

7/17/20
PT 200

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

AUG 17 2020

STEPHANIE CAMERON, CLERK
BY: 

STANSBURY BROWN LAW
DANIEL J. BROWN (SBN 307604)
dbrown@stansburybrownlaw.com
2610 1/2 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**

NORA AMBRIS CRUZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

WMJ FARMS, INCORPORATED, a
California corporation; and DOES 1 through
100,

Defendants.

Case No.: 282915 BY FAX

Amended as a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

**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 § 2698 *et seq.*)

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

X-08-17-20

1 Plaintiff Nora Ambris Cruz ("Plaintiff"), on behalf of herself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 ("Complaint") against WMJ Farms, Incorporated, a California corporation; and DOES 1 to 100,
4 inclusive (collectively "Defendants"), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business & Professions
8 Code § 17200 *et seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 551-552, 558,
9 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*; and Industrial Welfare Commission Wage
10 Order 14 ("Wage Order 14"), in addition to seeking declaratory relief and restitution. This
11 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
12 jurisdiction over Defendants' violations of the California Labor Code because the amount in
13 controversy exceeds this Court's jurisdictional minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802,
28 2698 *et seq.*; California Business & Professions Code § 17200 *et seq.* ("Unfair Competition

1 Law”); and Wage Order 14, which sets employment standards for Agricultural Occupations.

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

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

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

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

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

1 members of the Classes.

2 **GENERAL FACTUAL ALLEGATIONS**

3 9. Defendants are in the agricultural business and employ seasonal farm labor
4 employees to harvest agricultural goods. Plaintiff commenced employment with Defendants as a
5 non-exempt farm labor employee on a seasonal basis around 2001. Plaintiff would generally
6 work about four months at a time during her employment with Defendants. Plaintiff was tasked
7 with the job of “suckering” grapes for the benefit of the Defendants from Monday to Saturday
8 between approximately 9.0 and 10.0 hours per day. Defendants’ credited Plaintiff with working
9 approximately 7.5 to 8.5 hours per day, six days a week. However, in practice, on information
10 and belief, Plaintiff alleges that Defendants did not employ any actual timekeeping practices and
11 at no point was Plaintiff made to confirm or sign off on her hours. As discussed below, Plaintiff
12 usually worked considerably more hours per shift. Defendants have not boarded or lodged
13 Plaintiff during her employment.

14 **Missed Rest Periods**

15 10. Plaintiff and other non-exempt employees were not provided all legally required
16 rest periods regardless of whether they were working on a piece-rate or hourly basis. Specifically,
17 Plaintiff and other non-exempt employees were not permitted to exercise their statutorily
18 authorized rest periods. Wage Order 14, § 12 and California Labor Code §§ 226.7 and 516
19 establish the right of employees to be authorized and permitted to take a paid rest period of at
20 least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.
21 Despite Defendants’ failure to authorize and permit Plaintiff and other non-exempt employees to
22 take all lawful paid rest periods, due to their uniform and unlawful practices, Defendants never
23 provided Plaintiff and other non-exempt employees with an hour of pay at their regular rate for
24 each missed rest period violation as required by Labor Code § 226.7. Upon information and belief,
25 during at least a portion of the class period, Defendants maintained no payroll code or another
26 mechanism for the payment of rest period premiums in the event Plaintiff and other non-exempt
27 employees were not authorized to take lawful rest periods.

