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ARACELY PEREZ PORTRERO

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 ARACELY PEREZ PORTRERO,
15 individually and on behalf of others similarly
situated,

16 Plaintiff,

17 vs.

18 AZCONA HARVESTING, LLC.

19 Defendant.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

20
21
22
23 Plaintiff Aracely Perez Portrero (“Plaintiff”), on behalf of herself and all others similarly
24 situated, complain and allege as follows:

25 **INTRODUCTION**

26 1. This case arises out of the failure of defendant Azcona Harvesting, LLC (“Defendant”)
27 to comply with various provisions of the California Labor Code. Defendant employs on a seasonal
28 basis agricultural workers who harvest strawberries (“Strawberry Pickers”). Prior to May 1, 2017,

1 Defendant did not pay Strawberry Pickers whose daily earnings were calculated as a combination of
2 piece rate wages and hourly wages all the wages owed to them for their rest period time. In addition,
3 at all relevant times, Defendant did not provide Strawberry Pickers with duty free meal periods of at
4 least 30 minutes. As a result, Defendant failed to pay Strawberry Pickers all the minimum wages owed
5 to them under Labor Code Section 1197, Defendant failed to pay Strawberry Pickers all the wages for
6 rest period time owed to them under Labor Code Section 226.2, Defendant failed to pay Strawberry
7 Pickers premium wages owed to them for meal period and rest period violations under Labor Code
8 Section 226.7, Defendant engaged in unfair competition, Defendant failed to provide Strawberry
9 Pickers accurate wage statements in violation of Labor Code Section 226, Defendant failed to pay
10 Strawberry Pickers all the wages owed to them upon discharge (including seasonal layoffs) or
11 resignation under Labor Code Section 201 or 202, Defendant failed to pay Strawberry Pickers all the
12 wages owed to them under the Migrant and Seasonal Agricultural Workers Protection Act (“AWPA”),
13 and Defendant failed to provide Strawberry Pickers with accurate wage statements in violation of the
14 AWPA. Plaintiff seeks all damages, restitution, and penalties to which she and similarly situated
15 Strawberry Pickers are entitled under the AWPA and state law.

16 **JURISDICTION**

17 2. The Court has original jurisdiction over Plaintiff’s claims under the AWPA, a law of the
18 United States, pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1854. The Court has supplemental
19 jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367. The state law claims are so
20 related to Plaintiff’s claims under the AWPA that they form part of the same case or controversy.

21 **VENUE**

22 3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant
23 does business and therefore resides in this district and/or a substantial part of the events or omissions
24 giving rise to Plaintiff’s claims occurred in this district.

25 **THE PARTIES**

26 **A. Plaintiff**

27 4. Plaintiff worked as a Strawberry Picker for Defendant in Salinas in 2016 (from
28 approximately June to November) and 2017 (from approximately April to July). For some days during

1 her employment, Plaintiff was paid a total amount of daily wages that was calculated based on a
2 combination of piece rate wages and hourly wages. On other days during her employment, Plaintiff
3 was paid daily wages that were based only on hourly wages. Prior to May 1, 2017, for each day that
4 Plaintiff's daily wages was a combination of piece rate wages and hourly wages, the piece rate portion
5 of her wages did not compensate Plaintiff at all for any of her rest period time, and the hourly portion
6 of her wages was not high enough to meet minimum wage requirements or, beginning on January 1,
7 2016, the average hourly earnings requirement for rest period time under Labor Code Section 226.2.
8 During her employment, the meal periods provided to Plaintiff, which were exactly 30 minutes in
9 length, were not duty free for 30 minutes because, during that 30 minute period, Plaintiff was required
10 to travel from the work area to the break area at the start of the meal period, travel back to the work
11 area from the break area at the end of the meal period, and wash her hands before resuming work.
12 Because travel between the work area and break area and hand washing would typically take between
13 5 to 10 minutes, the meal periods provided to Plaintiff were not duty free for 30 minutes but were only
14 duty free for approximately 20-30 minutes.

