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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

NISEI FARMERS LEAGUE, Plaintiff, v. CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY; DAVID M. LANIER, in his official capacity as Secretary of California Labor and Workforce Development Agency; DEPARTMENT OF INDUSTRIAL RELATIONS; CHRISTINE BAKER, in her official capacity as Director of the Department of Industrial Relations; DIVISION OF LABOR STANDARDS ENFORCEMENT; JULIE A. SU, in her official capacity as California Labor Commissioner; and DOES 1 to 10, inclusive, Defendants.	CASE NO.: 16 CE CG 02107 **NISEI FARMERS LEAGUE'S VERIFIED COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIVE AND DECLARATORY RELIEF** **(1) DUE PROCESS – VAGUENESS** **(2) DUE PROCESS – ARBITRARY DEPRIVATION OF PROPERTY** **(3) DUE PROCESS – LACK OF FAIR NOTICE** **(4) DUE PROCESS – RETROACTIVE PUNISHMENT** **(5) TAKINGS CLAUSE** **(6) CONTRACT CLAUSE** **(7) DECLARATORY RELIEF** **(8) INJUNCTIVE RELIEF**

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Plaintiff Nisei Farmers League, acting on behalf of itself and the members of Nisei Farmers League to protect important state and federal constitutional rights, seeks urgent declaratory and injunctive relief against Defendants California Labor and Workforce Development Agency ("LWDA"), David M. Lanier (in his official capacity as Secretary of the LWDA), Department of Industrial Relations ("DIR"), Christine Baker (in her official capacity as Director of DIR), Division of Labor Standards Enforcement ("DLSE"), Julie A. Su (in her official capacity as California Labor Commissioner), and Does 1 through 10, inclusive, as follows:

I. INTRODUCTION AND SUMMARY OF ALLEGATIONS

1. This lawsuit seeks urgent declaratory and injunctive relief from an unconstitutional law—Section 226.2 of the Labor Code, enacted by Assembly Bill No. 1513 —which effectively eliminates piece-rate compensation in California by making it impossible for employers to know how to pay employees through piece-rate compensation without being subject to civil and criminal penalties and legislatively enabled private litigation that amounts to the imposition of further penalties. After July 1, 2016, Plaintiff and its members will suffer irreparable harm under this law if this Court does not take action to protect their state and federal constitutional rights.

2. For nearly a century, California law has recognized—like many sister states across the nation—that, rather than being limited to hourly compensation, employees should be free to receive compensation tied directly to their hard work. For this reason, since 1919, California law has recognized explicitly what has long been the practice in our nation: Employers can pay employees on a "piece-rate" basis.[1] Thus, an employer could pay an employee a fixed (or variable) amount of money to be earned through the performance or completion of certain activities or tasks, and the more of those activities or tasks that the employee performed or completed, the more he or she would earn.

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[1] The California Labor Code expressly authorizes the use of piece rate pay: It provides that "'[w]ages' includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." (Lab. Code, § 200). And it provides that "Minimum Wage" must be paid for all "hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise." (IWC Wage Order No. 13-2001, § 4, subd. (A).)

3. "Piece rate" is an incentive-based form of compensation that rewards employees for hard-work. And numerous studies show that, as compared to hourly compensation, piece rate has the potential to increase employees' compensation as well as their productivity, which creates numerous benefits for employees and employers, and ultimately cost savings for consumers. For example, as Edward P. Lazear, at Stanford University's Graduate School of Business, concluded in his article *Performance Pay and Productivity* (90.5 AM. ECON. REV. 1346 (2000)), a switch to a piece-rate compensation scheme from an hourly compensation scheme resulted in an average 44% increase in productivity and an average 10% increase in pay for workers. Indeed, for workers, piece-rate compensation can be part of the American dream; instead of being paid the same hourly rate no matter what they do, employees are directly rewarded for their effort and productivity. Better for the worker and better for the employer.

