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8 IN THE UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 GELACIO LOPEZ and PATRICIA LIRA,  
11 individually and acting in the interest of other  
current and former employees,

12 Plaintiffs,

13 vs.

14 GEMA BERRY FARMS, INC.  
15 a California Corporation; IVAN LOPEZ, an  
16 individual; and DOES 1 through 20, inclusive,

17 Defendants.

Case No.

**CLASS ACTION COMPLAINT FOR:**

1. Migrant and Seasonal Agricultural Worker Protection Act (AWPA);
2. Failure to Provide Rest and Meal Periods or Pay Additional Wages in Lieu Thereof;
3. Failure to Pay Minimum Wages;
4. Failure to Pay Rest & Recovery and Other Nonproductive Time Separate From Piece-rate Compensation;
5. Failure to Pay Overtime Premium Wages;
6. Failure to Indemnify Employee for All Necessary Expenditures or Losses Incurred;
7. Failure to Give Notice of Sick Leave and Provide Paid Sick Leave;
8. Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions
9. Violation of Unfair Competition Law, Cal. Bus. & Prof. Code §17200 et seq.

**REPRESENTATIVE NON-CLASS CLAIM**

10. Penalties Pursuant to the California Private Attorneys General Act, Labor Code §§2698 et seq.

**DEMAND FOR JURY TRIAL**

28

1           1.       Plaintiffs GELACIO LOPEZ and PATRICIA LIRA, collectively referred to as  
2 "PLAINTIFFS", brings this action against GEMA BERRY FARMS, INC., IVAN LOPEZ, and  
3 DOES 1 through 20, inclusive, collectively "DEFENDANTS," individually and on behalf of all other  
4 similarly situated individuals employed under common circumstances and facts. The allegations  
5 made in this complaint are based on knowledge of PLAINTIFFS GELACIO LOPEZ and PATRICIA  
6 LIRA, except those allegations made on information and belief, which are based on the investigation  
7 of their counsel.

8 **I.       NATURE OF THE ACTION**

9           2.       This is a Class Action pursuant to Federal Rule of Civil Procedure 23, and a collective  
10 action pursuant to the Migrant and Seasonal Agricultural Workers Protection Act (the "AWPA").  
11 PLAINTIFFS brings this action on behalf of a class of workers currently or formerly employed by  
12 DEFENDANTS in California. PLAINTIFFS seeks to vindicate the rights afforded to workers under  
13 the AWPA, California law, including the California Labor Code and Wage Orders, and California's  
14 unfair competition law ("UCL"), California Business & Professions Code sections 17200 et seq.

15           3.       This action arises out of the failure of DEFENDANTS' failure to pay seasonal  
16 agricultural workers who harvest strawberries ("Field Workers") all the wages owed to them due to  
17 unlawfully deducting the first box of picked strawberries from Field Workers who are late to work  
18 as a punitive and retaliatory measure; failing to pay for rest and recovery periods and other  
19 nonproductive time separate from any piece-rate compensation; failing to provide Field Workers  
20 with proper meal periods and second rest periods. As a result, DEFENDANTS fail to pay non-  
21 exempt Field Workers, including PLAINTIFFS and the Class, all wages owed to them upon  
22 discharge (including seasonal layoffs) or resignations in conformance with California law.

23           4.       DEFENDANTS have employed PLAINTIFFS and the Class directly and are sued as  
24 joint employers, agents and/or alter egos. DEFENDANTS are also sued as "persons," pursuant to  
25 Labor Code §§ 558, 558.1, 18, and 2699 *et seq.*, who violated or caused to be violated the Labor  
26 Code and other regulations governing wages, hours and conditions of employment. Liability under  
27 Labor Code §§558, 18, and 2699 *et seq.* does not require that DEFENDANTS be employers.

28           4.       PLAINTIFFS further alleges that DEFENDANT IVAN LOPEZ and is a "person

1 acting on behalf of an employer” within the meaning of Labor Code § 558.1 who violated or caused  
2 to be violated California Labor Code §§ 203, 226, 226.2 226.7, 1194, and 2802, as well as the  
3 provisions “regulating minimum wages or hours and days of work” as enumerated in IWC Wage  
4 Order 14. As such, Defendant IVAN LOPEZ may be held liable as an employer for such violations  
5 sustained by PLAINTIFFS and the Class that occurred after January 1, 2016, pursuant to Labor Code  
6 § 558.1.

7 5. PLAINTIFFS are ignorant of the true names or capacities of the DEFENDANTS sued  
8 herein under the fictitious names of DOES ONE through TWENTY, inclusive, and therefore sues  
9 those Defendants under such fictitious names. PLAINTIFFS will amend this complaint to allege the  
10 true names or capacities of these Defendants once they have been ascertained.

11 6. PLAINTIFFS are informed and believes and thereon alleges that each DEFENDANT  
12 is responsible in some manner for the occurrences herein alleged, and that the damages herein alleged  
13 were actually and proximately caused by each DEFENDANT’S conduct.

14 7. The core violations PLAINTIFFS alleges against DEFENDANTS for themselves,  
15 and the Class are: (1) failure to provide rest and meal periods or appropriately compensate employees  
16 in lieu thereof; (2) failure to pay minimum and premium overtime; (3) failure to pay compensate  
17 Field workers for rest and recovery period and other nonproductive time separate from any piece-  
18 rate compensation; (4) failure to reimburse employees for necessary expenses; (5) failure to pay all  
19 wages owed upon separation from employment; (6) and failure to provide accurate, itemized wage  
20 statements. Additional derivative violations are described below.

