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TULARE COUNTY SUPERIOR COURT
VICALIA DIVISION

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE
(UNLIMITED JURISDICTION)

VICENTE S. GUTIERREZ and DANIEL
PADILLA FLORES, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

FERNANDES BROTHERS, INC. DBA
LEGACY RANCHES AND FERN OAK
FARMS, a California corporation; JOSHUA
S. FERNANDES, an individual; JARED R.
FERNANDES, an individual; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 282364

CLASS ACTION

BY FAX

FIRST AMENDED COMPLAINT FOR:

1. FAILURE TO PAY OVERTIME WAGES (LABOR CODE § 510, 860, 1194, 1198);
2. UNFAIR BUSINESS PRACTICES (BUS. & PROF CODE § 17200, et seq.);
3. FAILURE TO PROVIDE ADEQUATE MEAL AND REST PERIODS (LABOR CODE § 226.7);
4. FAILURE TO INDEMNIFY FOR WORK-RELATED EXPENSES (LABOR CODE § 2802);
5. FAILURE TO TIMELY PAY WAGES DUE TO FORMER EMPLOYEES (LABOR CODE §§ 201, 202, 203);
6. UNLAWFUL DEDUCTIONS (LABOR CODE § 221);
7. FAILURE TO FURNISH ACCURATE WAGE STATEMENTS (LABOR CODE § 226); and,
8. PRIVATE ATTORNEYS GENERAL ACT (PAGA).

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- 7. FAILURE TO FURNISH ACCURATE WAGE STATEMENTS (LABOR CODE § 226); and,**
- 8. PRIVATE ATTORNEYS GENERAL ACT (PAGA).**

1 Plaintiffs Vicente S. Gutierrez and Daniel Padilla Flores (“Plaintiffs”), bring this suit as a
2 class action on behalf of themselves and all others similarly-situated pursuant to California Code
3 of Civil Procedure section 382, and allege on information and belief, as follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this Complaint against Defendants, Fernandes Brothers, Inc. dba
6 Legacy Ranches and Fern Oak Farms; Joshua S. Fernandes; Jared R. Fernandes; and, DOES ONE
7 through FIFTY, inclusive (hereinafter “Defendants”). Plaintiffs allege that Defendants routinely
8 violated state laws by: failing to provide Plaintiffs and other similarly-situated workers with
9 legally-compliant meal and rest periods, unlawfully failing to pay for necessary work-related
10 expenses, such as work boots, and failing to pay overtime wages, among other violations.
11 Plaintiffs seek unpaid wages, damages, restitution, and other relief on behalf of themselves and
12 other aggrieved former and current employees of Defendants.

13 2. The putative Class consists of all persons who are employed or have been
14 employed by Defendants as dairy workers at their facilities in California at any time since four
15 years prior to the filing of this Complaint and through February 15, 2020.

16 3. Plaintiffs allege that Defendants’ employment practices are unlawful, unfair, and
17 contrary to the public policies of the State of California. Plaintiffs allege that by violating the
18 state labor laws enumerated below, Defendants have engaged in and continue to engage in unfair
19 and unlawful business practices in violation of California’s Unfair Competition Law (Business
20 and Professions Code §§ 17200, *et seq.*), causing injury to Plaintiffs and other current and former
21 employees of Defendants.

22 4. Through their class-wide claims based on state law, Plaintiffs seek restitution of
23 all benefits obtained by Defendants from their unlawful business practices in the form of
24 premium wages and other damages permitted by law, including accrued interest pursuant to
25 California law; recovery of penalties; injunctive and declaratory relief; all other forms of
26 equitable relief permitted by law; and reasonable attorneys’ fees and costs.

27 **JURISDICTIONAL ALLEGATIONS**

28 5. Venue is proper in this judicial district, pursuant to California Code of Civil

1 Procedure (“C.C.P.”) section 395 (a). Defendants maintain offices, transact business, and have an
2 agent in Tulare County, and are otherwise within this Court’s jurisdiction for purposes of service
3 of process. The unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly
4 situated within the State of California and Tulare County. Defendants operate dairies in Tulare
5 County within the State of California and employ numerous employees in Tulare County.

6 6. The Court has jurisdiction over this class action pursuant to article 6, section 10 of
7 the California Constitution and C.C.P. section 410.10.

8 7. Plaintiffs bring this action against Defendants pursuant to California Labor Code
9 sections 201 and 202 (timely payment of final wages), 203 (waiting time penalties), 221
10 (unlawful deductions), 226 (inaccurate wage statements), 226.7 (meal and rest periods), 512
11 (meal periods), 2802 (indemnification of expenses), 510, 860, 1194, and 1198 (overtime wages),
12 and 2698-2699 (PAGA); attorneys’ fees and costs under applicable statutes; applicable Industrial
13 Welfare Commission (“IWC”) Wage Orders, Business & Professions Code sections 17200, *et*
14 *seq.*, and C.C.P. sections 395 and 395.5. The acts giving rise to this Complaint were made and
15 performed in the County of Tulare, and Defendants’ liability arises pursuant to their employment
16 of Plaintiffs in the County of Tulare. Members of the putative Plaintiff Class who are identified
17 as current and former nonexempt dairy employees of Defendants have also worked and/or lived
18 in the County of Tulare.

19 8. Defendants have their principal place of business and mailing address and operate
20 various dairy facilities in Tulare County.

21 **PARTIES**

22 9. Plaintiff. Plaintiff Vicente S. Gutierrez was employed as a nonexempt dairy
23 worker by Defendants from approximately 2014 to November 2019.

24 10. Plaintiff. Plaintiff Daniel Padilla Flores was employed by as a nonexempt dairy
25 worker by Defendants from approximately August 2017 to March 2019.