4. Piece-rate compensation is integral to the agricultural industry. Agriculture is an industry that is highly suitable for compensation based on the performance or completion of certain activities, or on the production of certain units. Among other things, it provides an incentive-based compensation scheme that benefits both employers and employees. For example, workers might be paid a fixed amount for each bin of produce that is harvested—those who harvest more and fill more bins will earn more dollars. Those increased earnings for the worker also mean increased productivity. This method of compensation therefore allows agricultural employers to incentivize and reward productivity, something that an hourly rate does not accomplish.

5. In 2015, purportedly in response to two California appellate decisions that were expressly limited to their facts,[2] the California Legislature passed Assembly Bill No. 1513 ("AB 1513"), which took effect on January 1, 2016 as Labor Code section 226.2.

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[2] The two 2013 California Court of Appeal decisions, *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 ("*Gonzalez*") and *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864 ("*Bluford*"), have been read broadly by Defendants in a way that erroneously creates new requirements that have never before existed, without regard to California's broader compensation system and without regard to the structural integrity of California's piece-rate system. *Gonzalez* held, on the specific facts presented there, that mechanics paid on a piece-rate basis should be paid separately and in addition to the piece rate for time spent waiting around for cars to repair. *Bluford* held, on the specific facts presented there, that rest breaks were not time spent working on the piece-rate activity and therefore should be compensated separately and in

6. In short, although Section 200 of the Labor Code explicitly permits piece-rate compensation (as distinct from hourly wage and other authorized forms of compensation), and nothing has abrogated Section 200, Section 226.2 purports to create new unconstitutionally vague and indiscernible requirements for piece-rate compensation that go even further than *Gonzalez* and *Bluford* and, if interpreted in the way the DLSE suggests, effectively gut piece-rate compensation by all but eliminating it and making it too difficult and unknowable to lawfully pay at a piece rate.

7. Section 226.2 purports to graft onto the piece-rate system new phrases and concepts that are so vague they cannot be followed. The result is that the law has become so complex, murky, and vague that an employer can no longer pay on a piece-rate basis without risking subsequent government investigation and/or civil lawsuits—and accompanying civil and criminal penalties—based on amorphous terms that the Legislature acknowledged created "significant conflicts" over interpretation, and which Defendants themselves have admitted cannot be defined.

8. The new law, which is unconstitutionally vague, *inter alia*, thus violates state and federal due process guarantees. Section 226.2, which effectively guts piece-rate compensation and creates intolerable uncertainty and unfairness for any piece-rate employer, went into effect on January 1, 2016. Section 226.2(b) purportedly offers employers a "safe harbor" if they make certain commitments and take certain actions by July 1, 2016, but even the steps necessary to lawfully avail oneself of the safe harbor are unconstitutionally vague, unfair, violate the Takings Clause and Contract Clause, and amount to an improper retroactive imposition of penalties, among bringing about numerous other constitutional infirmities.

9. For example, Section 226.2(a) requires an employer using a piece-rate compensation scheme to pay separately for rest and recovery periods and for so-called "other nonproductive time." The statute purports to define "other nonproductive time" in the most incomprehensible terms: time "that is not directly related to the activity being compensated on a piece-rate basis." (Lab. Code, § 226.2.)

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addition to the piece rate. And although both decisions were expressly limited to the facts presented in those cases, Defendants have read them more broadly, injected insurmountable vagueness, and the broad application that they have been given is without basis in the statutory framework and goes well beyond the bounds of codified law.

10. The phrases "other nonproductive time" and "directly related" are so vague that neither Nisei Farmers League nor its members can structure their conduct in such a way as to know, with any degree of certainty or otherwise, how to act in compliance with Section 226.2.

11. For workers that harvest crops, which of the following is "other non-productive time": traveling between work sites, attending meetings about the harvest, doing warm-up calisthenics for the harvest, putting on protective gear, sharpening tools? What about a worker who works more slowly because of more frequent pauses while harvesting—is each and every one of those pauses "other nonproductive time"? And how long does the pause or break need to last before it becomes "other nonproductive time"? What about bathroom breaks? What about a worker who chooses to make a personal cell phone call while remaining on the employer's premises? What about waiting for the containers in which harvested crops are placed when they run out? What if an employee chooses to wait for the weather to change before continuing harvesting, or walks between work stations? These are just a few of the real-world ambiguities created by this new law which make it impossible for employers to know whether they are complying, and impossible for Nisei Farmers League to advise its members on how to comply, without unfair risk of civil and criminal penalties.