15 **B. Defendants**

16 5. At all relevant times, Defendant has been a limited liability company organized under
17 the law of the State of California with a principal place of business in either Salinas or Greenfield,
18 California. Defendant harvests produce at various locations in the state of California. Defendant is or
19 was the employer of Plaintiff and other similarly situated Strawberry Pickers at the time Defendant
20 breached its legal obligations to them as described herein, and Defendant continues to breach legal
21 obligations owed to similarly situated Strawberry Pickers currently employed by Defendant.

22 **CLASS ACTION ALLEGATIONS**

23 6. Plaintiff brings her claims on behalf of herself and all other similarly situated
24 Strawberry Pickers (collectively the "Class") as a class action pursuant to Rule 23 of the Federal Rules
25 of Civil Procedure. The members of the Class belong to the Strawberry Pickers Class, Rest Period
26 Time Minimum Wages Class, Rest Period Time All Wages Class, Restitution Class, Wage Statement
27 Class and/or the Final Wages Class, which are defined as follows:
28

1 **Strawberry Pickers Class:** All persons who, at any time since the date three years before the
2 filing of the complaint in this action, worked for Defendant in California as a seasonal agricultural
3 worker who performed field work picking strawberries.

4 **Rest Period Time Minimum Wages Class:** All persons who, at any time between the date
5 three years before the filing of the complaint in this action and May 1, 2017, worked for Defendant in
6 California as a seasonal agricultural worker who performed field work picking strawberries, and whose
7 daily total wages was calculated as a combination of piece rate wages and hourly wages.

8 **Rest Period Time All Wages Class:** All persons who, at any time between January 1, 2016
9 and May 1, 2017, worked for Defendant in California as a seasonal agricultural worker who performed
10 field work picking strawberries, and whose daily total wages was calculated as a combination of piece
11 rate wages and hourly wages.

12 **Restitution Class:** All persons who, at any time since the date four years before the filing of
13 the complaint in this action, worked for Defendant in California as a seasonal agricultural worker who
14 performed field work picking strawberries.

15 **Wage Statement Class:** All persons who, at any time since the date one year before the filing
16 of the complaint in this action, worked for Defendant in California as a seasonal agricultural worker
17 who performed field work harvesting strawberries.

18 **Final Wages Class:** All persons who worked for Defendant in California as a seasonal
19 agricultural worker who performed field work harvesting strawberries who had a period of
20 employment during any harvesting season end at any time since the date three years before the filing of
21 the complaint in this action.

22 7. Plaintiff's class claims are brought and may be maintained as a class action under Rule
23 23(a) of the Federal Rules of Civil Procedure.

24 a. Numerosity. The Class members are so numerous that individual joinder of all of them
25 as plaintiffs is impractical. While the exact number of Class members is unknown to Plaintiff at this
26 time, Plaintiff is informed and believes and thereon alleges that there are not less than 50 members in
27 the Strawberry Pickers Class, not less than 50 members in the Rest Period Time Minimum Wages
28 Class, not less than 50 members in the Rest Period Time All Wages Class, not less than 50 members in

1 the Restitution Class, not less than 50 members in the Wage Statement Class, not less than 50 members
2 in the Final Wages Class, and not less than 50 members in the Class as a whole.

3 b. Commonality. There are questions of law or fact common to class members. These
4 common questions include, but are not limited to:

- 5 (1) Does Defendant have a policy or practice of not providing to
6 Strawberry Pickers meal periods that were duty free for 30
7 minutes?
- 8 (2) Did Defendant have a policy or practice of not paying Strawberry
9 Pickers, prior to May 1, 2017, minimum wages for their rest period
10 time?
- 11 (3) Did Defendant have a policy or practice of not paying Strawberry
12 Pickers, between January 1, 2016 and May 1, 2017, all the wages
13 for their rest period time owed to them under Labor Code Section
14 226.2?
- 15 (4) Did Defendant engage in a “willful” failure to pay all wages owed
16 to Strawberry Pickers upon termination, thereby making Defendant
17 liable for penalty wages under Labor Code Section 203?
- 18 (5) Did Defendant fail to provide Strawberry Pickers with accurate
19 wage statements in violation of Labor Code Section 226 or the
20 AWPA?
- 21 (6) Did Defendant fail to pay Strawberry Workers all wages due in
22 violation of the AWPA?