26 11. Plaintiffs bring the Labor Code and Business and Professions Code claims
27 enumerated herein on behalf of themselves and for a proposed Plaintiff Class comprised of all
28 persons who are employed or have been employed by Defendants as dairy workers at their

1 facilities in California at any time since four years prior to the filing of this Complaint and
2 through February 15, 2020 (hereinafter, “the Class Period”).

3 12. Defendant Fernandes Brothers, Inc. DBA Legacy Ranches and Fern Oak Farms.
4 Plaintiffs are informed and believe and thereon allege that Defendant Fernandes Brothers, Inc.
5 dba Legacy Ranches and Fern Oak Farms, is a corporation under the laws of California, and
6 doing business in the County of Tulare. On information and belief, Plaintiffs allege that as of the
7 date of filing, Defendant Fernandes Brothers, Inc. operates dairies in the County of Tulare.

8 13. Defendant Joshua S. Fernandes. Defendant Joshua S. Fernandes is a manager and
9 operator of Fernandes Brothers, Inc. dba Legacy Ranches and Fern Oak Farms. At all times
10 relevant herein Joshua S. Fernandes was Plaintiffs’ employer and the employer of members of the
11 putative Plaintiff Class and liable to them as as hereinafter alleged.

12 14. Defendant Jared R. Fernandes. Defendant Jared R. Fernandes is a manager and
13 operator of Fernandes Brothers, Inc. dba Legacy Ranches and Fern Oak Farms. At all times
14 relevant herein Jared R. Fernandes was Plaintiffs’ employer and the employer of members of the
15 putative Plaintiff Class and liable to them, as hereinafter alleged.

16 15. Plaintiffs further allege that during the relevant statutory period Defendants have
17 employed over 100 non-exempt dairy workers at their dairies. Plaintiffs are informed and believe
18 and thereon allege that the resulting damages were proximately caused by the conduct of said
19 Defendants.

20 16. Plaintiffs are ignorant of the true names and capacities of the Defendants named
21 herein as DOES ONE through FIFTY, inclusive, and therefore sue these Defendants by such
22 fictitious names pursuant to C.C.P. section 474. Plaintiffs will amend this Complaint to show the
23 true names and capacities when ascertained. Plaintiffs are likely to have evidentiary support,
24 after reasonable opportunity for further investigation, research, and discovery, to support their
25 allegations that each of the fictitiously-named Defendants is responsible in some manner for the
26 occurrences herein alleged and that Plaintiffs’ and the Plaintiff’s Class damages were proximately
27 caused by such occurrences.

28 **JOINT AND SEVERAL LIABILITY**

1 17. Plaintiffs are informed and believe and thereon allege that the named Defendants
2 have exercised complete control over the dairies, including operational and financial control over
3 Plaintiffs and similarly-situated employees. There exists and at all times mentioned has existed, a
4 unity of interest and ownership between and among all named Defendants, such that any
5 individuality and separateness among these Defendants, and each of them, have ceased, and that
6 they are alter egos of one another. Plaintiffs are informed and believe and thereon allege that at
7 all times herein material, Defendants, and each of them, were completely dominated and
8 controlled by each other and each was the alter ego of the other, or was acting on behalf of each
9 other as partners, agents, and/or joint venturers.

10 18. Defendants are jointly and severally liable as employers for the harms alleged in
11 this Complaint because they all have: (1) exercised control over the Plaintiffs' and the Plaintiff
12 Class' hours, wages or working conditions; (2) suffered or permitted Plaintiffs and the Plaintiff
13 Class to work; and/or (3) "engaged" Plaintiffs and the Plaintiff Class thereby creating a common
14 law employment relationship. Plaintiffs and all members of the Class were employees of all
15 named Defendants and DOES 1-50 within these definitions.

16 19. As Plaintiffs' and the Plaintiff Class' joint employers, Defendants are all jointly
17 and severally liable for the Plaintiffs' and the Plaintiff Class' owed damages, premium pay,
18 liquidated damages, statutory penalties, and other relief under the California Labor Code and
19 other laws herein alleged.

20 20. Plaintiffs are informed and believe, and on that basis alleges, that Defendants, and
21 each of them, at all times material to this Complaint, have acted as joint employers with respect to
22 the individual Plaintiffs and the Class because Defendants have:

- 23 (a) jointly exercised meaningful control over the work performed by Plaintiffs;
- 24 (b) jointly exercised meaningful control over Plaintiffs' wages, hours and working
25 conditions, including the quantity, quality standards, speed, scheduling, and operative
26 details of the tasks Plaintiffs performed; and,
- 27 (c) jointly required that Plaintiffs perform work which is an integral part of
28 Defendants' businesses.

1 21. Plaintiffs and the members of the class are directly supervised by the owner, and
2 by managers, supervisors and/or foremen employed by Defendants, and each of them, who
3 determine what tasks class members are to perform, the location, manner, means, schedule and
4 speed they are to do their work, and the tools, equipment, and other implements and supplies they
5 are to use.

6 22. At relevant times throughout Plaintiffs' employment, Defendants, their owners,
7 officers, and managing agents, and each of them, failed to conform their conduct to the
8 requirements of the law. This unlawful conduct included, but was not limited to, failing to
9 provide Plaintiffs and the Plaintiff Class with required, legally-compliant meal and rest breaks,
10 failing to pay premiums for missed and inadequate meal and rest breaks, failing to pay overtime
11 wages, failing to pay all wages due on termination, failing to reimburse them for work-related
12 equipment, and other violations as set forth herein.