12. In addition to the uncertainties created by this vague and ambiguous law, employers now face significant time-monitoring and time-recordkeeping problems for piece-rate compensation. How are employers supposed to identify and accurately record "nonproductive" time to ensure it is properly compensated and to sufficiently document that it was compensated fully and correctly? They must now do so to avoid or defend against claims for non-payment or underpayment of wages. Must they use a clock to separately and individually time each of the activities above to ensure that each act, no matter how little time it may take, is properly accounted for? How are they supposed to do this?

13. The terms do not define the required conduct with sufficient definiteness to allow a person of common understanding to know and comply with the law's requirements. Defendants have conceded as much by explaining that "[w]hat constitutes 'other nonproductive time' under [the Labor Code] definition will obviously vary." (DIR, *AB 1513 Piece-Rate Compensation Frequently Asked Questions*, available at http://www.dir.ca.gov/pieceratebackpayelection/AB_1513_FAQs.htm.) The

Legislature recognized the same: "[S]ignificant conflicts between workers and employers on what constitutes as [sic] nonproductive time and productive time can exist. Further, such disputes can vary significantly from industry to industry." (S. Comm. on Labor and Indus. Relations, August 27, 2015 analysis of AB 1513, at p. 5.) As a result, those phrases are unconstitutionally void for vagueness, *inter alia.*

14. They are also void for vagueness for the independent reason that the uncertainty inherent in the unconstitutional law allows for—and in fact all but guarantees—arbitrary and discriminatory enforcement.

15. To make matters worse, the new law places Nisei Farmers League members and many other similarly situated employers in a critical and untenable position by requiring them to make a decision by the close of July 1, 2016: the statutorily created deadline for the so-called "affirmative defense" under Section 226.2. That "affirmative defense" applies retroactively to wages paid between 2012 and 2015. It too is premised on unconstitutionally vague, contested, and unclear requirements.

16. Section 226.2(b) purportedly creates an affirmative defense to current and future litigation and enforcement actions that may be filed for back pay that is ostensibly owed to piece-rate employees for rest and recovery periods and other nonproductive time. But to take advantage of this "affirmative defense," employers must sign up by July 1, 2016 and retroactively pay any "actual sums due" for a 3½ year period from July 1, 2012 through December 21, 2015.[3] The list of employers who sign up is made publicly available on the DLSE's website.

17. But, confusingly, under the law before January 1, 2016, the "actual sums due" has been subject to varying interpretations. It previously had been settled that an employer could determine the piece rate, pay at a piece rate, and meet the minimum wage requirements by dividing the piece-rate compensation across the hours worked to ensure that the compensation was at least the minimum

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[3] Alternatively, the employer can agree to pay four percent of an employee's gross earnings to piece-rate employees. That "significant" amount "is, by definition, an estimation." (S. Comm. on Labor and Indus. Relations, August 27, 2015 analysis of AB 1513, at p. 6.) Many of Nisei Farmers League's members could never afford to pay this four percent.

wage. If the compensation for all work performed fell below the minimum wage for that period, the employer could "true up" the compensation by paying an additional amount to reach an average hourly minimum wage. Under that interpretation of the law, an employer that paid in that format already has paid the actual sums due under Section 226.2. If that view of the pre-2016 law is correct, an employer who has followed that practice should therefore be able to sign up for the affirmative defense and need not pay anything further in the way of "actual sums due."

18. Yet Defendants have issued conflicting views on the pre-2016 law—on the one hand recognizing this position would be correct, and on the other hand suggesting that more "actual sums due" should be paid. Thus, the "actual sums due" under pre-2016 law is, at best, unclear. Defendants admit the same, describing "the holdings of *Gonzalez* and *Bluford*" as "in dispute" and acknowledging "unsettled controversies over how to compensate piece-rate workers." (DIR, *New Piece-Rate Legislation (AB 1513) Fact Sheet*, available at http://www.dir.ca.gov/piecaratebackpayelection/AB_1513_FACT_SHEET.htm). The Legislature acknowledged "significant conflicts" over the same. If the law is in dispute and unsettled, how can an employer determine whether there are any "actual sums due" as contemplated by the statute?

