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

NAZARIO MARTINEZ SANTIAGO, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

JNM CONTRACTING, INC., a California
corporation; EGC INVESTMENTS, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No.: VCU282822 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

1 Plaintiff Nazario Martinez Santiago ("Plaintiff"), on behalf of himself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 ("FAC") against JNM Contracting, Inc., a California corporation; EGC Investments, Inc., a
4 California corporation; and, DOES 1 to 100, inclusive (collectively "Defendants"), and on
5 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, 2802, 2698 *et seq.*; and Industrial Welfare Commission Wage
11 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, and 1198, 2802.

1 and 2698 *et seq.*; 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 are)
8 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 EGC Investments, Inc. is also jointly liable with Defendant JNM
4 Contracting, Inc. for all civil legal responsibility and civil liability for the payment of wages,
5 including all sums payable to an employee or the state of California based upon any failure to pay
6 wages, pursuant to Labor Code § 2810.3

7 **GENERAL FACTUAL ALLEGATIONS**

8 10. Defendants are in the agricultural business and employ 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 2018 to approximately 2019 in the
11 position of "Picker." Plaintiff would generally work about three weeks at a time during his
12 employment with Defendants. Plaintiff was tasked with harvesting cherries for the benefit of the
13 Defendants. Defendants' credited Plaintiff with working approximately 7-8 hours per day, seven
14 days a week. However, in practice, on information and belief, Plaintiff alleges that Defendant
15 did not employ any actual timekeeping practices and at no point was Plaintiff made to confirm
16 or sign off on his hours. As discussed below, Plaintiff usually worked considerably more hours
17 per shift. Defendants have not boarded or lodged Plaintiff during his employment.

18 11. During Plaintiff's employment with Defendants, Plaintiff was in most workweeks
19 paid on a piece-rate basis, whereby he was paid a set rate of \$5.50 per bucket filled with cherries.
20 Defendants' foreperson allegedly recorded the hours Plaintiff worked; however, Plaintiff was
21 only paid an hourly minimum wage if his earned piece-rate compensation did not exceed his
22 minimum wages earned in a pay period.

23 12. Plaintiff and other non-exempt employees were not authorized to take all legally
24 required rest periods regardless of whether they were working on a piece-rate or hourly basis. For
25 example, Plaintiff's check numbered 12197 issued on May 24, 2019, indicates that he worked 8.0
26 hours on May 15, 2009, entitling him to two rest periods. However, Plaintiff's wage statement
27 indicates he was only compensated for one rest period (i.e. .17 hours), when he should have been
28 authorized and paid for two rest periods (i.e. .34 hours). Furthermore, Plaintiff alleges that at no

1 point was he ever provided a legally complaint duty-free rest period. Despite Defendants' failure
2 to authorize and permit Plaintiff and other non-exempt employees to take all lawful paid rest
3 periods, due to their uniform and unlawful practices, Defendants never provided Plaintiff and
4 other non-exempt employees with an hour of pay at their regular rate for each rest period violation
5 as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the
6 class period, Defendants maintained no payroll code or another mechanism for the payment of
7 rest period premiums in the event Plaintiff and other non-exempt employees were not authorized
8 to take lawful rest periods.

9 13. Defendants have failed to accurately record and compensate Plaintiff and other
10 non-exempt employees who are compensated on a piece-rate basis for non-productive time. *See*
11 *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-rate
12 compensation structure that does not separately compensate employees for non-productive time
13 violates California minimum wage laws). Plaintiff and other non-exempt employees were
14 required to perform work duties and activities that were not directly compensated on a piece-rate
15 basis. Specifically, employees would arrive for work at the usually time of 5:00 a.m. but would
16 have to wait for the foreperson to provide them with ladders and for Defendants to set up the on-
17 site tractors and trailers with which employees would deposit their cherries. Plaintiff alleges that
18 all this wait time constitutes unproductive worktime which must be compensated under California
19 law. Furthermore, employees were not compensated for bathroom and water breaks, waiting in
20 lines, and/or other mandatory duties that were not directly compensated on a piece-rate basis.
21 Accordingly, Plaintiff and other non-exempt employees worked at least an additional one hour
22 per shift of non-productive time. However, as evidenced by Plaintiff's check numbered 12197
23 issued on May 24, 2019, Defendants would only compensate employees for one tenth of an hour
24 of non-productive time per day. Plaintiff alleges that Defendants have not accurately tracked and
25 compensated employees' non-productive time in compliance with Labor Code § 226.2.

