

STANSBURY BROWN LAW
DANIEL J. BROWN (SBN 307604)
dbrown@stansburybrownlaw.com
2610 ½ Abbot Kinney Blvd.
Venice, CA 90291
Tel: 323-207-5925

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

JUVENAL GAONA VARGAS, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

JOE CARMONA dba J S J LABOR
SERVICE, an individual; KLINK CITRUS
ASSOCIATION, a California corporation; and
DOES 1 through 100,

Defendants.

Case No.: VCU282081

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 551, 552, 558,
1194, AND 1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (5) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);**
- (6) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (7) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (8) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 17200 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Juvenal Gaona-Vargas ("Plaintiff"), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 ("Complaint") against Joe Carmona dba J S J Labor Service, and individual; Klink Citrus
4 Association, a California corporation; and, DOES 1 to 100, inclusive (collectively "Defendants"),
5 and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under California Business & Professions
9 Code § 17200 *et. seq.*, Labor Code §§ 201-205, 226 *et seq.*, 226.7, 510, 512, 516, 551-552, 558,
10 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, and 2802; and Industrial Welfare Commission
11 Wage Order 14 ("Wage Order 14"), in addition to seeking declaratory relief and restitution. This
12 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
13 jurisdiction over Defendants' violations of the California Labor Code because the amount in
14 controversy exceeds this Court's jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
17 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
18 County of Tulare. One or more of the Defendants own, maintain offices, transact business, have
19 agent(s) within the County of Tulare, and/or otherwise are found within the County of Tulare,
20 and Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is, a California resident. During the four years immediately preceding
24 the filing of the Complaint in this action and within the statute of limitations periods applicable
25 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
26 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
27 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
28 §§ 201-205, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et*

1 *seq.*, and 2802; California Business & Professions Code § 17200 *et seq.* (“Unfair Competition
2 Law”); and Wage Order 14, which sets employment standards for Agricultural Occupations.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
5 continue to do) business by employing seasonal farm labor employees to harvest agricultural
6 commodities in the United States, and employed Plaintiff, and other similarly-situated non-
7 exempt employees, within Tulare County and the state of California and, therefore, were (and
8 are) doing business in Tulare County and the State of California.

9 5. Plaintiff does not know the true names or capacities, whether individual, partner,
10 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
11 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
12 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
13 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
14 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
15 and proximately caused Plaintiff and the Classes (as defined herein) to be subject to the unlawful
16 employment practices, wrongs, injuries and damages complained of herein.

17 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
18 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

19 7. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
21 Defendants, and each of them, were the agents, servants, and employees of each and every one of
22 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
23 were acting within the course and scope of said agency and employment. Defendants, and each
24 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
25 omissions complained of herein.

26 8. At all times mentioned herein, Defendants, and each of them, were members of
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
28 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 9. Defendant Klink Citrus Association is also jointly liable with Defendant Joe
4 Carmona dba J S J Labor Service for all civil legal responsibility and civil liability for the payment
5 of wages, including all sums payable to an employee or the state of California based upon any
6 failure to pay wages, pursuant to Labor Code §2810.3

7 **GENERAL FACTUAL ALLEGATIONS**

8 10. Defendants are in the agricultural business and employee seasonal farm labor
9 employees to harvest agricultural goods. Plaintiff commenced employment with Defendants as a
10 non-exempt farm labor employee on a seasonal basis from approximately November 2018 until
11 approximately June 2019 in the position of "Picker." Plaintiff's job duties included harvesting
12 various types of oranges. Defendants' credited Plaintiff with working approximately 2.0 to 5.0
13 hours per shift, three to six days a week. However, as discussed below, Plaintiff usually worked
14 considerably more hours per shift. Defendants have not boarded or lodged Plaintiff during his
15 employment.

16 11. During Plaintiff's employment with Defendants, Plaintiff was in most workweeks
17 paid on a piece-rate basis, whereby he was paid a set rate per bag filled with citrus fruit.
18 Defendants' office manager allegedly recorded the hours Plaintiff worked; however, Plaintiff was
19 only paid an hourly minimum wage if his earned piece-rate compensation did not exceed his
20 minimum wages earned in a pay period.