19. By committing to pay "actual sums due" when the term is disputed and unclear, an employer opens itself to investigation and lawsuits based on a subsequent interpretation of the term. If an employer agrees to pay "actual sums due," and does not pay anything additional based on the supportable belief that no further sums are due, but a court later disagrees, that employer will have exposed itself to civil damages and penalties, and potentially criminal penalties, when it could have paid the sums due had it known what sums were due.

20. In comparison, if the employer does not sign up for the "affirmative defense" by the close of July 1, 2016—for example, because it believes it does not owe any further sums under the pre-2016 law and therefore understandably does not want to submit its name to the DLSE suggesting it is an employer that may owe sums for back pay—it waives its right to invoke the affirmative defense. It could then be subject to litigation or an agency enforcement action over piece-rate compensation from 2012 through 2015 in which subsequent judicial interpretation of the previously

unsettled law might reach the conclusion that the employer should have paid more "actual sums due" and it would therefore enter that litigation with no affirmative defense.

21. A judicial declaration is therefore necessary to determine the meaning of the phrase "actual sums due" and/or to deem the phrase unconstitutionally void for vagueness. At minimum, the "unsettled" pre-2016 law does not allow Nisei Farmers League members to make a meaningful and informed decision based on their rights under the law. It is imperative to stay the July 1, 2016 deadline while the Court resolves this critical question so that the affirmative defense does not disappear in the meantime.

22. The intent of piece-rate compensation is to provide a direct financial reward for employee productivity. But the administrative burden of creating a hybrid system for non-piece-rate and piece-rate time will almost certainly deter employers from utilizing this method of compensation. This burden could also have the impact of reducing the amount of piece-rate pay as a result of the additional non-piece-rate hourly wage that would be required, thereby potentially limiting an employee's overall compensation.

23. Continuing to restrict or burden an employer's use of piece-rate pay by making it even more costly and difficult to administer causes more harm to an employee than increased protection.

24. Making matters worse, the law combines with other portions of California labor law to subject California employers to civil fines and penalties if they misinterpret this unclear law, and can potentially classify certain reasonable interpretations of the new law as criminal conduct. For example, failing to pay properly for "other nonproductive time" can result in liquidated compensatory damages (Lab. Code, § 1194.2) alongside statutory penalties for waiting time pay (Lab. Code, § 203), improper wage statements (Lab. Code, § 226, subd. (e)), additional penalties under the Private Attorney General Act (Lab. Code, § 2698, *et seq.*), and additional civil penalties that the Labor Commissioner may impose (Lab. Code, § 1197.1). Additionally, failing to pay "any employee a wage less than the minimum fixed by an order of the commission" or "[v]iolating or refus[ing] or neglect[ing] to comply with any provision of this chapter [governing wages, hours, and working conditions] or any order or ruling of the commission" is a criminal act punishable "by a fine of not less than one hundred dollars ($100) or by imprisonment for not less than 30 days." (Lab. Code,

§ 1199.) Thus, failing to pay "other nonproductive time" for an activity an employer thought did not fit the definition could result in a minimum wage violation under the rationale that there was not proper compensation for that other nonproductive time. That error could be deemed criminal.

25. The problems identified above violate Nisei Farmers League and its members' state and federal due process rights in multiple ways. In addition to being void for vagueness, the law fails to provide fair or adequate notice of the conduct it requires or prohibits. And the damages and extensive civil and criminal penalties that can be assessed despite one's best intentions to comply with the law, as well as any insistence by Defendants that Nisei Farmers League members must pay "actual sums due" to invoke the affirmative defense—particularly where Defendants admit that term is unclear and unsettled under pre-2016 law—constitute an arbitrary deprivation of property. Further, requiring Nisei Farmers League members to pay something that would amount to more than the "actual sums due" than were actually due under pre-2016 law constitutes an impermissible retroactive punishment.