13 23. By virtue of Defendants' unlawful failure and refusal to pay Plaintiffs and the
14 Plaintiff Class premiums for missed and inadequate meal and rest breaks and other benefits to
15 which they are entitled, Plaintiffs and the Plaintiff Class have lost wages and other damages due
16 to them in amounts to be proven at trial.

17 24. Plaintiffs are informed and believe and thereon allege that at all times relevant
18 herein, each and every Defendant, including the DOE Defendants, acted in concert and in
19 furtherance of each other's interest. The acts of the individually named Defendants, as described
20 herein, were known to and ratified by other Defendants.

21 25. Whenever and wherever reference is made in this complaint to individuals who are
22 not named as Plaintiffs or Defendants but are or were employees, agents, or authorized
23 representatives of Defendants, or any of its/their subsidiaries, branches, departments or divisions,
24 such individuals at all relevant times acted and failed to act at the instruction of, or otherwise on
25 behalf of Defendants, and were at all relevant times acting within the course and scope of such
26 employment, agency, or authorized representation.

27 26. Plaintiffs are informed and believe and thereon allege that at all times material to
28 this action, each Defendant—including each sued herein as DOE—was the agent, or employee of,

1 or co-conspirator with and/or working in concert with, each of the remaining Defendants and was
2 at all times acting within the purpose and scope of such agency, employment, concerted activity,
3 or conspiracy. Plaintiffs further allege that to the extent that specific acts or omissions were
4 perpetrated by a certain Defendant, the remaining Defendant or Defendants confirmed and
5 ratified said acts and omissions.

6 **CLASS REPRESENTATIVE ALLEGATIONS**

7 25. Plaintiff Vicente S. Gutierrez. In 2014, Defendants employed Plaintiff Gutierrez
8 to perform work of a nonexempt employee at their dairies, where he labored as a milker and also
9 as an outside worker. His employment with Defendants ended in or about November 2019.

10 26. Plaintiff Daniel Padilla Flores. In 2017, Defendants employed Plaintiff Padilla to
11 perform work of a nonexempt employee at their dairies, where he labored as a milker. His
12 employment with Defendants ended in or about March 2019.

13 27. During the Class Period, Defendants failed to pay Plaintiffs and their co-workers
14 for all the overtime hours worked. Defendants paid Plaintiffs and their co-workers based upon a
15 fixed salary. Defendants devised a system through which they would adjust Plaintiffs' hours to
16 pay them the same amount per day worked notwithstanding the actual hours worked by Plaintiffs.
17 Their paychecks show that Defendants paid them a fixed daily rate depending on the number of
18 days they worked.

19 28. While employed by Defendants, Plaintiffs and his co-workers were not provided
20 with the adequate meal and rest periods to which they were entitled by law. During the Class
21 Period, Defendants simply did not provide Plaintiffs or other dairy workers with ten-minute rest
22 periods even though they typically worked over 10 hours per day. As Plaintiffs' time cards
23 demonstrate, when they were provided with a 30-minute meal period, it was often after having
24 worked more than five (5) hours per day. Plaintiffs also were not provided with a second meal
25 period even though they sometimes worked over 10 hours per day.. Defendants did not pay
26 Plaintiffs premium compensation for the meal and rest breaks they did not adequately receive.
27 Their paychecks did not include an itemized statement reflecting the premium pay for missed or
28 inadequate meal and rest periods.

1 29. During the Class Period, Defendants failed to provide Plaintiffs and their co-
2 workers boots to labor in the dairies, a work item that Defendants were obligated to provide and
3 failed to provide as a necessary work-related expense, in violation of Labor Code § 2802.

4 30. Defendants also had a pattern and practice of making deductions from Plaintiffs’
5 wages to cover the cost of work supply items including, but not limited, to boots necessary for the
6 Plaintiffs and their co-workers to discharge their duties, in violation of Labor Code § 221.

7 31. When Plaintiffs’ employment with Defendants ended, Defendants gave them their
8 final paycheck. However, the paychecks did not include any premium pay for missed meal and
9 rest periods and payment for the unlawful deductions from their paychecks. To date, Defendants
10 have not paid Plaintiffs all premium pay for missed meal and rest periods, all overtime wages
11 owed, the amounts illegally deducted, waiting time penalties, reimbursements for the purchase of
12 boots, or any interest on these amounts.

13 **ADDITIONAL ALLEGATIONS**

14 32. On information and belief, Plaintiffs allege that during the Class Period,
15 Defendants employed over 100 nonexempt workers to work at their dairy facilities in the County
16 of Tulare.

17 33. At all times relevant hereto, the relationship between Defendants and Plaintiffs and
18 each member of the Plaintiff Class, has been that of employer and employee. Each and every one
19 of the Defendants is an employer of the Plaintiffs, with respect to all the causes of action alleged
20 in this Complaint, within the meaning of the applicable Wage Order and applicable California
21 Labor Code sections. Therefore, each Defendant is jointly and severally liable for the violations
22 of state law alleged herein.

23 34. Failure to Pay Overtime Wages. Before January 1, 2019, nonexempt employees
24 covered by Wage Order No. 14 could “not be employed more than ten (10) hours in any one
25 workday or more than six (6) days in any workweek unless the employee receives one and one-
26 half (1 1/2) times such employee’s regular rate of pay for all hours worked over ten (10) hours in
27 any workday and for the first ten (10) hours on the seventh (7th) day of work and double the
28 employee’s regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of

1 work in the workweek.” (Wage Order 14-2001, ¶ 3(A).) Labor Code section 1194 subdivision (a)
2 provides, in relevant part: “Notwithstanding any agreement to work for a lesser wage, any
3 employee receiving less than the legal minimum wage or the legal overtime compensation
4 applicable to the employee is entitled to recover in a civil action the unpaid balance of the full
5 amount of this minimum wage or overtime compensation, including interest thereon, reasonable
6 attorney’s fee, and costs of suit.” Labor Code section 1194 entitles aggrieved employees to
7 recover the overtime compensation they are owed.