21 12. Plaintiff and other non-exempt employees were not authorized to take all legally
22 required rest periods regardless of whether they were working on a piece-rate or hourly basis.
23 Despite Defendants' failure to authorize and permit Plaintiff and other non-exempt employees to
24 take all lawful paid rest periods, due to their uniform and unlawful practices, Defendants never
25 provided Plaintiff and other non-exempt employees with an hour of pay at their regular rate for
26 each rest period violation as required by Labor Code § 226.7. Upon information and belief, during
27 at least a portion of the class period, Defendants maintained no payroll code or another mechanism
28 for the payment of rest period premiums in the event Plaintiff and other non-exempt employees

1 were not authorized to take lawful rest periods.

2 13. Defendants have failed to accurately record and compensate Plaintiff and other
3 non-exempt employees who are compensated on a piece-rate basis for non-productive time. *See*
4 *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-rate
5 compensation structure that does not separately compensate employees for non-productive time
6 violates California minimum wage laws). Plaintiff and other non-exempt employees were
7 required to perform work duties and activities that were not directly compensated on a piece-rate
8 basis, such as waiting for boxes and ladders to be set up in the field at the beginning of the shift,
9 changing to different rows in same field, bathroom and water breaks, waiting in lines, waiting at
10 the beginning of their shifts in the field for oranges to dry so they can be picked, and/or other
11 mandatory duties that were not directly compensated on a piece-rate basis. While some of
12 Plaintiff's wage statements do contain a "Break" item, the amount of time recorded under break
13 is only enough to compensate Plaintiff for rest periods. Therefore, the "Break" item does not
14 compensate Plaintiff for other non-productive time. Accordingly, Plaintiff alleges that Defendants
15 have not accurately tracked and compensated employees' non-productive time in compliance with
16 Labor Code § 226.2.

17 14. Defendants have also failed to record employees' total hours worked each
18 workday accurately. Specifically, Defendants' office manager would maintain timecards for all
19 non-exempt employees, but on information and belief, such timecards did not accurately reflect
20 the times that employees began and ended each workday. For example, although Plaintiff would
21 typically work 6.0 to 8.0 hours per workday, and occasionally worked up to 10.0 hours in a
22 workday, Plaintiff's wage statements indicated that he typically only worked between 2.0 to 5.0
23 hours per workday, presumably because Plaintiff's wage statements were based on time records
24 that were prepared by Defendants' office manager, which inaccurately listed he only worked
25 between 2.0 and 5.0 hours per workday. As a result, Defendants failed to ensure that Plaintiff and
26 other non-exempt employees were being paid at least the minimum wage for all hours actually
27 worked, and failed to ensure that Plaintiff and other non-exempt employees received proper
28 overtime wages for all overtime hours worked, in compliance with Wage Order 14.

1 15. Defendants also never provided Plaintiff and other non-exempt employees with a
2 first meal period when they worked shifts in excess of 6.0 hours. Instead Plaintiff and other non-
3 exempt employees would have to eat while continuing to work. Upon information and belief,
4 Defendants' forepersons did not accurately record the beginning and ending of each meal period
5 on the timecards. Despite Defendants' failure to provide Plaintiff and other non-exempt
6 employees with all lawful meal periods due to their uniform and unlawful practices, Defendants
7 never provided Plaintiff and other non-exempt employees with an hour of pay at their regular rate
8 for each meal period violation as required by Labor Code § 226.7.

9 16. Defendants failed to adequately reimburse Plaintiff for all reasonable and
10 necessary work expenditures, including but not limited to, requiring Plaintiff to purchase and
11 maintain scissors, cloves, and sacks, for the harvesting of citrus fruit without reimbursement.

12 17. As a result of Defendants' failure to accurately compensate Plaintiff and other
13 non-exempt employees for non-productive time, failure to pay all minimum and overtime wages,
14 and failure to provide all required meal periods and authorize all rest periods or pay premium pay
15 in lieu thereof, Defendants have maintained inaccurate payroll records, failed to timely pay all
16 wages owed to separating employees at the time of their separation, and issued inaccurate wage
17 statements.