28 ///

1 **Off-The-Clock**

2 11. Defendants have also failed to record employees' total hours worked each
3 workday accurately. Specifically, Defendants' forepersons would maintain timecards for all non-
4 exempt employees, but on information and belief, such timecards did not accurately reflect the
5 times that employees began and ended each workday. For example, although Plaintiff would
6 typically work between 9.0 and 10.0 hours per workday, on information and belief, Plaintiff
7 alleges he was only compensated for working between 7.5 to 8.5 hours per week. In addition to
8 the regular shaving of hours off of Plaintiff and other non-exempt employees' timesheets, they
9 were told by their foreperson that they had to arrive at the job site at least 10-15 minutes prior to
10 their shifts to sign in for the day and were not compensated for this time. As a result, Defendants
11 failed to ensure that Plaintiff and other non-exempt employees were being paid at least the
12 minimum wage for all hours actually worked, and failed to ensure that Plaintiff and other non-
13 exempt employees received proper overtime wages for all overtime hours worked, including
14 overtime payment for hours worked over 9.5 in a workday and over 55.0 in a workweek, in
15 compliance with Wage Order 14.

16 **Missed Meal Periods**

17 12. Defendants also did not provide Plaintiff and other non-exempt employees with a
18 legally complaint first meal period when they worked shifts in excess of 6.0 hours. Plaintiff and
19 other non-exempt employees complained about their lack of a meal periods on numerous
20 occasions to Defendants, however the meal period policy never changed. Plaintiff and the other
21 non-exempt employees would rarely if ever receive the statutorily required thirty minutes for their
22 meal periods despite their frequently voicing their dissatisfaction with the practice. Defendants
23 were not only aware of, but actively encouraged this practice. Further, Defendants failed to
24 provide second meal periods when non-exempt employees worked shifts in excess of 10.0 hours.
25 Upon information and belief, Defendants' forepersons did not accurately record the beginning
26 and ending of each meal period on the timecards. Despite Defendants' failure to provide Plaintiff
27 and other non-exempt employees with all lawful meal periods due to their uniform and unlawful
28 practices, Defendants never provided Plaintiff and other non-exempt employees with an hour of

1 pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

2 **Failure to Reimburse for Necessary Business Expenditures**

3 13. Defendants failed to adequately reimburse Plaintiff for all reasonable and
4 necessary work expenditures, including but not limited to, the purchase and use of scissors and
5 gloves that she was required to purchase as a necessary condition to employment.

6 **Failure to Provide Accurate Wage Statements**

7 14. As a result of Defendants' failure to accurately compensate Plaintiff and other
8 non-exempt employees all minimum and overtime wages, and failure to provide all required meal
9 periods and authorize all rest periods or pay premium pay in lieu thereof, Defendants have
10 maintained inaccurate payroll records, and issued inaccurate wage statements. Furthermore,
11 Plaintiff's wage statements are facially deficient as the wage statements impermissibly listed
12 Plaintiff's entire social security number instead of just the last four digits as mandated by Labor
13 Code § 226(a)(7).

14 **Waiting Time Penalties**

15 15. As a further result of Defendants' failure to pay all minimum and overtime wages,
16 and failure to provide all required meal periods and authorize all rest periods or pay premium pay
17 in lieu thereof, Defendants failed to pay all wages owed to Plaintiff upon her separation of
18 employment from Defendants.

19 **CLASS ACTION ALLEGATIONS**

20 16. **Class Definitions:** Plaintiff brings this action on behalf of herself and the
21 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 22 a. The Rest Period Class consists of all current and former non-exempt employees of
23 Defendants in California who were subject to the requirements of Wage Order 14
24 and who worked at least one shift in excess of 3.5 hours during the four years
25 immediately preceding the filing of this lawsuit through the present.
- 26 b. The Off-The-Clock-Class consists of all Defendants' current and former non-
27 exempt employees in California who were subject to the requirements of Wage
28

Order 14 who were not permitted to record their actual hours worked, during the four years immediately preceding the filing of the lawsuit through the present;

c. The Overtime Wage Class consists of all current and former non-exempt employees of Defendants in California who were subjected to the requirements of Wage Order 14 and were not compensated at one and one-half times their regular rate of pay for: (i) hours worked over 9.5 in a workday and/or (ii) hours worked over 55.0 in a workweek during the four years immediately preceding the filing of this lawsuit through the present.

d. The Meal Period Class consists of all current and former non-exempt employees of Defendants in California who were subject to the requirements of Wage Order 14 and who: (i) worked at least one shift in excess of 5.0 hours without a meal period of at least 30 minutes in duration commencing prior to the conclusion of the fifth hour of work, and who do not have a corresponding meal period premium payment made for such shifts and/or (ii) worked at least one shift in excess of 10.0 hours without a second meal period of at least 30 minutes in duration commencing prior to the conclusion of the tenth hour of work, and who do not have a corresponding meal period premium payment made for such shifts during the four years preceding the filing of this lawsuit through the present.