8 35. Meal and Rest Break Requirements. The IWC Wage Order applicable to members
9 of the Plaintiff Class provides that, “No employer shall employ any person for a work period of
10 more than five (5) hours without a meal period of not less than 30 minutes, except that when a
11 work period of not more than six (6) hours will complete the day’s work the meal period may be
12 waived by mutual consent of the employer and employee.” It further states that, “Every employer
13 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be
14 in the middle of each work period. The authorized rest period time shall be based on the total
15 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
16 fraction thereof. However, a rest period need not be authorized for employees whose total daily
17 work time is less than three and one-half (3-1/2) hours. Authorized rest period time shall be
18 counted as hours worked for which there shall be no deduction from wages.” Labor Code § 226.7
19 further states: “No employer shall require any employee to work during any meal or rest period
20 mandated by an applicable order of the Industrial Welfare Commission. [...] If an employer fails
21 to provide an employee a meal period or rest period in accordance with an applicable order of the
22 Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay
23 at the employee’s regular rate of compensation for each work day that the meal or rest period is
24 not provided.”

25 36. Failure to Provide Work-Related Expenses & Unlawful Paycheck Deductions.
26 Labor Code section 2802 provides, in pertinent part: “An employer shall indemnify his or her
27 employee for all necessary expenditures or losses incurred by the employee in direct consequence
28 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,

1 even though unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful [...]. For purposes of this section, the term ‘necessary expenditures or losses’
3 shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the
4 employee enforcing the rights granted by this section.” Labor Code section 221 prohibits
5 deductions from employee wages for items that the employer must provide.

6 37. Defendants unlawfully deducted from Plaintiffs’ and members of the Plaintiff
7 Class’ paychecks to purchase boots to work at Defendants’ dairies. Plaintiffs and members of the
8 Plaintiff Class also had to purchase boots that they were required to wear and/or use in the course
9 and scope of their employment with Defendants, and/or in order to protect themselves from injury
10 or exposure to health hazards on the job, such as excessive water, sick and/or injured cows, and
11 chemicals. Defendants failed to provide Plaintiffs and members of the Plaintiff Class these
12 essential, work-related boots. By requiring these employees to incur expenses in direct
13 consequence of the discharge of their duties and/or in obedience to Defendants’ direction without
14 reimbursement therefor, Defendants have violated Labor Code sections 221 and 2802.

15 38. Plaintiffs are informed and believe and thereon allege that Defendants employed
16 other nonexempt dairy workers under the same or similar terms and conditions as described in the
17 preceding paragraphs, and that through common practices, policies, and/or schemes instituted at
18 their dairy facilities in Tulare County, Defendants have systematically underpaid Plaintiffs and
19 members of the Plaintiff Class by, among other things: failing to pay overtime wages; failing to
20 provide Plaintiffs and members of the Plaintiff Class with adequate rest and meal periods without
21 paying premium pay; unlawfully failing to provide for such necessary equipment as boots; and,
22 unlawfully deducting from their paychecks for equipment.

23 39. As a direct and proximate result of the unlawful practices described herein, during
24 the Class Period, Defendants consistently underpaid and failed to pay Plaintiffs and Plaintiff
25 Class for the wages due to them as required by the applicable IWC Wage Order and various
26 sections of the Labor Code. Plaintiffs further allege that Defendants’ failure to pay Plaintiffs and
27 the Plaintiff Class their premium pay, overtime pay, and unlawfully failing to provide boots was
28 willful.

1 40. Defendants' underpayment of rest and meal period premiums to the Plaintiffs, as
2 well as their failure to pay overtime wages and to provide necessary work equipment, resulted
3 from certain unlawful compensation practices that Defendants centrally devised, implemented,
4 communicated and applied to all members of the Plaintiff Class. These unlawful compensation
5 practices include but are not limited to the following.

- 6 (a) Failing to pay the overtime wages owed to the Class as required by Labor Code §§
7 510, 860, 1194, 1198 and the applicable IWC Wage Order;
- 8 (b) Failing to provide adequate meal periods and rest periods to members of the
9 Plaintiff Class as required by Labor Code §§ 226.7, 512, and the applicable IWC
10 Wage Order;
- 11 (c) Failing to pay premium compensation to members of the Plaintiff Class for missed
12 and inadequate meal and rest periods, as required by Labor Code section 226.7(b);
- 13 (d) Failing to provide members of the Plaintiff Class with necessary work-related
14 equipment and failing to indemnify them for these work-related expenses, in
15 violation of Labor Code section 2802 and the 8 California Code of Regulations
16 section 11140;
- 17 (e) Engaging in unlawful deductions to all members of the Plaintiff Class, in violation
18 of Labor Code section 221;
- 19 (f) Failing to provide accurate itemized wage statements to all members of the
20 Plaintiff Class as required by Labor Code section 226(a);
- 21 (g) Failing to pay waiting time penalties to all members of the Plaintiff Class who
22 resigned or were terminated without being paid all wages due, as required by
23 Labor Code section 203; and,
- 24 (h) Committing other violations of the California Labor Code and the applicable Wage
25 Order, according to proof.

26 41. As a result of Defendants' pattern and practice of failing to pay the compensation
27 due to Plaintiffs and members of the Plaintiff Class, they have been and continue to be
28

1 systematically deprived of the wages and monies to which they are entitled by law, to the
2 detriment of themselves, their families, and the public at large.