18 18. Additionally, Defendant Joe Carmona dba J S J Labor Service is a farm labor
19 contractor subject to the requirements of Labor Code § 205, which requires that employees be
20 paid weekly, on a business day designated in advance, for all wages earned up to and including
21 the fourth day before the scheduled payday. However, Defendants pay their employees on a delay
22 of five days or more, in violation of the "fourth day" requirement found in Labor Code § 205.

23 **CLASS ACTION ALLEGATIONS**

24 19. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
25 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 26 a. The Rest Period Class consists of all current and former non-exempt employees of
27 Defendant Joe Carmona dba J S J Labor Service in California who worked at least
28 one shift in excess of 3.5 hours while performing work for Defendant Klink Citrus

1 Association during the four years immediately preceding the filing of this lawsuit
2 through the present.

3 b. The Minimum Wage Class consists of all current and former non-exempt
4 employees of Defendant Joe Carmona dba J S J Labor Service in California who
5 performed work for Defendant Klink Citrus Association that was compensated on
6 a piece-rate or hourly basis during the four years immediately preceding the filing
7 of this lawsuit through the present.

8 c. The Overtime Wage Class consists of all current and former non-exempt
9 employees of Defendant Joe Carmona dba J S J Labor Service in California who
10 worked overtime hours (based on criteria set forth in Wage Order 14) while
11 performing work for Defendant Klink Citrus Association during the four years
12 immediately preceding the filing of this lawsuit through the present.

13 d. The Meal Period Class consists of all current and former non-exempt employees
14 of Defendant Joe Carmona dba J S J Labor Service in California who worked at
15 least one shift in excess of 5.0 hours while performing work for Defendant Klink
16 Citrus Association without a meal period of at least 30 minutes in duration
17 commencing prior to the conclusion of the fifth hour of work, and who do not have
18 a corresponding meal period premium payment made for such shifts during the
19 four years preceding the filing of this lawsuit through the present.

20 e. The Employee Expense Class consists of all of Defendants' current and former
21 non-exempt employees in California who were not reimbursed for the purchase
22 and maintenance of tools necessary for the performance of their job duties during
23 the four years immediately preceding the filing of this lawsuit to the present.

24 f. The Wage Statement Class consists of all members of the Rest Period Class,
25 Minimum Wage Class, Overtime Class, and/or Meal Period Class who received a
26 wage statement from Defendants during the one year immediately preceding the
27 filing of this lawsuit through the present.
28

1 g. The Waiting Time Class consists of all Defendants' formerly employed members
2 of the Rest Period Class, Minimum Wage Class, Overtime Class, and Meal Period
3 Class who separated from employment during the three years immediately
4 preceding the filing of this lawsuit through the present.

5 20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
6 joinder of all members would be unfeasible and not practicable. The membership of the Classes
7 is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes
8 number greater than two hundred (200) individuals. The identity of such membership is readily
9 ascertainable via inspection of Defendants' employment records.

10 21. **Common Questions of Law and Fact Predominate/Well Defined Community**
11 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
12 situated employees, which predominate over questions affecting only individual members. Those
13 common questions include, without limitation:

- 14 i. Whether Defendants correctly compensated employees for rest periods pursuant
15 to Labor Code § 226.2;
- 16 ii. Whether Defendants paid all minimum wages owed for all hours worked to
17 members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194,
18 1194.2, and 1197;
- 19 iii. Whether Defendants violated the applicable Labor Code provisions, including, but
20 not limited to, §§ 510 and 1194 and Wage Order 14 by requiring members of the
21 Overtime Wage Class to perform overtime work and not paying for said work in
22 accordance with the overtime laws of the State of California;
- 23 iv. Whether Defendants' timekeeping policies/practices resulted in the failure to
24 properly compensate members of the Minimum Wage Class;
- 25 v. Whether Defendants authorized and permitted legally compliant rest periods to
26 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 27 vi. Whether Defendants provided all legally compliant meal periods to members of
28 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

- 1 vii. Whether Defendants failed to reimburse members of the Employee Expense Class
2 for business expenditures necessarily incurred in the performance of their duties;
3 viii. Whether Defendants provided accurate, itemized wage statements to members of
4 the Classes; and
5 ix. Whether Defendants' policies and/or practices for the timing and amount of
6 payment of final wages to members of the Waiting Time Class at the time of
7 separation from employment were lawful.