23 c. Typicality. Plaintiff is a member of the Class, and her claims are typical of the claims
24 of the other Class members Plaintiff seeks to represent. Plaintiff suffered the same kinds of injuries
25 suffered by other Class members and seeks the same kind of relief sought by other Class members.

26 d. Adequate Representation. Plaintiff will adequately and fairly protect the interests of the
27 members of the Class. Plaintiff has no interests adverse to the interests of absent Class members.
28 Plaintiff is represented by legal counsel with substantial class action experience in civil litigation and

1 employment law.

2 7. This case is brought and may be maintained as a class action under Rule 23(b)(3) of the
3 Federal Rules of Civil Procedure. Questions of law or fact common to class members predominate
4 over any questions affecting only individual members, and a class action is superior to other available
5 methods for the fair and efficient adjudication of the controversy. Class action treatment will allow a
6 large number of similarly situated persons to prosecute their common claims in a single forum,
7 simultaneously, efficiently, and without the unnecessary duplication of effort and expense that
8 numerous individual actions would require. Further, the monetary amounts due to many individual
9 class members are likely to be relatively small, and the burden and expense of individual litigation
10 would make it difficult or impossible for individual class members to seek and obtain relief. A class
11 action will serve an important public interest by permitting employees harmed by Defendant's
12 unlawful practices to effectively pursue recovery of the sums owed to them.

13 **FIRST CLAIM FOR RELIEF**

14 **FAILURE TO PROVIDE DUTY FREE MEAL PERIODS**

15 **(By Plaintiff and the Strawberry Pickers Class against Defendant)**

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

17 9. At all relevant times, Plaintiff and the other members of the Strawberry Pickers Class
18 were employees of Defendant covered by Labor Code Sections 226.7 and 512 and applicable Wage
19 Orders.

20 10. Pursuant to Labor Code Section 512 and applicable Wage Orders, Plaintiff and the other
21 members of the Strawberry Pickers Class were entitled to a duty free meal period of at least 30 minutes
22 every day they worked more than five hours in a work day. Pursuant to Labor Code Section 226.7,
23 Plaintiff and the other members of the Strawberry Pickers Class were entitled to premium wages equal
24 to one hour of pay at their regular rate of pay for every day that Defendant failed to provide a meal
25 period that was duty free for at least 30 minutes.

26 11. Defendant failed to provide Plaintiff and other members of the Strawberry Pickers Class
27 with meal periods that were duty free for at least 30 minutes in accordance with Labor Code Section
28 512 and/or applicable Wage Orders and failed to pay Plaintiff and other members of the Strawberry

1 Pickers Class premium wages in accordance with Labor Code Section 226.7 when duty free meal
2 periods of at least 30 minutes were not provided. Plaintiff is informed and believes and thereon
3 alleges that, during the limitations period applicable to this cause of action, Defendant had a policy or
4 practice of not providing members of the Strawberry Pickers Class with meal periods that were duty
5 free for at least 30 minutes and Defendant did not pay members of the Strawberry Pickers Class
6 premium wages when Defendant failed to provide them with 30 minute duty free meal periods.

7 12. As a result of Defendants' unlawful conduct, Plaintiff and other members of the
8 Strawberry Pickers Class have suffered damages in an amount, subject to proof, to the extent they were
9 not paid all the premium wages owed to them for Defendant's meal period violations.

10 13. Plaintiff and members of the Strawberry Pickers Class are entitled to recover reasonable
11 attorney's fees in connection with their meal period claims pursuant to Code of Civil Procedure
12 Section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

13 **SECOND CLAIM FOR RELIEF**

14 **FAILURE TO PAY MINIMUM WAGES**

15 **(By Plaintiff and the Strawberry Pickers Class against Defendant)**

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

18 15. At all relevant times, Plaintiff and the other members of the Strawberry Pickers Class
19 were employees of Defendant covered by Labor Code Section 1197.

