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

FRANCISCO AGAPITO and AMBROCIO
LEZAMA, on behalf of themselves and all
others similarly situated,

Plaintiff,

vs.

LA VERNE NURSERY, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No. 56-2019-00527470-CU-OE-VTA

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

- (1) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, 1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 512);**
- (4) **UNLAWFUL DEDUCTIONS FROM
WAGES (LABOR CODE §§ 221-
224)**
- (5) **WAGE STATEMENT
VIOLATIONS (LABOR CODE §
226, *et seq.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) **FAILURE TO REIMBURSE
NECESSARY BUSINESS
EXPENSES (LABOR CODE §§
2802, 2804)**
- (8) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200, *et seq.*).**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §§
2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

VENTURA
SUPERIOR COURT
FILED

AUG 19 2020

MICHAEL D. PLANET
Executive Officer and Clerk
BY: **NINA LEMOS** Deputy

1 Plaintiffs Francisco Agapito and Ambrocio Lezama (“Plaintiffs”), on behalf of themselves
2 and all others similarly situated, hereby bring this Second Amended Class and Representative
3 Action Complaint against La Verne Nursery, Inc., a California Corporation; and Does 1 through
4 100, inclusive (collectively “Defendants”), and on information and belief allege as follows:

5 **JURISDICTION**

6 1. Plaintiffs, on behalf of themselves and all others similarly situated, hereby bring
7 this class action for recovery of unpaid wages and penalties under California Business and
8 Professions Code § 17200, *et. seq.*, Labor Code §§ 201-204, 221-224, 226, 226.7, 510, 512, 516,
9 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802, 2804, and Industrial Welfare
10 Commission Wage Order No. 14 (“Wage Order 14”), in addition to seeking declaratory relief and
11 restitution. This class action is brought pursuant to California Code of Civil Procedure § 382.
12 This Court has jurisdiction over Defendants’ violations of the California Labor Code because the
13 amount in controversy exceeds this Court’s jurisdictional minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiffs are individuals over the age of eighteen (18). At all relevant times herein,
22 Plaintiffs were and currently are California residents. During the four years immediately
23 preceding the filing of this action and within the statute of limitations periods applicable to each
24 cause of action pled herein, Plaintiffs were employed by Defendants as non-exempt employees.
25 Plaintiffs were, and are, victims of Defendants’ policies and/or practices complained of herein,
26 lost money and/or property, and have been deprived of the rights guaranteed by California Labor
27 Code §§ 201-204, 221-224, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,
28 2802, 2804, California Business & Professions Code § 17200, *et seq.* (Unfair Competition), and

Wage Order 14, which sets employment standards for agricultural occupations, including the planting and harvesting of any horticultural commodity.

4. Plaintiffs are informed and believe, and based thereon allege, that during the four years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do) business as a commercial tree nursery that grows, sells, and delivers various trees throughout California, and employed Plaintiffs and other similarly situated non-exempt employees within Ventura County and the state of California and, therefore, were (and are) doing business in Ventura County and the State of California.

5. Plaintiffs do not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed and believe, and thereon allege, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiffs and the Classes (as defined in Paragraph 18) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. Plaintiffs are informed and believe, and based thereon allege, that at all times mentioned herein, Defendants were and are the employers of Plaintiffs and all Class members.

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

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

1 Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and all
2 Class Members (as defined in Paragraph 18).

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Plaintiff Agapito was hired by Defendants as a non-exempt employee in
5 approximately November 2015. Plaintiff Agapito was placed on restrictions after suffering a work
6 injury in or about September 2018, and last worked for Defendants in approximately March 2019.
7 Mr. Agapito's job duties included, but were not limited to, maintenance of Defendants' facilities.

8 10. Plaintiff Lezama was employed by Defendants as a non-exempt "Sprayer" from
9 approximately September 2019 until on or about February 6, 2020. Mr. Lezama's job duties
10 included, but were not limited to, spraying crops with pesticides.