3 **CLASS ALLEGATIONS**

4 42. **Proposed Class.** Pursuant to California Code of Civil Procedure section 382,
5 Plaintiffs, as Class Representatives, bring the Causes of Action on behalf of themselves and all
6 others similarly situated, as a class action. The Class that Plaintiffs seek to represent is composed
7 of and defined as follows (the “Class Members”): all persons who are employed or have been
8 employed by Defendants as nonexempt dairy workers at their facilities in California at any time
9 since four years prior to the filing of this Complaint and through February 15, 2020 (“the Class
10 Period”).

11 43. **Superiority of Class Action Mechanism.** Class certification is appropriate
12 because Defendants have implemented a scheme that is generally applicable to the Plaintiff Class,
13 making it appropriate to issue final injunctive relief and corresponding declaratory relief with
14 respect to the Plaintiff Class as a whole. Class certification is also appropriate because the
15 common questions of law and fact predominate over any questions affecting only individual
16 members of the class. Members of the proposed Plaintiff Class have been injured and are entitled
17 to recover. Class action treatment will allow those similarly situated persons to litigate their
18 claims in the manner that is most efficient and economical for the parties and the judicial system.
19 Further, the prosecution of separate actions against Defendants by individual class members may
20 create a risk of inconsistent or varying adjudications that would establish incompatible standards
21 of conduct for Defendants. Plaintiffs are informed and believe and thereon allege that the
22 proposed Plaintiff Class consists of more than 100 current and former employees. Members of
23 the class are ascertainable but so numerous that joinder is impracticable. For all these and other
24 reasons, a class action is superior to other available methods for the fair and efficient adjudication
25 of the controversy set forth in this Complaint.

26 44. There is a well-defined community of interest in the litigation and the class is
27 ascertainable:

28 (a) **Numerosity:** The Plaintiff Class is so numerous that the individual joinder of all

1 members is impractical under the circumstances of this case. While the exact number of class
2 members in the Class is unknown to Plaintiffs at this time, Plaintiffs are informed and believe and
3 thereon allege that the Class has over 100 members.

4 (b) **Common Questions Predominate**: Common questions of law and fact exist as to
5 all members of the Class and predominate over any questions that affect only individual members
6 of the Class.

7 45. **Community of Interest**. Defendants, through their practices and policies, have
8 violated the rights of their employees under California's Unfair Competition Law (Business &
9 Professions Code §§17200 *et seq.*) and the California Labor Code. The questions raised by this
10 complaint are of common or general interest to the Plaintiff Class members, who have a well-
11 defined community of interest in the questions of law and fact raised in this action. On
12 information and belief, the common questions of law and fact affecting the rights of all Class
13 members include, but are not necessarily limited to:

- 14 (a) Whether Defendants violated the Labor Code and the applicable IWC Wage Order
15 by paying a fixed salary and failing to pay the overtime wages owed to the Class;
- 16 (b) Whether Defendants violated Labor Code section 226.7 and the meal and rest
17 period provisions of the applicable IWC Wage Order by failing to provide
18 adequate meal periods and rest periods to which all Class Members were entitled;
- 19 (c) Whether Defendants violated Labor Code section 226.7(b) by failing to pay all
20 members of the Plaintiff Class the premium compensation mandated by that statute
21 for missed meal and rest periods;
- 22 (d) Whether Defendants violated Labor Code section 2802 by failing to provide boots
23 and indemnify all members of the Plaintiff Class for such work-related expenses;
- 24 (e) Whether Defendants failed to pay all members of the Plaintiff Class their full
25 wages when due in violation of Labor Code sections 201 and 202;
- 26 (f) Whether Defendants failed to pay waiting time penalties for all members of the
27 Plaintiff Class members who quit or were discharged during the Class Period, as
28 required by Labor Code section 203;

- (g) Whether Defendants violated Labor Code section 221 through unlawful deductions from the Plaintiff Class' wages;
- (h) Whether Defendants failed to provide accurate itemized wage statements to all members of the Plaintiff Class, as required by Labor Code section 226;
- (i) What relief is necessary to remedy Defendants' unfair and unlawful conduct as herein alleged;
- (j) Other common questions of law and fact; and,
- (k) Plaintiffs anticipate that Defendants' affirmative defenses will raise additional common issues of fact and law.

46. **Adequacy of Plaintiffs as Class Representatives.** The Class Representatives can adequately and fairly represent the interests of the Plaintiff Class as defined above because their individual interests are consistent with, not antagonistic to, the interests of the class. The claims of the Plaintiffs are typical of the claims of the class as a whole in that they arise from Defendants' overall failure to conform their wage and hour practices to the requirements of the California Labor Code and the applicable Wage Order. Plaintiffs were employed by Defendants as nonexempt dairy workers at their dairy facilities during the Class Period. Plaintiffs were underpaid because of Defendants' unlawful employment policies and practices.

47. **Adequacy Of Counsel For The Class.** Counsel for Plaintiffs possess the requisite resources and ability to prosecute this case as a class action and are experienced employment attorneys who have successfully litigated other cases involving similar issues.

FIRST CAUSE OF ACTION
Failure to Pay Overtime Wages
(Labor Code §§ 218.6, 510, 860, 1194, 1198; IWC Wage Order)

48. Plaintiffs hereby re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs, as though fully set forth herein.

49. Until January 1, 2019, nonexempt employees covered by Wage Order No. 14 could "not be employed more than ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first ten

1 (10) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all
2 hours worked over eight (8) on the seventh (7th) day of work in the workweek." (Wage Order 14-
3 2001, ¶ 3(A).) After January 1, 2020, Wage Order 14-2001 requires overtime pay for all hours
4 worked in excess of 9 hours in any workday, for the first 8 hours worked on the 7th consecutive
5 day of work in a workweek, and for any work in excess of 50 hours in any one workweek. (*Ibid.*;
6 Lab. Code, § 860, subd. (a)(1).) The overtime pay requirements will change again in January
7 2021 and 2022. (*Ibid.*)

8 50. Defendants paid Plaintiffs and the Class based upon a fixed salary and did not pay
9 for all overtime hours worked.