8 22. **Predominance of Common Questions:** Common questions of law and fact
9 predominate over questions that affect only individual members of the Classes. The common
10 questions of law set forth above are numerous and substantial and stem from Defendants' policies
11 and/or practices applicable to each individual class member, such as Defendants' uniform piece-
12 rate pay structure, meal and rest period policies and practices, timekeeping policies and practices,
13 non-reimbursement, wage statement, and payment of final wages policies and practices. As such,
14 the common questions predominate over individual questions concerning each individual class
15 member's showing as to his or her eligibility for recovery or as to the amount of his or her
16 damages.

17 23. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
18 Plaintiff was employed by Defendants as a non-exempt employee in California during the
19 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
20 herein, Plaintiff, like the members of the Classes, was paid on a piece-rate and hourly basis, was
21 subject to Defendants' meal and rest period and timekeeping policies and practices, was subjected
22 to Defendants' unlawful failure to reimburse business expenses, was furnished with inaccurate
23 and incomplete wage statements, and was not paid all wages earned at the time of his separation
24 of employment.

25 24. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
26 to represent fairly and adequately the interests of the members of the Classes. Moreover,
27 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
28 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-

1 and-hour class actions in state and federal courts in the past and are committed to vigorously
2 prosecuting this action on behalf of the members of the Classes.

3 25. **Superiority:** The California Labor Code is broadly remedial in nature and serves
4 an important public interest in establishing minimum working conditions and standards in
5 California. These laws and labor standards protect the average working employee from
6 exploitation by employers who have the responsibility to follow the laws and who may seek to
7 take advantage of superior economic and bargaining power in setting onerous terms and
8 conditions of employment. The nature of this action and the format of laws available to Plaintiff
9 and members of the Classes make the class action format a particularly efficient and appropriate
10 procedure to redress the violations alleged herein. If each employee were required to file an
11 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
12 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
13 their vastly superior financial and legal resources. Moreover, requiring each member of the
14 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
15 employees who would be disinclined to file an action against their former and/or current employer
16 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
17 employment. Further, the prosecution of separate actions by the individual class members, even
18 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
19 with respect to the individual class members against Defendants herein; and which would
20 establish potentially incompatible standards of conduct for Defendants; and/or legal
21 determinations with respect to individual class members which would, as a practical matter, be
22 dispositive of the interest of the other class members not parties to adjudications or which would
23 substantially impair or impede the ability of the class members to protect their interests. Further,
24 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
25 individual prosecution considering all of the concomitant costs and expenses attending thereto.
26 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
27 Civil Procedure.

28 ///

FIRST CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

26. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27. Wage Order 14, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours actually worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 14.

28. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

29. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 14.

30. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs

1 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
2 Civil Procedure § 1021.5.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY ALL OVERTIME WAGE**

5 **(AGAINST ALL DEFENDANTS)**

6 31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 32. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
8 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
9 overtime hours worked, and provide a private right of action for the failure to pay all overtime
10 compensation for overtime work performed.

11 33. At all times relevant herein, Defendants were required to properly compensate
12 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
13 Labor Code § 1194 and Wage Order 14. Wage Order 14, § 3 requires an employer to pay overtime
14 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth
15 in the Wage Order.

16 34. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
17 employees to work overtime hours but did not compensate Plaintiff or members of the Overtime
18 Class at one and one-half times their regular rate of pay for such hours.

19 35. The foregoing policies and practices are unlawful and create entitlement to
20 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
21 premiums owing, including interest thereon, statutory and civil penalties, and attorneys' fees and
22 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
23 14, and Code of Civil Procedure § 1021.5.