26 14. Defendants have also failed to record employees' total hours worked each
27 workday accurately. Specifically, Defendants' forepersons would maintain timecards for all non-
28 exempt employees, but on information and belief, such timecards did not accurately reflect the

1 times that employees began and ended each workday. For example, although Plaintiff would
2 typically work at least 8 hours per workday, Plaintiff's wage statements indicated that he typically
3 only worked 7 hours per workday, presumably because Plaintiff's wage statements were based
4 on time records that were prepared by Defendants' forepersons, which inaccurately listed he only
5 worked 7.0 hours per workday. As a result, Defendants failed to ensure that Plaintiff and other
6 non-exempt employees were being paid at least the minimum wage for all hours actually worked,
7 and failed to ensure that Plaintiff and other non-exempt employees received proper overtime
8 wages for all overtime hours worked, in compliance with Wage Order 14.

9 15. Defendants further failed to pay non-exempt employees all overtime wages,
10 because non-exempt employees worked at least 8.0 hours per day 7.0 days a week for a total of
11 56.0 hours per week, entitling them to at least 1.0 hour of overtime pay per week pursuant to
12 Wage Order 14.

13 16. Defendants also did not provide Plaintiff and other non-exempt employees with a
14 legally complaint first meal period when they worked shifts in excess of 6.0 hours. Plaintiff and
15 other non-exempt employees would be instructed by the foreperson to take their lunch at 8:30am.
16 However due to the pressures to complete all of their work within narrow time frames set by
17 Defendants and the desire to maximize their piece rate compensation, Plaintiff and other non-
18 exempt employees would only take 15-20 minutes maximum for their meal periods. Defendants
19 were not only aware of, but actively encouraged this practice. Further, Defendants failed to
20 provide second meal periods when non-exempt employees worked shifts in excess of 10.0 hours.
21 Upon information and belief, Defendants' forepersons did not accurately record the beginning
22 and ending of each meal period on the timecards. Defendant's also failed to record employees
23 meal periods. Despite Defendants' failure to provide Plaintiff and other non-exempt employees
24 with all lawful meal 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 meal period violation as required by Labor Code § 226.7.

27 17. Defendants failed to adequately reimburse Plaintiff for all reasonable and
28 necessary work expenditures, including but not limited to, requiring Plaintiff to purchase his own

1 equipment, tools, and buckets for the harvesting of cherries without reimbursement.

2 18. As a result of Defendants' failure to accurately compensate Plaintiff and other
3 non-exempt employees for non-productive time, failure to pay all minimum and overtime wages,
4 and failure to provide all required meal periods and authorize all rest periods or pay premium pay
5 in lieu thereof, Defendants have maintained inaccurate payroll records, and issued inaccurate
6 wage statements. Furthermore, Defendants issued wage statements that were facially deficient as
7 they impermissibly included employees' entire social security number, instead of just the last four
8 digits, and at least some wage statements impermissibly failed to provide the name and address
9 of the client employer.

10 19. As a further result of Defendants' failure to pay all minimum and overtime wages,
11 meal and failure to provide all required meal periods and authorize all rest periods or pay premium
12 pay in lieu thereof, Defendants failed to pay all wages owed to Plaintiff upon his separation of
13 employment from Defendants.

14 20. Additionally, JNM Contracting, Inc. is a farm labor contractor subject to the
15 requirements of Labor Code § 205, which requires that employees be paid weekly, on a business
16 day designated in advance, for all wages earned up to and including the fourth day before the
17 scheduled payday. However, Defendants pay their employees on a delay of five days or more, in
18 violation of the "fourth day" requirement found in Labor Code § 205. For example, Plaintiff's
19 check numbered 12197 that represented the pay period between May 13, 2019 and May 19, 2019
20 was not issued to Plaintiff until five days afterwards on May 24, 2019.