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

f. The Wage Statement Class consists of all members of the Rest Period Class, Off-The-Clock Class, Overtime Class, Meal Period Class, and/or Employee Expense Class who received a wage statement from Defendants during the one year immediately preceding the filing of this lawsuit through the present.

g. The Waiting Time Class consists of all Defendants' formerly employed members of the Rest Period Class, Off-The-Clock Class, Overtime Class, Meal Period Class,

and/or Expense Reimbursement Class who separated from employment during the three years immediately preceding the filing of this lawsuit through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

- i. Whether Defendants correctly compensated employees for rest periods pursuant to Labor Code § 226.7;
- ii. Whether Defendants paid at least the minimum wages owed for all hours worked to members of the Off-The-Clock Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;
- iii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and Wage Order 14 by requiring members of the Overtime Wage Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- iv. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Off-The-Clock Class;
- v. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- vi. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- vii. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;

viii. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and

ix. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful.

19. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' meal and rest period policies and practices, timekeeping policies and practices, non-reimbursement, wage statement, and payment of final wages policies and practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to her or her eligibility for recovery or as to the amount of her or her damages.

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

21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

22. **Superiority:** The California Labor Code is broadly remedial in nature and serves

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

25 **FIRST CAUSE OF ACTION**

26 **MINIMUM WAGE VIOLATIONS**

27 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

21 27. Defendants' practice and uniform administration of corporate policy regarding
22 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
23 members of the Off-The-Clock Class in a civil action for the unpaid amount of minimum wages,
24 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
25 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
26 Civil Procedure § 1021.5.

27 ///

28 ///

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGE**

3 **(AGAINST AL DEFENDANTS)**

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

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

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

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

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

22 **THIRD CAUSE OF ACTION**

23 **MEAL PERIOD VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

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

26 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 failed in their affirmative obligation to provide all of their non-exempt employees in California,
28 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods

1 in accordance with the mandates of the California Labor Code and Wage Order 14, § 11. Despite
2 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
3 of the Meal Period Class at their respective regular rates of compensation, in accordance with
4 California Labor Code §§ 226.7, and 512.

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

9 **FOURTH CAUSE OF ACTION**

10 **REST PERIOD VIOLATIONS**

11 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

24 **(AGAINST ALL DEFENDANTS)**

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

26 41. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
27 states that "an employer shall indemnify her or her employees for all necessary expenditures or
28 losses incurred by the employee in direct consequence of the discharge of her or her duties, or of

1 her or her obedience to the directions of the employer..."

2 42. Due to Defendants' unlawful policy and practice of requiring employees to incur
3 costs associated with purchasing necessary equipment at their own expense, Defendants have
4 violated Labor Code § 2802.

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

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

11 **SIXTH CAUSE OF ACTION**

12 **WAGE STATEMENT VIOLATIONS**

13 **(AGAINST ALL DEFENDANTS)**

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

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

20 47. Furthermore, Defendants knowingly and intentionally, as a matter of uniform
21 practice and policy, failed to conform to Labor Code §226 *et seq* by unlawfully including the
22 entirety of Plaintiff and the Wage Statement Class' Social Security numbers on their wage
23 statements in violation of the provisions of the Labor Code that provide that only the last four
24 digits be displayed on employee's wage statements.