20 16. Pursuant to Labor Code Section 1197, Plaintiff and the other members of the
21 Strawberry Pickers Class were entitled to minimum wages for all time deemed compensable "hours
22 worked," including time spent taking meal periods that were not duty free for at least 30 minutes.

23 17. Defendant failed to pay Plaintiff and other members of the Strawberry Pickers Class all
24 the minimum wages owed to them for all their time deemed compensable "hours worked." Plaintiff is
25 informed and believes and thereon alleges that, during the limitations period applicable to this cause of
26 action, Defendant had a policy or practice of not providing members of the Strawberry Pickers Class
27 with meal periods that were duty free for at least 30 minutes and Defendant did not pay members of
28 the Strawberry Pickers Class any wages for any of their meal period time that, because meal periods

1 were not duty free for at least 30 minutes, was compensable “hours worked.”

2 18. As a result of Defendants’ unlawful conduct, Plaintiff and other members of the
3 Strawberry Pickers Class have suffered damages in an amount, subject to proof, to the extent they were
4 not paid all the minimum wages owed to them.

5 19. Pursuant to Labor Code Section 1194, Plaintiff and other members of the Strawberry
6 Pickers Class are entitled to recover the full amount of their unpaid minimum wages, interest thereon,
7 reasonable attorney’s fees and costs of suit. Pursuant to Labor Code Section 1194.2, Plaintiff and
8 other members of the Strawberry Pickers Class are also entitled to recover liquidated damages in an
9 amount equal to the amount of unpaid minimum wages and interest thereon.

10 **THIRD CLAIM FOR RELIEF**

11 **FAILURE TO PAY MINIMUM WAGES**

12 **(By Plaintiff and the Rest Period Time Minimum Wages Class against Defendant)**

13 20. Plaintiff incorporates paragraphs 1 through 7 of this complaint as if fully alleged herein.

14 21. At all relevant times, Plaintiff and the other members of the Rest Period Time Minimum
15 Wages Class were employees of Defendant covered by Labor Code Section 1197.

16 22. Pursuant to Labor Code Section 1197, Plaintiff and the other members of the Rest
17 Period Time Minimum Wages Class were entitled to minimum wages for all time deemed
18 compensable “hours worked,” including time spent taking rest periods.

19 23. Defendant failed to pay Plaintiff and other members of the Rest Period Time Minimum
20 Wages Class all the minimum wages owed to them for all their time deemed compensable “hours
21 worked.” Plaintiff is informed and believes and thereon alleges that, during the limitations period
22 applicable to this cause of action, Defendant had a policy or practice of paying members of the Rest
23 Period Time Minimum Wages Class a combined amount of hourly wages and piece rate wages that did
24 not pay them minimum wages for their rest period time.

25 24. As a result of Defendants’ unlawful conduct, Plaintiff and other members of the Rest
26 Period Time Minimum Wages Class have suffered damages in an amount, subject to proof, to the
27 extent they were not paid all the minimum wages owed to them.

28 25. Pursuant to Labor Code Section 1194, Plaintiff and other members of the Rest Period

1 Time Minimum Wages Class are entitled to recover the full amount of their unpaid minimum wages,
2 interest thereon, reasonable attorney's fees and costs of suit. Pursuant to Labor Code Section 1194.2,
3 Plaintiff and other members of the Rest Period Time Minimum Wages Class are also entitled to
4 recover liquidated damages in an amount equal to the amount of unpaid minimum wages and interest
5 thereon.

6 **FOURTH CLAIM FOR RELIEF**

7 **FAILURE TO PAY ALL WAGES OWED FOR REST PERIOD TIME**

8 **(By Plaintiff and the Rest Period Time All Wages Class against Defendant)**

9 26. Plaintiff incorporates paragraphs 1 through 7 of this complaint as if fully alleged herein.

10 27. At all relevant times, Plaintiff and the other members of the Rest Period Time All
11 Wages Class were employees of Defendant covered by Labor Code Section 226.2.