26. Those same problems violate the Takings Clause because, once an employer signs up to pay actual sums due, any insistence by Defendants to pay more than that which is actually due, including the requirement to pay the money to Defendants when an employee cannot be found, imposes severe retroactive liability on the limited class of piece-rate employers, who could not have anticipated such liability, and the extent of that liability is substantially disproportionate.

27. Additionally, the law substantially and illegitimately interferes with contracts between Nisei Farmers League members and their employees, in which the scope and nature of the piece-rate activity and compensation were agreed upon. Such an unjustified interference violates the Contract Clause of the U.S. Constitution.

28. Thus, as explained more fully herein, Nisei Farmers League and its members maintain the following, *inter alia*:

a. Section 226.2 of the California Labor Code, enacted by AB 1513, on its face and as applied, and Defendants' enforcement of those provisions, violates due process under state and federal law because the provisions are unconstitutionally vague and unfair.

b. Section 226.2 of the California Labor Code, enacted by AB 1513, on its face and as applied, and Defendants' enforcement of those provisions, violates due process under state and federal law because it arbitrarily deprives Nisei Farmers League and its members of property.

c. Section 226.2 of the California Labor Code, enacted by AB 1513, on its face and as applied, and Defendants' enforcement of those provisions, violates due process under state and federal law because Nisei Farmers League and its members lack fair or adequate notice of what the law requires or forbids.

d. Section 226.2 of the California Labor Code, enacted by AB 1513, on its face and as applied, and Defendants' enforcement of those provisions, violates due process under state and federal law because it constitutes an impermissible retroactive punishment.

e. Section 226.2 of the California Labor Code, enacted by AB 1513, on its face and as applied, and Defendants' enforcement of those provisions, violates the Takings Clause of the Fifth Amendment to the U.S. Constitution because it imposes severe retroactive liability on a limited class of parties that could not have anticipated the liability, and the extent of that liability is substantially disproportionate to the parties' experience.

f. Section 226.2 of the California Labor Code, enacted by AB 1513, on its face and as applied, and Defendants' enforcement of those provisions, violates the Contract Clause of the U.S. Constitution because it substantially and illegitimately interferes with prior and existing contracts between Nisei Farmer League members and their employees.

g. An employer that paid piece-rate compensation that ensured that the compensation for all work performed met or exceeded the hourly minimum wage—regardless of whether the time is characterized as productive time or non-productive time—need not make additional payments to satisfy the "actual sums due" provision of the affirmative defense in Section 226.2(b) because that employer has already properly and lawfully compensated the employee in accordance with the applicable minimum wage requirement.

h. If California lawmakers want to explicitly eliminate piece-rate compensation, though such elimination would be unfair to employees and employers alike, they could try to do so by explicitly removing it as an authorized form of compensation under Section 200 and specifying that it is no longer a recognized form of compensation in California. But it is unconstitutional, unlawful, and improper to explicitly authorize piece-rate compensation in Section 200 of the Labor Code and then effectively make it impossible to pay through piece-rate compensation by amending Section 226.2 to surreptitiously eliminate piece-rate compensation and/or create so much vagueness and uncertainty that employers cannot, with any degree of reasonable certainty, know how they are expected to lawfully pay piece-rate employees in 2016 and beyond, or for the period of 2012-2015, all the while facing civil damages and penalties and criminal penalties for any misstep identified through judicial hindsight of an intolerably vague law.

29. For these and the other reasons set forth herein, Nisei Farmers League respectfully asks this Court to:

a. Preserve the status quo by extending the safe harbor period created by Section 226.2 until at least six months after adequate and clear direction on lawful piece rate compensation under Section 226.2 is provided for under California law or the statute is deemed unconstitutional;

b. Declare that the current version of Labor Code section 226.2 is unconstitutional, including, but not limited to, the terms "other nonproductive time," "directly related," and "actual sums due";

c. Declare "actual sums due" from 2012 through the present—and until a new law that is sufficiently clear is passed—to be those in which the piece-rate compensation equaled or was "trued up" to at least minimum wage;

d. Preliminarily enjoin the enforcement of Section 226.2 and toll the Section 226.2(b) deadlines;

e. Permanently enjoin enforcement of Section 226.2 to the extent it is unconstitutional or unlawful;

f. Enjoin Defendants from enforcing “actual sums due” as requiring separate payment for non-piece-rate work or rest periods pre-2016 where such time has already been paid through a piece rate.