24 **THIRD CAUSE OF ACTION**

25 **MEAL PERIOD VIOLATIONS**

26 **(AGAINST ALL DEFENDANTS)**

27 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 failed in their affirmative obligation to provide all of their non-exempt employees in California,
2 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
3 in accordance with the mandates of the California Labor Code and Wage Order 14, § 11. Despite
4 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
5 of the Meal Period Class at their respective regular rates of compensation, in accordance with
6 California Labor Code §§ 226.7, and 512.

7 38. As a result, Defendants are responsible for paying premium compensation for meal
8 period violations including interest thereon, as well as statutory penalties, civil penalties, and
9 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 14, and Civil Code §§
10 3287(b) and 3289.

11 **FOURTH CAUSE OF ACTION**

12 **REST PERIOD VIOLATIONS**

13 **(AGAINST ALL DEFENDANTS)**

14 39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 40. Wage Order 14, § 12 and California Labor Code §§ 226.7 and 516 establish the
16 right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
17 minutes net rest time for each four (4) hour period worked, or major fraction thereof.

18 41. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
19 of the Rest Period Class to take all legally compliant rest periods.

20 42. The foregoing violations create an entitlement to recovery by Plaintiff and
21 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
22 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
23 according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

26 **(AGAINST ALL DEFENDANTS)**

27 43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 44. At all relevant times herein, Defendants were subject to Labor Code § 2802, which

1 states that "an employer shall indemnify his or her employees for all necessary expenditures or
2 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
3 his or her obedience to the directions of the employer..."

4 45. Due to Defendants' unlawful policy and practice of requiring employees to
5 purchase and maintain tools necessary for the performance of their job duties and to incur mileage
6 expense, Defendants have violated Labor Code § 2802.

7 46. Plaintiff and members of the Employee Expense Class are entitled to attorneys'
8 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

9 47. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
10 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
11 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue
12 from the date on which they incurred the initial necessary expenditure.

13 **SIXTH CAUSE OF ACTION**

14 **WAGE STATEMENT VIOLATIONS**

15 **(AGAINST ALL DEFENDANTS)**

16 48. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

17 49. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
19 and the Wage Statement Class with accurate, itemized wage statements that included, among
20 other requirements, accurate total gross wages earned, meal and rest period premiums, and total
21 net wages earned in violation of Labor Code §226 *et seq.*

22 50. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
23 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
24 failures led to, among other things, the non-payment of all of their meal and rest period
25 premiums, and deprived them of the information necessary to identify discrepancies in
26 Defendants' reported data.

27 51. Defendants' failures created an entitlement to Plaintiff and members of the Wage
28 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,

1 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to
2 suit pursuant to Labor Code § 226 *et seq.*

3 **SEVENTH CAUSE OF ACTION**

4 **WAITING TIME PENALTIES**

5 **(AGAINST ALL DEFENDANTS)**

6 52. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 53. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
8 an employer to pay all wages immediately at the time of termination of employment in the event
9 the employer discharges the employee or the employee provides at least 72 hours of notice of
10 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
11 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
12 employee's last date of employment.

13 54. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class
14 all final wages due to them at the time of their separation including, among other things, unpaid
15 amounts for rest and recovery periods and non-productive time, underpaid overtime and
16 minimum wages owed, and meal and rest period premium wages. Further, Plaintiff is informed
17 and believes, and based thereon alleges, that as a matter of uniform policy and practice,
18 Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the
19 end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.
20 Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

21 55. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
22 Time Class their earned wages upon separation from employment results in a continued payment
23 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
24 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
25 plus reasonable attorneys' fees and costs of suit.

26 ///

27 ///

28 ///

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

56. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

57. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay Plaintiff and the Classes all overtime and minimum wages, provide all required meal periods and failing to authorize and permit all required rest periods, failing to pay meal and rest period premium wage payments, failing to reimburse for necessary business expenditures, and failing to furnish accurate, itemized wage statements, and willfully failing to timely pay Plaintiff and members of the Waiting Time Class all final wages upon separation of employment.

58. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

59. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

60. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

61. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

62. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

63. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code:

- a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved

1 employees at the regular rate of compensation in violation of Labor Code §§
2 226.7, 512, 558, and 1198;

3 d. Failing to authorize and permit all legally required rest periods, and failure to
4 pay rest period premium wages, to Plaintiff, the Rest Period Class, and other
5 aggrieved employees at the regular rate of compensation in violation of Labor
6 Code §§ 226.7, 516, 558, and 1198;

7 e. Failing to reimburse Plaintiff, the Employee Expense Class, and other
8 aggrieved employees for all necessary work expenses incurred in violation of
9 Labor Code §§ 2802 and 2804;

10 f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
11 employees with complete, accurate, itemized wage statements in violation of
12 Labor Code § 226;

13 g. Failing to timely pay all final wages and compensation earned by Plaintiff, the
14 Waiting Time Class, and other aggrieved employees at the time of separation
15 in violation of Labor Code §§ 201, 202, and 203;

16 h. Failing to compensate Plaintiff and other aggrieved employees at least once
17 every week on a business day designated in advance and including all wages
18 earned up to and including the fourth day before such payday in violation of
19 Labor Code § 205; and

20 i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
21 employees in violation of Labor Code § 1174.

22 64. On February 13, 2020, Plaintiff notified Defendants via certified mail, and notified
23 the California Labor and Workforce Development Agency ("LWDA") via its website, of
24 Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for
25 civil penalties under California Labor Code § 2698 et seq. with respect to violations of the
26 California Labor Code identified in Paragraph 63 (a)-(i). Now that sixty-five days have passed
27 from Plaintiff's notifying Defendants and the LWDA of these violations, and the LWDA has not
28 provided notice that it intends to investigate the violations, Plaintiff has exhausted his
administrative requirements for bringing a claim under the Private Attorneys General Act with

1 respect to these violations.

2 65. Plaintiff was compelled to retain the services of counsel to file this court action to
3 protect his interests and the interests of other similarly aggrieved employees, and to assess and
4 collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and
5 costs, which he is entitled to receive under California Labor Code § 2699(g).

6 **PRAYER**

7 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
8 this suit is brought against Defendants, as follows:

- 9 1. For an order certifying the proposed Classes;
- 10 2. For an order appointing Plaintiff as representative of the Classes;
- 11 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 12 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
13 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
14 1197;
- 15 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
16 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 17 6. Upon the Third Cause of Action, for compensatory, consequential, general and
18 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 19 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
20 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 21 8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and
22 special damages according to proof pursuant to Labor Code § 2802;
- 23 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
24 226, *et seq.*;
- 25 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
26 to Labor Code § 201-203;
- 27 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
28 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or

practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

12. Upon the Ninth Cause of Action, (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for the violations of the Labor Code Sections cited in Labor Code § 2699.5.

13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

14. On all causes of action, for attorneys' fees and costs as provided by Code of Civil Procedure § 1021.5 and all other applicable statutes; and

15. For such other and further relief the Court may deem just and proper.

Dated: June 16, 2020

Respectfully submitted,
STANBURY BROWN LAW

By:



Daniel J. Brown
Attorneys for Plaintiff

///

///

///

///

///

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: June 16, 2020

Respectfully submitted,
STANBURY BROWN LAW

By:



Daniel J. Brown
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

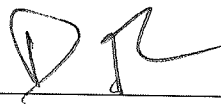
I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

On July 07, 2020, I served the document listed below on the parties in this action as follows:

- **PROOF OF SERVICE OF FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- X (BY EMAIL) I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 07, 2020, at Venice, California.



Daniel J. Brown

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

Ian B. Wieland, Esq.
Email: ian@sw2law.com
Charles P. Hamamjian, Esq.
Sagaser, Watkins & Wieland, PC
5260 North Palm Avenue, Suite 400
Fresno, CA 93704

Attorney Defendants Joe Carmona dba J S J Labor Service
and Klink Citrus Association