10 51. As a result of Defendants' failure to provide Plaintiffs and members of the Class
11 with overtime pay in accordance with California law, Plaintiffs and members of the Class have
12 been deprived of wages due them in amounts to be proven at trial.

13 52. Pursuant to law, including Labor Code section 218.6, Plaintiffs are entitled to
14 recover prejudgment interest on the amount of overtime wages owed, in an amount to be proven
15 at trial.

16 53. Pursuant to Labor Code section 1194, subdivision (a), Plaintiffs and members of
17 the Class who have not been paid overtime compensation as required by the applicable Wage
18 Order and Labor Code section 1198 are entitled to recover the full unpaid balance of such wages,
19 interest thereon, reasonable attorneys' fees, and the costs of suit.

20 **SECOND CAUSE OF ACTION**
21 **(Unfair Business Practices Under Business and Professions Code §§17200, *et seq.*)**

22 54. Plaintiffs hereby re-allege and incorporate by reference each and every allegation
23 contained in the preceding paragraphs as though fully set forth herein.

24 55. This is a representative action for Unfair Business Practices. Plaintiffs, on behalf
25 of themselves, those similarly situated, and the general public, bring this claim pursuant to
26 Business and Professions Code sections 17200, *et seq.* Defendants' conduct as alleged in this
27 complaint has been and continues to be unfair, unlawful and harmful to Plaintiffs and those
28 similarly-situated. Plaintiffs seek to enforce important rights affecting the public interest within

1 the meaning of C.C.P. section 1021.5.

2 56. Plaintiffs and members of the putative Plaintiff Class are “persons” within the
3 meaning of Business and Professions Code section 17204 who have suffered injury in fact as a
4 result of Defendants’ unfair competition, and who comply with the requirements of Code of Civil
5 Procedure section 382, as set forth above, and therefore have standing to bring this claim for
6 injunctive relief, restitution, and other appropriate equitable relief.

7 57. Business and Professions Code sections 17200, *et seq.* prohibit unlawful, unfair
8 and fraudulent business practices.

9 58. Through the conduct alleged in this complaint, Defendants have acted contrary to
10 these public policies, violated specific provisions of the California Labor Code, and engaged in
11 other unlawful and unfair business practices in violation of Business & Professions Code sections
12 17200, *et seq.*, depriving Plaintiffs, all persons similarly-situated, and all interested persons of
13 rights, benefits, and privileges guaranteed under law.

14 59. Defendants have committed unfair and unlawful business practices within the
15 meaning of Business & Professions Code sections 17200, *et seq.* by engaging in conduct that
16 includes, but is not limited to the following:

- 17 (a) Failing to pay overtime wages owed to the Class as required by Labor Code
18 section 510, 860, 1194, 1998 and the applicable IWC Wage Order;
- 19 (b) Failing to provide legally-compliant meal periods and to authorize and permit rest
20 periods as required by Labor Code section 226.7 and applicable IWC Wage Order;
- 21 (c) Failing to pay premium compensation for missed meal and rest periods, as
22 required by Labor Code section 226.7(b);
- 23 (d) Failing to provide all necessary work-related equipment and failing to indemnify
24 employees for work-related expenses incurred, in violation of Labor Code section
25 2802 and the corresponding provisions of the applicable IWC Wage Order;
- 26 (e) Engaging in unlawful deductions to members of the Plaintiff Class, in violation of
27 Labor Code section 221;
- 28 (f) Failing to provide accurate itemized wage statements as required by Labor Code

1 section 226(a); and,

2 (g) Failing to pay waiting time penalties to members of the Plaintiff Class who resign
3 or are terminated without being paid all wages due, as required by Labor Code
4 section 203.

5 (h) Plaintiffs reserve the right to identify additional unfair and unlawful practices by
6 Defendants as further investigation and discovery warrant.

7 60. Plaintiffs are informed and believe and thereon allege that at all times material to
8 this action, Defendants' conduct has injured the interests of the Plaintiffs and the putative Plaintiff
9 Class in that at all times material to this action, Defendants' conduct has resulted in economic loss
10 to Plaintiffs and members of the proposed Plaintiff Class, which includes former and current
11 similarly-situated employees of Defendants.

12 61. As a direct result of the unfair, unlawful, and anti-competitive conduct alleged in
13 this complaint, Defendants have acted contrary to law and contrary to public policy and have thus
14 engaged in unlawful and unfair business practices in violation of Business and Professions Code
15 sections 17200, *et seq.* Defendants have engaged in such conduct for their own economic self-
16 interest, to increase their profits. Through their unfair business practices alleged herein,
17 Defendants have received and retained and continue to receive and retain funds that rightfully
18 belong to Plaintiffs and those similarly-situated and have produced further profits with those
19 funds. As a result, Defendants have been unjustly enriched and have achieved an unfair
20 competitive advantage over their legitimate business competitors at the expense of their
21 employees and the public at large. Plaintiffs are entitled to, and do seek all relief as may be
22 necessary to restore to Plaintiffs and those similarly-situated, all money and property which
23 Defendants have acquired, or of which Plaintiffs and those similarly-situated have been deprived,
24 by means of the Defendants' unfair and unlawful business practices, and to restore to Plaintiffs
25 and members of the Plaintiff Class the ill-gotten gains obtained by Defendants through those
26 practices.