II. PARTIES

30. Plaintiff NISEI FARMERS LEAGUE is an agricultural sector association and California nonprofit mutual benefit corporation. Nisei Farmers League represents more than 1,000 farmers, packers, processors, dehydrators, and farm labor contractors throughout California’s Central Valley that produce more than 160 agricultural commodities, the majority of which have agricultural cycles requiring piece-rate employees. Nisei Farmers League’s membership includes hundreds of agricultural employers that employ piece-rate employees in vegetable, grape, citrus, row crop, flower, poultry, livestock, nursery crop, and tree-fruit operations. Those members and their employees had and have contracts of employment, whether written, oral, or implied, in which the employers offer a piece rate to cover certain activities and the employees agree to work at a piece rate. These members could otherwise bring their own suit because they are directly affected by Defendants’ unlawful actions and by the unlawful and unconstitutional provisions enacted by AB 1513. Nisei Farmers League brings this action to protect interests that are germane to the purpose of the organization.

31. One of the declared purposes of Nisei Farmers League is to “maintain[] an up-to-date working knowledge of [labor regulations] and assist[] [its] members in understanding and staying in compliance with these sometimes daunting regulations and requirements” (“Labor and Immigration,” Nisei Farmers League, available at http://www.niseifarmersleague.com/index.php/p/labor_immigration), which includes understanding and protecting its members’ ability to pay at a piece rate in compliance with the law. Additionally, the relief requested in this lawsuit, which centers on the legal requirements concerning Section 226.2, does not require the participation of individual members of Nisei Farmers League.

32. An actual controversy exists between the Nisei Farmers League and Defendants because Defendants seek to enforce unlawful and unconstitutional provisions of Labor Code section 226.2 against Nisei Farmers League and its members even though certain provisions of the law are hopelessly vague and allow for arbitrary enforcement, and can lead to civil and criminal penalties in

violation of Nisei Farmers League members' due process rights. Defendants' interpretation and enforcement of such a law against Nisei Farmers League and its members will cause irreparable and unconstitutional harm in violation of due process, particularly because Nisei Farmers League and its members have no way to know what conduct will be construed to violate the law and cannot regulate or structure their conduct so as to comply with the law.

33. Defendant LABOR AND WORKFORCE DEVELOPMENT AGENCY ("LWDA") is a cabinet-level agency of the State of California that coordinates workforce programs and agencies. The LWDA oversees the Department of Industrial Relations and the Division of Labor Standards Enforcement. As the agency with ultimate oversight over the DIR and DLSE, the LWDA is ultimately responsible for the unconstitutional and unlawful interpretation of and any enforcement actions taken pursuant to Section 226.2 by the DIR and DLSE. The LWDA has its office in Sacramento, California.

34. Defendant DAVID M. LANIER is the Secretary of the LWDA and as such is its highest administrative official. Secretary Lanier is sued solely in his official capacity. The LWDA and Secretary Lanier shall be referred to hereafter collectively as "LWDA."

35. Defendant DEPARTMENT OF INDUSTRIAL RELATIONS ("DIR") is a department within the LWDA dedicated to working conditions for California's wage earners. DIR administers and enforces laws governing wages, hours and breaks, overtime, retaliation, workplace safety and health, apprenticeship training programs, and medical care and other benefits for injured workers. DIR has four divisions and six commissions, boards and programs, which collectively have offices throughout California, including in Fresno, California. The DIR has issued guidance regarding piece-rate compensation, has a statutory duty to train farm labor contractors regarding wage-and-hour laws, and oversees the Division of Labor Standards Enforcement, which is responsible for administering and enforcing the law at issue in this case.