12 28. Pursuant to Labor Code Section 226.2, Plaintiff and the other members of the Rest
13 Period Time All Wages Class were entitled to be paid at an average hourly rate based on total
14 compensation for the workweek for their time spent taking rest periods.

15 29. Defendant failed to pay Plaintiff and other members of the Rest Period Time All Wages
16 Class all the wages owed to them for their time spent taking rest periods. Plaintiff is informed and
17 believes and thereon alleges that, during the limitations period applicable to this cause of action,
18 Defendant had a policy or practice of paying members of the Rest Period Time All Wages Class a
19 combined amount of hourly wages and piece rate wages that did not pay them at an average hourly rate
20 based on total compensation for the workweek for their time spent taking rest periods.

21 30. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Rest
22 Period Time All Wages Class have suffered damages in an amount, subject to proof, to the extent they
23 were not paid all the wages owed to them for rest period time.

24 31. Pursuant to Labor Code Section 218, Plaintiff and other members of the Rest Period
25 Time All Wages Class are entitled to recover the full amount of their unpaid wages, interest thereon,
26 reasonable attorney's fees and costs of suit.

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FIFTH CLAIM FOR RELIEF

UNFAIR COMPETITION

(By Plaintiff and the Restitution Class)

32. Plaintiff incorporate paragraphs 1 through 31 of this complaint as if fully alleged herein.

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

34. As a result of Defendant's unfair competition as alleged herein, Plaintiff and other members of the Restitution Class have suffered injury in fact and lost money or property. Plaintiff and members of the Restitution Class have been deprived of their rights to be provided with duty free meal periods of at least 30 minutes, to be paid all minimum wages owed to them, and/or to be paid all wages owed to them for rest period time, and Plaintiff and members of the Restitution Class have not been paid all the monies owed to them under California law.

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

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

SIXTH CLAIM FOR RELIEF

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(By Plaintiff and the Wage Statement Class against Defendants)

37. Plaintiffs incorporate paragraphs 1 through 31 of this complaint as if fully alleged herein.

38. At all relevant times, Plaintiff and the other members of the Wage Statement Class were

1 employees of Defendant covered by Labor Code Section 226 and/or 226.2.

2 39. Pursuant to Labor Code Section 226(a), Plaintiff and other members of the Wage
3 Statement Class were entitled to receive, semimonthly or at the time of each payment of wages,
4 an accurate itemized wage statement showing, *inter alia*, the total amount of gross wages earned
5 during the pay period, the total amount of net wages earned during the pay period, the total
6 number of hours worked during the pay period, all the applicable hourly rates of pay during the
7 pay period, and all the applicable piece rates during the pay period. Pursuant to Labor Code
8 Section 226.2(a)(2), Plaintiff and other members of the Wage Statement Class were entitled to
9 receive, semimonthly or at the time of each payment of wages, an accurate itemized wage
10 statement stating, separately from the information reequired by Section 226(a), the total hours of
11 compensable rest period time, the rate of compensation for rest period time, and the gross wages
12 paid for rest period time during the pay period.

13 40. Defendant failed to provide Plaintiff and other members of the Wage Statement Class
14 accurate itemized statements in accordance with Labor Code Section 226(a) and/or 226.2. Plaintiff is
15 informed and believe and thereon allege that, during the limitations period applicable to this cause of
16 action, Defendant had the following policies or practice which resulted in members of the Wage
17 Statement Class not receiving accurate wage statements:

18 a. Defendant did not pay members of the Strawberry Pickers class premium wages for
19 meal period violations.

20 b. Defendant did not pay members of the Rest Period Time Minimum Wages Class all the
21 minimum wages owed to them for their rest period time.

22 c. Defendant did not pay members of the Rest Period Time All Wages Class all the wages
23 owed to them for their rest period time.

24 d. The wage statements provided to members of the Rest Period Time Minimum Wages
25 Class and the Rest Period Time All Wages Class did not set forth hourly wage rates and piece rates
26 separately or accurately. Although total daily wages was calculated based on a combination of
27 hourly wages and piece rate wages, total daily wages was reported on wage statements as the product
28 of hours worked multiplied by a combined average hourly earnings rate.