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

1 Defendants' reported data.

2 49. Defendants' failures created an entitlement to Plaintiff and members of the Wage
3 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
4 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to
5 suit pursuant to Labor Code § 226 *et seq.*

6 **SEVENTH CAUSE OF ACTION**

7 **WAITING TIME PENALTIES**

8 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

55. 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, failing to provide all required meal periods, 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, 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.

56. 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.

57. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself 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.

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

59. Plaintiff was compelled to retain the services of counsel to file this court action to protect her 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)

60. Plaintiff re-alleges and incorporates by reference all prior paragraphs as through fully set forth herein.

61. 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 herself 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 violations;

- a. Failing to pay minimum wages for all hours worked to Plaintiff, the Off-The-Clock Class, and other similarly aggrieved employees in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- 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 failing to pay meal

- 1 period premium pay, to Plaintiff, the Meal Period Class, and other similarly
2 aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 3 d. Failing to timely pay all final wages and compensation earned by Plaintiff, the
4 Waiting Time Class, and other aggrieved employees at the time of separation
5 in violation of Labor Code §§ 201, 202, and 203;
- 6 e. Failing to authorize and permit all legally required rest periods, and failing to
7 pay rest period premiums, to Plaintiff, the Rest Period Class, and other similarly
8 aggrieved employees in violation of Labor Code §§ 226.7, 512, and 558;
- 9 f. Failing to reimburse Plaintiff, the Employee Expense Class, and other
10 aggrieved employees for all necessary work expenses incurred in violation of
11 Labor Code §§ 2802 and 2804;
- 12 g. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
13 employees with complete, accurate, itemized wage statements in violation of
14 Labor Code § 226;
- 15 h. Failing to pay non-exempt employees all earned wages at least twice during
16 each calendar month in violation of Labor Code § 204;
- 17 i. Failing to compensate Plaintiff and other aggrieved employees at least once
18 every week on a business day designated in advance and including all wages
19 earned up to and including the fourth day before such payday in violation of
20 Labor Code § 205; and
- 21 j. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
22 employees in violation of Labor Code §§ 558 and 1174.

23 62. On May 19, 2020, Plaintiff notified Defendants via certified mail, and notified the
24 California Labor and Workforce Development Agency ("LWDA") via its website, of
25 Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for
26 civil penalties under California Labor Code § 2698 et seq. with respect to violations of the
27 California Labor Code identified in Paragraph 61 (a)-(j). The LWDA has not provided notice
28 that it intends to investigate the violations, and therefore Plaintiff has exhausted her
administrative requirements for bringing a claim under the Private Attorneys General Act with

1 respect to these violations.

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

6 **PRAYER**

7 WHEREFORE, Plaintiff prays for judgment for herself 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

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

3 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
4 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
5 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
6 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
7 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
8 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
9 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
10 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
11 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
12 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
13 each initial violation and \$200 for each subsequent violation per employee per pay period for
14 those violations of the Labor Code for which no civil penalty is specifically provided, based on
15 the following Labor Code violations;

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

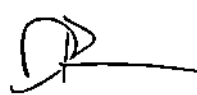
18 14. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
19 Procedure § 1021.5 and all other applicable statutes; and

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

21
22 Dated: August 15, 2020

Respectfully submitted,
STANBURY BROWN LAW

23
24 By:



Daniel J. Brown
Attorneys for Plaintiff

25
26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

Dated: August 15, 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 August 15, 2020 I served the document listed below on the parties in this action as follows:

- **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) In accordance with California Code of Civil Procedure section 1010.6 in compliance with the Judicial Council's Appendix I, Emergency Rules Related to Covid-19, Emergency Rule 12, 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 August 15, 2020 at Venice, California.



Daniel J. Brown

SERVICE LIST

(i) Patrick S. Moody, Esq.
pmoody@theemployerslawfirm.com
BARSAMIAN & MOODY
1141 W Shaw Ave. # 104
Fresno, CA 93711

Attorneys for Defendant WMJ Farms, Incorporated