36. Defendant CHRISTINE BAKER is the Director of DIR and as such is its highest administrative official. Director Baker is sued solely in her official capacity. DIR and Director Baker shall be referred to hereafter collectively as "DIR."

37. Defendant DIVISION OF LABOR STANDARDS ENFORCEMENT ("DLSE") is an agency within the DIR. The DLSE is vested by the California Labor Code to enforce all of the labor, employment, safety and wage-and-hour laws contained in the California Labor Code, the IWC wage orders, and related laws set forth in the California Labor Code. Its powers and enforcement authorities are set forth in the Labor Code at Section 79, *et seq.* The DLSE has offices throughout California, including in Fresno, California. The DLSE is responsible for administering and enforcing the law at issue in this case.

38. Defendant JULIE A. SU is the Labor Commissioner of the State of California. In that capacity, she is the highest administrative official of the DLSE. Commissioner Su is sued solely in her official capacity. The DLSE and Commissioner Su shall be referred to hereafter collectively as "DLSE."

39. Plaintiff is ignorant of the true names of Defendants sued herein as DOE 1 through DOE 10, inclusive, and therefore sues said defendants by those fictitious names. Plaintiff will amend the complaint to allege their true names and capacities when the same have been ascertained. Plaintiff is informed and believes and based thereon alleges that each of these fictitiously named defendants is in some manner responsible for the wrongful conduct alleged in this complaint. Plaintiff is informed and believes and based thereon alleges that these fictitiously named defendants were, at all times mentioned in this complaint, the agents, servants, and employees of their co-defendants and were acting within their legal authority as such with the consent and permission of their co-defendants.

40. Defendants, and those subject to their supervision, direction, and control, are responsible for the enforcement of the statute challenged herein. Except where otherwise specified, the relief requested in this action is sought against each Defendant, as well as against each Defendant's officers, employees, and agents, and against all persons acting in cooperation with Defendants, under their supervision, at their direction, or under their control.

III. JURISDICTION AND VENUE

41. This case raises questions under the Constitution of the State of California and the United States Constitution. Thus, this Court has jurisdiction over all of Plaintiff's claims. This Court

is authorized to grant declaratory relief pursuant to section 1060 of the California Code of Civil Procedure and to grant injunctive relief pursuant to sections 525, 526, and 526(a) of the California Code of Civil Procedure.

42. This is an action against a state agency, which may be commenced and tried in the County of Fresno. Venue is proper in this Court pursuant to California Code of Civil Procedure sections 393(b) and 395. Additionally, because this action is brought against public officers and may be commenced in a county where the Attorney General maintains offices and performs its functions (Code Civ. Proc., § 393, subd. (b)), this action is properly brought in the County of Fresno where the Attorney General maintains an office. (*Id.* § 401, subd. (1).) Moreover, venue is proper in Fresno because at least some members of the Nisei Farmers League reside in the county and the effects of the statute are felt by those members in the County of Fresno, such that at least some part of the cause of action arose in Fresno and the Nisei Farmers League members have suffered injury in Fresno.

IV. FACTUAL ALLEGATIONS

A. Legal Background

1. Piece-Rate Compensation Is A Historical And Essential Form Of Compensation

43. Piece-rate compensation is when an employer pays an employee a fixed (or variable) amount of money to be earned through the performance or completion of certain activities or tasks, and the more of those activities or tasks that the employee performs or completes, the more he or she earns. Relying on the American Heritage Dictionary, the DLSE has defined it as "[w]ork paid for according to the number of units turned out" and stated that "a piece rate must be based upon an ascertainable figure paid for completing a particular task or making a particular piece of goods." (DLSE Enforcement Policies and Interpretations Manual, § 2.5.1.) Such compensation might be, for example, a set amount paid per basket of strawberries harvested, per mile driven, or per carburetor replaced.

44. Piece-rate compensation is a fundamental form of compensation. The concept formally dates back hundreds of years, and the concept of paying a set amount of money per task completed has existed for much longer than that. It has been explicitly authorized as a lawful form of

compensation in California since 1919 and is likewise codified by federal statute and around the country.

