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8   IN THE UNITED STATES DISTRICT COURT

9   NORTHERN DISTRICT OF CALIFORNIA

10 | Case No.
   GELACIO LOPEZ and PATRICIA LIRA,
11 individually and acting in the interest of other | **CLASS ACTION COMPLAINT FOR:**
   current and former employees,
12 | 1. Migrant and Seasonal Agricultural
                                                | Worker Protection Act (AWPA);
13   Plaintiffs, | 2. Failure to Provide Rest and Meal Periods
                                                | or Pay Additional Wages in Lieu
14   vs. | Thereof;
                                                | 3. Failure to Pay Minimum Wages;
15 GEMA BERRY FARMS, INC. | 4. Failure to Pay Rest & Recovery and
   a California Corporation; IVAN LOPEZ, an | Other Nonproductive Time Separate
16 individual; and DOES 1 through 20, inclusive, | From Piece-rate Compensation;
                                                | 5. Failure to Pay Overtime Premium
17   Defendants. | Wages;
                                                | 6. Failure to Indemnify Employee for All
18 | Necessary Expenditures or Losses
                                                | Incurred;
19 | 7. Failure to Give Notice of Sick Leave and
                                                | Provide Paid Sick Leave;
20 | 8. Knowing and Intentional Failure to
                                                | Comply with Itemized Employee Wage
21 | Statement Provisions
22 | 9. Violation of Unfair Competition Law,
                                                | Cal. Bus. & Prof. Code §§17200 et seq.
23
24 | **REPRESENTATIVE NON-CLASS
25 | CLAIM**
                                                | 10. Penalties Pursuant to the California
26 | Private Attorneys General Act, Labor
                                                | Code §§2698 et seq.
27
28 | **DEMAND FOR JURY TRIAL**

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

I.   NATURE OF THE ACTION

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

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

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

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

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

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

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

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

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

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

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

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

II.   **PARTIES**

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

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

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

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

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

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

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

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