21 8. DEFENDANTS have refused to pay the wages due and owed to PLAINTIFFS and  
22 Class members under the express provisions of the California Labor Code, which in turn has resulted  
23 in additional Labor Code violations entitling PLAINTIFFS and the Class to prompt payment of  
24 wages *and* penalties.

25 9. PLAINTIFFS bring the final cause of action as a representative – non class – claim  
26 pursuant to the California Labor Code Private Attorneys General Act (“PAGA”), Labor Code  
27 §§2698 *et seq.* The PAGA does not require class certification in order to confer workforce-wide  
28 relief, provided that the administrative requirements are met. PLAINTIFFS have complied with the

1 PAGA's prerequisite administrative requirements and, as such, now has a substantive right to stand  
2 in the shoes of the State of California and bring a PAGA enforcement action to recover penalties for  
3 the State and all current and former employees of DEFENDANTS, including PLAINTIFFS. As such,  
4 PLAINTIFFS wishes to pursue the PAGA claim as a non-class, representative claim, as expressly  
5 authorized by the plain language of the Act. In the alternative, however, PLAINTIFFS can pursue  
6 the PAGA claim as a class action.

7 10. PLAINTIFFS, for themselves and the Class, also seek injunctive relief requiring  
8 DEFENDANTS to comply with all applicable California labor laws and regulations in the future and  
9 preventing DEFENDANTS from engaging in and continuing to engage in unlawful and unfair  
10 business practices. PLAINTIFFS also seeks declaratory relief enumerating DEFENDANTS'  
11 violations so that the DEFENDANTS and the general public will have clarity and guidance with  
12 regards to DEFENDANTS' future employment practices.

## 13 II. PARTIES

14 11. PLAINTIFF GELACIO LOPEZ is a California resident. He was employed as a non-  
15 exempt Field Worker by DEFENDANTS at GEMA BERRY FARMS, INC. located in Salinas,  
16 California between February/March 2017, and December 2021. PLAINTIFF GELACIO LOPEZ is  
17 an aggrieved employee, within the meaning of the PAGA, who has been subjected to the violations  
18 and unlawful employment practices described herein, and who, as a result, has suffered injury in fact  
19 and has lost money or property.

20 12. PLAINTIFF PATRICIA LIRA is a California resident. She was employed as a non-  
21 exempt employee by DEFENDANTS at GEMA BERRY FARMS, INC., located in Salinas,  
22 California between February/March 2001, and December 2021. PLAINTIFF PATRICIA LIRA is  
23 an aggrieved employee, within the meaning of the PAGA, who has been subjected to the violations  
24 and unlawful employment practices described herein, and who, as a result, has suffered injury in fact  
25 and has lost money or property.

26 13. The following allegations as to DEFENDANTS are made on information and belief,  
27 and are likely to have evidentiary support after a reasonable opportunity for further investigation or  
28 discovery.

1           14.    On information and belief, DEFENDANT GEMA BERRY FARMS, INC. is a  
2 California corporation that operates a strawberry farm business, employing PLAINTIFFS and the  
3 Class of non-exempt employees PLAINTIFFS seek to represent in this lawsuit. DEFENDANT  
4 GEMA BERRY FARMS, INC. does business in Salinas, California. The agent for service of process  
5 is Ivan Lopez located at 4316 Hartfield Court Westlake Village, CA 91361 but also works at the  
6 Salinas California location. Defendant GEMA BERRY FARMS, INC. is also liable under Labor  
7 Code § 558.1 for all violations that occurred after January 1, 2016.

8           15.    On information and belief, Defendant IVAN LOPEZ is a person who violated or  
9 caused the violations of the California Labor Code and provisions regulating hours and days of work  
10 as detailed in the applicable Industrial Welfare Commission Order. At all relevant times, IVAN  
11 LOPEZ has been an owner, director, and/or managing agent for GEMA BERRY FARMS, INC. who  
12 has had complete authority over all labor policies and practices, including those resulting in  
13 violations as described in this complaint; and he has actively violated or caused the violations alleged  
14 herein. Defendant IVAN LOPEZ is also liable under Labor Code § 558.1 for all violations that  
15 occurred after January 1, 2016.

16           16.    PLAINTIFFS are ignorant of the true names or capacities of the DEFENDANTS sued  
17 herein under the fictitious names DOES 1 through 20, inclusive, and therefore sues such Defendants  
18 under fictitious names. PLAINTIFFS will amend this complaint to allege the true names or capacities  
19 of these DEFENDANTS once they have been ascertained. PLAINTIFFS are informed and believe  
20 and thereon alleges that each DEFENDANT is responsible in some manner for the occurrences  
21 herein alleged, and that the damages herein alleged were actually and proximately caused by each  
22 DEFENDANT'S conduct.

23           17.    PLAINTIFFS are informed and believes and thereon alleges that at all times  
24 mentioned herein, DEFENDANTS, including Does, were acting as the agent of every other  
25 DEFENDANT, and all acts alleged to have been committed by any DEFENDANT were committed  
26 on behalf of every other Defendant; and, at all times mentioned herein, each alleged act was  
27 committed by each Defendant and/or agent, servant, or employee of each DEFENDANT, and each  
28 Defendant directed, authorized or ratified each such act. PLAINTIFFS are informed and believes

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