45. Piece-rate compensation is essential to the agricultural industry. It provides a payment structure that incentivizes workers by rewarding productivity. Working harder will result in higher earnings. For example, if two workers are both offered $5 per bucket of blueberries harvested, they will have an incentive to harvest more blueberries. The worker who harvests four buckets in one hour will earn $20 for that hour and the worker who only harvests two buckets will earn $10. Conversely, payment at an hourly rate provides no such incentive. If those same two workers were paid at $10 per hour, they would have no incentive to harvest even a single bucket of blueberries in the hour. And there would be no rational economic reason for one worker to harvest four buckets in an hour if the other worker was not harvesting even one. (E.g., Edward P. Lazear, *Performance Pay and Productivity*, 90.5 AM. ECON. REV. 1346 (2000) ["[P]aying on the basis of output will induce workers to supply more output"]; Fritz M. Roka, *Compensating Farm Workers through Piece Rates: Implications on Harvest Costs and Worker Earnings*, Doc. FE792 (2009) ["[A]n hourly wage system removes the productivity incentive"].).

46. For this reason, piece-rate compensation has been used in the agricultural industry for centuries. (E.g., THE IDEA OF WORK IN EUROPE FROM ANTIQUITY TO MODERN TIMES 282-91 (Josef Ehmer & Catharina Lis, eds., 2009) [discussing "the widespread existence of the piece rate from the late Middle Ages up to the middle of the sixteenth century"].) It continues to be widely used today in California. (E.g., D. Kate Rubin & Jeffrey M. Perloff, *Who Works for Piece Rates and Why*, AM. J. AGRIC. ECON. 75(4), 1036-43 (1993) [analyzing piece-rate pay in the agricultural industry]; Gregorio Billikopf, *Incentive Pay (Pay for Performance)*, U. CAL. AGRIC. ISSUES CTR., Aug. 11, 2006, https://nature.berkeley.edu/ucce50/ag-labor/7labor/08.htm ["Individual incentive plans offer the clearest link between a worker's effort and the reward. Probably the best-known individual or small group incentive pay plan in agriculture is piece rate."].)

47. A historical and central underpinning of the piece-rate compensation method is the concept that the employer can set the conditions of piece-rate compensation within the bounds of the law. The employer may specify the scope of work and the specified rate of pay. The employee, by

agreeing to do the work, accepts both the scope of the work and the rate of pay. (E.g., *Kerr's Catering Service v. Dep't of Industrial Relations* (1962) 57 Cal.2d 319, 329 [describing "the reliance of the employee on receiving his expected wage, whether it be computed upon the basis of a set minimum, a piece rate, or a commission"].)

48. Piece-rate compensation has long been recognized in California as a proper form of payment. For example, in 1919, almost a hundred years ago, the California Legislature defined wages as "all amounts for labor or service performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, or other method of calculating the same." (Assembly Bill No. 187, § 3 (1919).) The California Supreme Court recognized the same: "Wages may be measured by time, by the piece, or by any other standard." (*Hillen v. Industrial Accident Commission* (1926) 199 Cal. 577, 581.)

49. Today, Labor Code section 200(a) utilizes nearly identical language, defining wages as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." That section continues to allow employers to set a rate of pay based on the work done, not merely by the hour. It has not been abrogated.

2. Defendants Have Recognized The Historical Piece-Rate Compensation Practice Is Lawful

50. The now-defunct Industrial Welfare Commission issued Wage Orders that remain in place today, under the direction and enforcement of the DIR and DLSE. Wage Order No. 13, regulating "Industries Preparing Agricultural Products for Market, on the Farm," recognizes piece-rate compensation as a form of wages and states that an employer shall pay an employee "not less than [the current minimum wage] per hour for all hours worked." (IWC Wage Order No. 13-2001, § 2, subd. (O); *id.* § 4, subd. (A).) Other Wage Orders contain a similar requirement.

51. Historically and in certain publications current today, Defendants have interpreted that requirement as requiring that the piece-rate compensation divided by hours worked must be at least the minimum hourly wage.