1 e. The wage statements provided to members of the Rest Period Time Minimum
2 Wages Class and the Rest Period Time All Wages Class did not state separately the the total
3 amount of rest period time, the rate of compensation for rest period time, or the gross wages paid
4 for rest period time during the pay period.

5 41. Defendant's failure to provide Plaintiff and other members of the Wage Statement Class
6 with accurate wage statements was knowing and intentional. Defendant had the ability to provide
7 Plaintiff and other members of the Wage Statement Class with accurate wage statements but
8 intentionally provided wage statements that Defendant knew did not comply with all the requirements
9 of Labor Code Section 226 and/or 226.2. Defendant intended and knew that, during the limitations
10 period applicable to this cause of action, Defendant had the following policies or practice which
11 resulted in members of the Wage Statement Class not receiving accurate wage statements:

12 a. Defendant did not pay members of the Strawberry Pickers class premium wages for
13 meal period violations.

14 b. Defendant did not pay members of the Rest Period Time Minimum Wages Class all the
15 minimum wages owed to them for their rest period time.

16 c. Defendant did not pay members of the Rest Period Time All Wages Class all the wages
17 owed to them for their rest period time.

18 d. The wage statements provided to members of the Rest Period Time Minimum Wages
19 Class and the Rest Period Time All Wages Class did not set forth hourly wage rates and piece rates
20 separately or accurately. Although total daily wages was calculated based on a combination of
21 hourly wages and piece rate wages, total daily wages was reported on wage statements as the product
22 of hours worked multiplied by a combined average hourly earnings rate.

23 e. The wage statements provided to members of the Rest Period Time Minimum
24 Wages Class and the Rest Period Time All Wages Class did not state separately the the total
25 amount of rest period time, the rate of compensation for rest period time, or the gross wages paid
26 for rest period time during the pay period.

27 42. As a result of Defendant's conduct, Plaintiff and other members of the Wage Statement
28 Class have suffered injury. From the wage statements provided to them alone, Plaintiff and other

1 members of the Wage Statement Class could not promptly and easily determine the total amount of
2 gross wages actually earned during the pay period, the total amount of net wages actually earned
3 during the pay period, the total number of hours actually worked during the pay period, all the
4 applicable hourly rates of pay during the pay period, all applicable piece rates, the total number of
5 hours of compensable rest period time, the rate of compensation for rest period time, and/or the gross
6 wages paid for rest period time during the pay period.

7 43. Pursuant to Labor Code Section 226(e) and 226.2(a)(2), Plaintiff and other members of
8 the Wage Statement Class are entitled to recover fifty dollars for the initial pay period in which a
9 violation of Labor Code Section 226 or 226.2 occurred and one hundred dollars for each violation of
10 Labor Code Section 226 or 226.2 in every subsequent pay period, not to exceed an aggregate civil
11 penalty of four thousand dollars per employee

12 44. Pursuant to Labor Code Sections 218, 226(e), 226(g) and 226.2(a)(2), Plaintiff and
13 other members of the Wage Statement Class are entitled to recover the full amount of civil penalties
14 due under Labor Code Section 226(e), reasonable attorney's fees and costs of suit.

15 **SEVENTH CLAIM FOR RELIEF**

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

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

18 45. Plaintiff incorporates paragraphs 1 through 31 of this complaint as if fully alleged
19 herein.

20 46. At all relevant times, Plaintiff and the other members of the Final Wages Class were
21 employees of Defendant covered by Labor Code Sections 201 or 202.

22 47. Pursuant to Labor Code Sections 201 or 202, Plaintiff and other members of the Final
23 Wages Class were entitled upon termination to timely payment of all wages earned and unpaid prior to
24 termination. Discharged employees (including employees subject to seasonal layoffs) were entitled to
25 payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees
26 who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72
27 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to
28 payment of all wages earned and unpaid prior to resignation at the time of resignation.