21 **CLASS ACTION ALLEGATIONS**

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

- 24 a. The Rest Period Class consists of all current and former non-exempt employees of
25 Defendant JNM Contracting, Inc. in California who worked at least one shift in
26 excess of 3.5 hours while performing work for Defendant EGC Investments, Inc.
27 during the four years immediately preceding the filing of this lawsuit through the
28 present.

- 1 b. The Minimum Wage Class consists of all current and former non-exempt
2 employees of Defendant JNM Contracting, Inc. in California who performed work
3 for Defendant EGC Investments, Inc. that was compensated on a piece-rate or
4 hourly basis during the four years immediately preceding the filing of this lawsuit
5 through the present.
- 6 c. The Overtime Wage Class consists of all current and former non-exempt
7 employees of Defendant JNM Contracting, Inc. in California who worked
8 overtime hours (based on criteria set forth in Wage Order 14) while performing
9 work for Defendant EGC Investments, Inc. during the four years immediately
10 preceding the filing of this lawsuit through the present.
- 11 d. The Meal Period Class consists of all current and former non-exempt employees
12 of Defendant JNM Contracting, Inc. in California who: (i) worked at least one shift
13 in excess of 5.0 hours while performing work for Defendant EGC Investments,
14 Inc. without a meal period of at least 30 minutes in duration commencing prior to
15 the conclusion of the fifth hour of work, and who do not have a corresponding
16 meal period premium payment made for such shifts and/or (ii) worked at least one
17 shift in excess of 10.0 hours while performing work for Defendant EGC
18 Investments, Inc. without a second meal period of at least 30 minutes in duration
19 commencing prior to the conclusion of the tenth hour of work, and who do not
20 have a corresponding meal period premium payment made for such shifts during
21 the four years preceding the filing of this lawsuit through the present.
- 22 e. The Employee Expense Class consists of all of Defendants' current and former
23 non-exempt employees in California who were not reimbursed for the purchase
24 and maintenance of tools necessary for the performance of their job duties during
25 the four years immediately preceding the filing of this lawsuit to the present.
- 26 f. The Wage Statement Class consists of all members of the Rest Period Class,
27 Minimum Wage Class, Overtime Class, and/or Meal Period Class who received a
28

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, Minimum Wage Class, Overtime Class, and Meal Period Class who separated from employment during the three years immediately preceding the filing of this lawsuit through the present.

22. **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.

23. **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 § 226.2;
- ii. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage 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 Minimum Wage 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;

- 1 vi. Whether Defendants provided all legally compliant meal periods to members of
2 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 3 vii. Whether Defendants failed to reimburse members of the Employee Expense Class
4 for business expenditures necessarily incurred in the performance of their duties;
- 5 viii. Whether Defendants provided accurate, itemized wage statements to members of
6 the Classes; and
- 7 ix. Whether Defendants' policies and/or practices for the timing and amount of
8 payment of final wages to members of the Waiting Time Class at the time of
9 separation from employment were lawful.

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

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

27 **26. Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
28 to represent fairly and adequately the interests of the members of the Classes. Moreover,

1 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
2 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
3 and-hour class actions in state and federal courts in the past and are committed to vigorously
4 prosecuting this action on behalf of the members of the Classes.

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

1 Civil Procedure.

2 **FIRST CAUSE OF ACTION**
3 **MINIMUM WAGE VIOLATIONS**
4 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

26 32. Defendants' practice and uniform administration of corporate policy regarding
27 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
28 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,

1 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
2 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
3 Civil Procedure § 1021.5.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY ALL OVERTIME WAGE**

6 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

20 37. The foregoing policies and practices are unlawful and create entitlement to
21 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
22 premiums owing, including interest thereon, statutory and civil penalties, and attorneys' fees and
23 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
24 14, and Code of Civil Procedure § 1021.5.

25 **THIRD CAUSE OF ACTION**

26 **MEAL PERIOD VIOLATIONS**

27 **(AGAINST ALL DEFENDANTS)**

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

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

8 40. As a result, Defendants are responsible for paying premium compensation for meal
9 period violations including interest thereon, as well as statutory penalties, civil penalties, and
10 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 14, and Civil Code §§
11 3287(b) and 3289.