27 62. Business and Professions Code section 17203 provides that the Court may restore
28 to an aggrieved party any money or property acquired by means of unlawful and unfair business

1 practices. Plaintiffs seek restitution of all unpaid wages owing to themselves and those similarly
2 situated, according to proof, as well as the declaratory and injunctive relief described herein.

3 **THIRD CAUSE OF ACTION**
4 **(Failure to Permit and Authorize Off-Duty Rest Periods, Labor Code § 226.7;**
5 **IWC Wage Order No. 14-2001)**

6 63. Plaintiffs hereby re-allege and incorporate by reference each and every allegation
7 contained in the preceding paragraphs as though fully set forth herein.

8 64. The applicable IWC Wage Order provides, in pertinent part, “Every employer
9 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be
10 in the middle of each work period. The authorized rest period time shall be based on the total
11 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
12 fraction thereof. However, a rest period need not be authorized for employees whose total daily
13 work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be
14 counted as hours worked for which there shall be no deduction from wages.”

15 65. California law, including Labor Code section 226.7, requires Defendants to permit
16 and authorize Plaintiffs and members of the Plaintiff Class to take all rest periods specified in the
17 applicable Wage Order and entitles Plaintiffs and members of the Plaintiff Class to be paid one
18 additional hour of pay per day at their regular rate of compensation as additional wages for each
19 day they were denied required rest periods during the Class Period.

20 66. During the Class Period, Plaintiffs and members of the Plaintiff Class have
21 suffered a loss equal to their applicable regular rates of pay times the total number of days each
22 worked during which they were not authorized and permitted to take rest periods, and have
23 therefore not been paid all of the wages due to them, and are entitled to restitution in amounts to
24 be proven at trial.

25 **FOURTH CAUSE OF ACTION**
26 **(Failure to Provide Meal Periods, Labor Code § 226.7;**
27 **IWC Wage Order No. 14-2001)**

28 67. Plaintiffs hereby re-allege and incorporate by reference each and every allegation
contained in the preceding paragraphs as though fully set forth herein.

1 68. The applicable Wage Order provides, in pertinent part: “An employer may not
2 employ an employee for a work period of more than five (5) hours without providing an
3 employee with a meal period of not less than 30 minutes, except when a work period of not more
4 than six (6) hours will complete the day’s work the meal period may be waived by mutual consent
5 of employer and employee.”

6 69. California law, including Labor Code section 226.7, requires Defendants to
7 provide Plaintiffs and members of the Plaintiff Class all meal periods specified in the applicable
8 Wage Order and entitled them to be paid one additional hour of pay per day at their regular rates
9 of compensation as additional wages for each day they were denied requisite adequate meal
10 periods.

11 70. Plaintiffs further allege that during the Class Period, Plaintiffs and members of the
12 Plaintiff Class have suffered a loss equal to their applicable regular rates of pay times the total
13 number of days each worked without being provided with adequate meal periods, and have
14 therefore not been paid all of the wages due to them and are entitled to restitution in amounts to
15 be proven at trial.

16 **FIFTH CAUSE OF ACTION**
17 **(Failure to Provide Necessary Protective Clothing and Failure to**
18 **Indemnify Employees for Work-Related Expenses;**
19 **Labor Code § 2802; IWC Wage Order)**

20 71. Plaintiffs hereby re-allege and incorporate by reference each and every allegation
21 contained in the preceding paragraphs as though fully set forth herein.

22 72. Labor Code § 2802(a) requires an employer to indemnify its employees “for all
23 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
24 of his or her duties.” Labor Code § 2802(b) provides that all awards made under Labor Code §
25 2802(a) shall “carry interest at the same rate as judgments in civil actions” and that interests
26 “shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

27 73. Plaintiffs and members of the Plaintiff Class were required to wear and/or use
28 boots in the course and scope of their employment with Defendants, and/or in order to protect
themselves from injury or exposure to health hazards on the job, such as excessive water, sick

1 and/or injured cows, and chemicals. Defendants have illegally failed to provide Plaintiffs and
2 members of the Plaintiff Class with such work boots. Defendants' failure to indemnify workers
3 for necessary work-related expenses violates the IWC Wage Order and Labor Code § 2802.

4 74. As a direct and proximate result of Defendants' conduct, Plaintiffs and members of
5 the Plaintiff Class have suffered substantial losses, in amounts according to proof at trial.
6 Plaintiffs and members of the Plaintiff Class therefore are entitled to restitution of all expenses
7 incurred in the of their work duties, reasonable attorneys' fees and costs for Defendants' violation
8 of Labor Code section 2802.

9
10 **SIXTH CAUSE OF ACTION**
(Waiting Time Penalties, Cal. Labor Code § 203)

11 75. Plaintiffs hereby re-allege and incorporate by reference each and every allegation
12 contained in the preceding paragraphs as though fully set forth herein.

13 76. By failing to compensate Plaintiffs and members of the Plaintiff Class who have
14 quit or been discharged during the Class Period as required by the Labor Code and the applicable
15 Wage Order, Defendants have also willfully failed to make timely payment of the full wages due
16 to their former employees, and thereby have violated Labor Code sections 201 and 202.

17 77. Pursuant to Labor Code section 203, Plaintiffs and members of the Plaintiff Class
18 who have quit or have been discharged from employment with Defendants during the Class
19 Period are entitled to waiting time penalties equal to up to 30 days' pay per person, in an amount
20 to be determined at trial.

21 **SEVENTH CAUSE OF ACTION**
(Unlawful Deductions; Labor Code § 221)

22 78. Plaintiffs hereby re-allege and incorporate by reference each and every allegation
23 contained in the preceding paragraphs as though fully set forth herein.