1 48. Defendant failed to pay Plaintiff and other members of the Final Wages Class all wages
2 earned and unpaid prior to termination in accordance with Labor Code Sections 201 or 202. Plaintiff is
3 informed and believes and thereon alleges that at all relevant times within the limitations period
4 applicable to this cause of action, Defendant had the following policies or practices, which resulted in
5 Defendant failing to pay members of the Final Wages Class all the wages owed to them upon
6 termination:

7 a. Defendant did not pay members of the Strawberry Pickers class premium wages for
8 meal period violations.

9 b. Defendant did not pay members of the Rest Period Time Minimum Wages Class all the
10 minimum wages owed to them for their rest period time.

11 c. Defendant did not pay members of the Rest Period Time All Wages Class all the wages
12 owed to them for their rest period time.

13 49. Defendant's failure to pay Plaintiff and members of the Final Wages Class all wages
14 earned prior to termination in accordance with Labor Code Sections 201 or 202 was willful.
15 Defendant had the ability to pay all wages earned by members of the Final Wages Class prior to
16 termination in accordance with Labor Code Sections 201 or 202, but intentionally adopted policies or
17 practices incompatible with the requirements of Labor Code Sections 201 or 202. Defendant intended
18 and knew that, during the limitations period applicable to this cause of action, Defendant had the
19 following policies or practices, which resulted in Defendant failing to pay members of the Final Wages
20 Class all the wages owed to them upon termination:

21 a. Defendant did not pay members of the Strawberry Pickers class premium wages for
22 meal period violations.

23 b. Defendant did not pay members of the Rest Period Time Minimum Wages Class all the
24 minimum wages owed to them for their rest period time.

25 c. Defendant did not pay members of the Rest Period Time All Wages Class all the wages
26 owed to them for their rest period time.

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

1 and thereon alleges that, during the limitations period applicable to this cause of action, Defendant had
2 Defendant had the following policies or practices, which resulted in Defendant failing to pay members
3 of the Strawberry Pickers Class all the wages owed to them on regular pay dates and/or upon the
4 termination of their employment:

5 a. Defendant did not pay members of the Strawberry Pickers class premium wages for
6 meal period violations.

7 b. Defendant did not pay members of the Rest Period Time Minimum Wages Class all the
8 minimum wages owed to them for their rest period time.

9 c. Defendant did not pay members of the Rest Period Time All Wages Class all the wages
10 owed to them for their rest period time.

11 60. Pursuant to 29 U.S.C. § 1821(d), Defendant was required to provide Plaintiff and the
12 other members of the Strawberry Pickers Class itemized wage statements for each pay period that
13 accurately set forth the basis on which wages are paid, the number of hours they worked, and their total
14 pay period earnings.

15 61. Defendant failed to pay provide Plaintiff and other members of the Strawberry Class
16 with accurate wage statements in violation of 29 U.S.C. § 1821(d). Plaintiff is informed and believes
17 and thereon allege that, during the limitations period applicable to this cause of action, Defendant had
18 the following policies or practice which resulted in members of the Strawberry Pickers Class not
19 receiving accurate wage statements:

20 a. Defendant did not pay members of the Strawberry Pickers class premium wages for
21 meal period violations.

22 b. Defendant did not pay members of the Rest Period Time Minimum Wages Class all the
23 minimum wages owed to them for their rest period time.

24 c. Defendant did not pay members of the Rest Period Time All Wages Class all the wages
25 owed to them for their rest period time.

26 d. The wage statements provided to members of the Rest Period Time Minimum Wages
27 Class and the Rest Period Time All Wages Class did not set forth hourly wage rates and piece rates
28 separately or accurately. Although total daily wages was calculated based on a combination of

1 hourly wages and piece rate wages, total daily wages was reported on wage statements as the product
2 of hours worked multiplied by a combined average hourly earnings rate.

3 e. The wage statements provided to members of the Rest Period Time Minimum
4 Wages Class and the Rest Period Time All Wages Class did not state separately the the total
5 amount of rest period time, the rate of compensation for rest period time, or the gross wages paid
6 for rest period time during the pay period.