12 **FOURTH CAUSE OF ACTION**

13 **REST PERIOD VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

25 **FIFTH CAUSE OF ACTION**

26 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

27 **(AGAINST ALL DEFENDANTS)**

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

1 46. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
2 states that “an employer shall indemnify his or her employees for all necessary expenditures or
3 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
4 his or her obedience to the directions of the employer...”

5 47. Due to Defendants’ unlawful policy and practice of requiring employees to
6 purchase and maintain tools necessary for the performance of their job duties, Defendants have
7 violated Labor Code § 2802.

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

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

14 **SIXTH CAUSE OF ACTION**

15 **WAGE STATEMENT VIOLATIONS**

16 **(AGAINST ALL DEFENDANTS)**

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

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

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

28 53. Defendants’ failure to furnish Plaintiff and the members of the Wage Statement

1 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
2 failures led to, among other things, the non-payment of all of their meal and rest period
3 premiums, and deprived them of the information necessary to identify discrepancies in
4 Defendants' reported data.

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

9 **SEVENTH CAUSE OF ACTION**

10 **WAITING TIME PENALTIES**

11 **(AGAINST ALL DEFENDANTS)**

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

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

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

27 58. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
28 Time Class their earned wages upon separation from employment results in a continued payment

1 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
2 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
3 plus reasonable attorneys' fees and costs of suit.

4 **EIGHTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION**

6 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

27 64. Plaintiff was compelled to retain the services of counsel to file this court action to
28 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf

1 of Defendants' current non-exempt employees, and to enforce important rights affecting the
2 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
3 which he is entitled to recover under Code of Civil Procedure § 1021.5.

4 **NINTH CAUSE OF ACTION**
5 **PRIVATE ATTORNEYS GENERAL ACT**
6 **(AGAINST ALL DEFENDANTS)**

7 65. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
8 fully set forth herein.

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

- 25 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
26 Wage Class, and other similarly aggrieved employees in violation of Labor
27 Code §§ 1182.12, 1194, 1194.2, and 1197;
28 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all

- 1 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
2 1194, and 1198;
- 3 c. Failing to provide all legally required meal periods, and failing to pay meal
4 period premium pay, to Plaintiff, the Meal Period Class, and other similarly
5 aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 6 d. Failing to timely pay all final wages and compensation earned by Plaintiff, the
7 Waiting Time Penalty Class, and other aggrieved employees at the time of
8 separation in violation of Labor Code §§ 201, 202, and 203;
- 9 e. Failing to authorize and permit all legally required rest periods, and failing to
10 pay rest period premiums, to Plaintiff, the Rest Period Class, and other similarly
11 aggrieved employees in violation of Labor Code §§ 226.7, 512, and 558;
- 12 f. 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 g. Failing to pay non-exempt employees all earned wages at least twice during
16 each calendar month in violation of Labor Code § 204; and
- 17 h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
18 employees in violation of Labor Code §§ 558 and 1174.

19 67. On May 9, 2020, Plaintiff notified Defendants via certified mail, and notified the
20 California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants'
21 violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties
22 under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code
23 identified in Paragraph 66 (a)-(h). The LWDA has not provided notice that it intends to investigate
24 the violations, and therefore Plaintiff has exhausted her administrative requirements for bringing
25 a claim under the Private Attorneys General Act with respect to these violations.

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

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1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;

6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code § 2802;

10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 201-203;

12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, 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

1 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
2 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
3 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
4 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
5 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
6 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
7 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
8 each initial violation and \$200 for each subsequent violation per employee per pay period for
9 those violations of the Labor Code for which no civil penalty is specifically provided, based on
10 the following Labor Code violations;

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

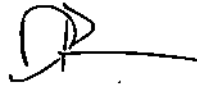
13 14. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
14 Procedure § 1021.5 and all other applicable statutes; and

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

16
17 Dated: August 15, 2020

Respectfully submitted,
STANBURY BROWN LAW

18
19 By:


Daniel J. Brown
Attorneys for Plaintiff

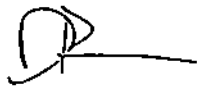
20
21 **DEMAND FOR JURY TRIAL**

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

23
24 Dated: August 15, 2020

Respectfully submitted,
STANBURY BROWN LAW

25
26 By:


Daniel J. Brown
Attorneys for Plaintiff

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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

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