24 79. Labor Code Section 221 prohibits deductions from employee wages. Labor Code
25 section 224 permits deductions to be made from wages for "items that are for the benefit of the
26 employee, not the employer." (*City of Oakland v. Hassey* (2008) 163 Cal.App.4th 1477, 1501.)
27 Items that consist of normal operating expenses of the business are not for the employee's benefit,
28 and hence deductions for such items may not be made from wages, even if the employee consents

1 to such deductions in writing. “[A]n employer may not ‘pass through’ the normal costs of
2 operating a business to the employee he hires. Debiting an employee’s earned wages to cover a
3 normal operating expense of the employer is not allowed in California.” (*Davis v. Farmers*
4 *Insurance Exchange* (2016) 245 Cal.App.4th 1302, 1335.)

5 80. Defendants had a practice of deducting items from the wages of Plaintiffs and the
6 Plaintiff Class that were not for the benefit of the employees, but, rather, were for the benefit of
7 the Defendants. Plaintiffs’ wage statements show that Defendants were deducting the cost of
8 work supplies from Plaintiffs’ wages. These work supplies included, without limitation, boots the
9 Plaintiffs had to wear in the course of their employment with Defendants. Plaintiffs needed these
10 boots to discharge their duties and to protect them from any hazardous waste in the dairies.
11 Deductions for work supply items violated Labor Code section 221.

12 81. As a direct and proximate result of Defendants’ conduct, Plaintiffs and members of
13 the Plaintiff Class have suffered substantial losses, in amounts according to proof at trial.
14 Plaintiffs and members of the Plaintiff Class therefore are entitled to restitution of all wages
15 deducted for work supplies by the Defendants, reasonable attorneys’ fees and costs for
16 Defendants’ violation of Labor Code section 221.

17 **EIGHTH CAUSE OF ACTION**
18 **(Failure to Provide Accurate Wage Statements; Labor Code § 226)**

19 82. Plaintiffs hereby re-allege and incorporate by reference each and every allegation
20 contained in the preceding paragraphs as though fully set forth herein.

21 83. Plaintiffs believe and thereon allege that Defendants knowingly and intentionally
22 failed to furnish them and the Plaintiff Class with accurate itemized wage statements. For
23 example, the statements did not include the number of overtime hours worked, or the proper gross
24 wages. Further, the statements did not include premium wages due for all missed and inadequate
25 meal and rest breaks.

26 84. As a direct result of Defendants’ failure to comply with Labor Code section 226,
27 Plaintiffs and other current and former employees of each Defendant were injured and entitled to
28 recover an amount, including but not limited to penalties equal to \$50 for the first violation and

1 \$100 for each subsequent violation, up to a maximum amount of \$4,000 and reasonable costs and
2 attorney's fees in an amount to be proven at trial.

3 **NINTH CAUSE OF ACTION**
4 **(Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004;**
5 **Labor Code §§ 2698-2699, et seq.)**

6 85. Plaintiffs hereby re-allege and incorporate by reference each and every allegation
7 contained in the preceding paragraphs as though fully set forth herein.

8 86. Plaintiffs, as aggrieved employees, bring this claim pursuant to California Labor
9 Code §§ 2698-2699 on behalf of themselves and all other current or former similarly aggrieved
10 employees of Defendants in California at any time for which recovery is authorized under Labor
11 Code §§ 2698-2699, *et seq.* Pursuant to California Labor Code § 2699.3, on January 30, 2020,
12 Plaintiff Gutierrez, by and through his counsel, filed online and sent notice online to the Labor
13 and Workforce Development Agency (LWDA) and by certified mail to the Defendants of the
14 specific provisions of the Labor Code that have been violated ("PAGA Notice"), including the
15 facts and theories to support the violations. The LWDA has not responded to Plaintiffs' PAGA
16 Notice as of the date of this Complaint. Plaintiff thus complied with the PAGA notice
17 requirement.

18 87. As alleged above, Defendants have violated the provisions of the California Labor
19 Code, specifically the failure to provide meal and rest periods, reimburse business
20 expenses, timely pay owed wages for all hours worked, and provide accurate itemized wage
21 statements. Plaintiff seeks recovery of unpaid wages and penalties resulting from said violations
22 on behalf of himself and all other similarly aggrieved employees of Defendants in California at
23 any time for which recovery is authorized under California Labor Code §§ 2698-2699.

24 88. Pursuant to California Labor Code § 2699, Plaintiff and similarly aggrieved
25 workers are entitled to recover civil
26 penalties for Defendants' violations of Labor Code sections 201, 201.3, 204, 210, 226, 226.3,
27 226.7, 510, 512, 1194, 1198, and 2802.

28 89. Plaintiff requests an award of attorneys' fees and costs, including as authorized
under California Labor Code §2699, and the relief set out in the prayer for relief.

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1 who have quit or been discharged during the Class Period pursuant to Labor Code
2 section 203, in an amount according to proof;

3 8. Restitution of all other wages and benefits due and restitution of all profits acquired by
4 Defendants by means of any unfair business practice, in an amount according to proof;

5 9. Actual and/or liquidated damages pursuant to Labor Code section 226(e);

6 10. Interest accrued on wages owed, pursuant to Labor Code § 218.6 and Civil Code
7 section 3287;

8 11. Attorneys' fees, statutory costs and litigation expenses in an amount the Court
9 determines to be reasonable, pursuant to California Code of Civil Procedure section
10 1021.5, Labor Code sections 218.5, 221, 510, 860, 1194, 1198, and 2802; and,

11 12. For such other and further relief as the court deems just, equitable, and proper.

12
13 Date: April 9, 2020

LAW OFFICES OF JOHN E. HILL

14
15 By: _____
16 Enrique Martínez
17 *Attorneys for Plaintiffs & Putative Class*
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