7 62. Defendant's failure to pay Plaintiff and other members of the Strawberry Pickers Class
8 all the wages owed to them when due in violation of 29 U.S.C. § 1832 and Defendant's failure to
9 provide Plaintiff and other members of the Strawberry Pickers Class with accurate wage statements in
10 violation of 29 U.S.C. § 1821(d) were intentional. Defendant acted consciously and deliberately when
11 it failed to pay members of the Strawberry Pickers Class all wages owed to them and when it failed to
12 provide them with accurate wage statements.

13 63 As a result of Defendant's unlawful conduct, Plaintiff and other members of the
14 Strawberry Pickers Class have suffered damages in an amount, subject to proof, to the extent they were
15 not paid for all the wages owed to them.

16 64. Pursuant to 29 U.S.C. § 1854, Plaintiff and other members of the Strawberry Pickers
17 Class are entitled to recover actual damages or statutory damages of up to \$500 per class member per
18 violation, not to exceed the aggregate amount of \$500,000.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for relief
21 and judgment against Defendant as follows:

22 A. An order certifying that Plaintiff may pursue her claims as a class action under Rule 23
23 of the Federal Rules of Civil Procedure;

24 B. An order appointing Plaintiff as Class representative and appointing Plaintiff's counsel
25 as Class counsel;

26 C. Damages for unpaid premium wages under Labor Code Section 226.7;

27 D. Damages for unpaid minimum wages under Labor Code Section 1194;

28 E. Liquidated damages under Labor Code Section 1194.2;

- 1 F. Damages for unpaid rest period wages under Labor Code Section 226.2;
- 2 G. Restitution for unpaid wages under Business and Professions Code Section 17203;
- 3 H. Civil penalties for inaccurate or non-compliant wage statements under Labor Code
- 4 Section 226 and/or Labor Code Section 226.2;
- 5 I. Damages for unpaid wages under Labor Code Sections 201 or 202;
- 6 J. Damages for unpaid penalty wages under Labor Code Section 203;
- 7 K. Actual damages or statutory damages under 29 U.S.C. § 1854;
- 8 L. Pre-judgment interest;
- 9 M. Costs;
- 10 N. Reasonable attorney’s fees; and
- 11 O. Such other and further relief as the Court deems just and proper.

12 Dated: August 17, 2017

KARASIK LAW FIRM
LAW OFFICES OF SANTOS GOMEZ

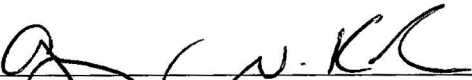
14 By 
15 Gregory N. Karasik
16 Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

17 Plaintiff demands a trial by jury for herself and all others similarly situated on all claims so
18 triable.

19
20 Dated: August 17, 2017

KARASIK LAW FIRM
LAW OFFICES OF SANTOS GOMEZ

22 By 
23 Gregory N. Karasik
24 Attorneys for Plaintiff

JS-CAND 44 (Rev. 07/16)

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ARACELY PEREZ PORTRERO, individually and on behalf of others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Gregory N. Karasik **KARASIK LAW FIRM** (SBN 115834)
11835 West Olympic Boulevard, Suite 1275
Los Angeles, California 90064; Telephone: (310) 312-6800

DEFENDANTS

AZCONA HARVESTING, LLC.

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

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

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 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)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<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 Of Veteran's Benefits <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 <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 type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<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))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC § 3729(a)) <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 <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	CIVIL RIGHTS <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	PRISONER PETITIONS 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	<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 type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC § 7609	

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-Transfer
- 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 USC Section 1854
Brief description of cause:
Class action claims of farm workers for unpaid wages

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

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

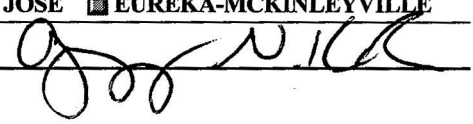
JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE: 08/17/2017

SIGNATURE OF ATTORNEY OF RECORD:



INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Strawberry Picker Claims Employer Refused Proper Rest Breaks](#)