11 11. During Plaintiffs' employment with Defendants, Plaintiffs often worked overtime
12 hours, but did not always receive overtime compensation equal to one and one-half times their
13 regular rate of pay for working overtime hours. Specifically, Defendants paid Plaintiffs bonuses,
14 shift differentials, and/or other forms of non-discretionary incentive pay (hereinafter the
15 aforementioned forms of pay are collectively referred to as "Incentive Pay"). However,
16 Defendants failed to properly include Incentive Pay in Plaintiffs' regular rate of pay, and therefore
17 failed to properly calculate Plaintiffs' regular rate of pay for overtime purposes. As a result,
18 Plaintiffs were paid less than one and one-half times (or two times in the case of double-time
19 hours) the legal "regular rate" of pay for all overtime hours worked. Defendants' systematic
20 underpayment of Plaintiffs' overtime wages occurred during time periods in which they both
21 earned Incentive Pay and worked overtime hours.

22 12. In addition to underpaying Plaintiffs for overtime hours worked, Defendants
23 utilized a timekeeping system which resulted in Plaintiffs not being compensated for all hours
24 worked. Specifically, Plaintiffs and other non-exempt employees were required to clock in and
25 out for their shifts, and although upon information and belief, Defendants recorded Plaintiffs'
26 hours worked to the minute, Defendants only paid Plaintiffs in quarter-hour increments.
27 Defendants' rounding of time to the quarter-hour was not even-handed and has resulted in
28 Plaintiffs and other non-exempt employees not being compensated for all hours worked. As a

1 result of these policies/practices, Plaintiffs and other non-exempt employees were underpaid for
2 wages due, including overtime, double-time, and minimum wages.

3 13. Defendants have also failed to provide Plaintiffs and other non-exempt employees
4 with all statutorily-mandated meal periods due to Defendants' meal period policies/practices.
5 Specifically, Defendants fail to record the beginning and end of each meal period because
6 Defendants generally do not require Plaintiffs or other non-exempt employees to clock-out for
7 meal periods. Instead, Defendants automatically deduct 30 minutes from employee timekeeping
8 records for a purported meal period, even if the meal period does not actually last for 30 minutes.
9 In addition, for at least a portion of the putative class period, Defendants frequently provided meal
10 periods late, due to Defendants' scheduling practices which frequently schedule meal periods to
11 begin more than 5.0 hours into employees' shifts. For example, Defendants frequently scheduled
12 meal periods to begin at 12:00 or 12:30 p.m., even though Plaintiffs and other non-exempt
13 employees began working before 7:00 or 7:30 a.m., thus rendering their meal periods late as they
14 were provided after more than 5.0 hours of work. In addition to Defendants' failure to provide
15 legally compliant first meal periods, as a matter of policy/practice, Defendants do not provide a
16 second meal period when Plaintiffs and other non-exempt employees work shifts in excess of
17 10.0 hours. In those instances that Defendants failed to provide Plaintiffs and putative class
18 members with a legally compliant meal period, Defendants failed to pay Plaintiffs the meal period
19 premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion
20 of the putative class period, Defendants maintained no payroll code or other mechanism for
21 paying meal period premiums when Defendants failed to provide a legally compliant meal period.

22 14. In addition, Defendants caused unlawful deductions to be taken from Plaintiffs'
23 and other non-exempt employees' wages. Specifically, Defendants sometimes provided non-
24 exempt employees with reimbursements for cell phone expenses, generally in increments of \$20.
25 However, Defendants noted these payments as "bonuses" on employee wage statements. Even
26 though reimbursements are not taxable wages, Defendants caused these payments to be taxed as
27 if they were taxable wages rather than reimbursements, by virtue of Defendants labeling these
28 payments as bonuses on employee wage statements. As a result, Defendants caused unlawful
deductions (in the form of tax deductions) to be taken from Plaintiffs' and other non-exempt

employees' wages, and/or caused employees to be paid less than their agreed-upon wage.

15. Defendants also failed to reimburse Plaintiffs and other non-exempt employees for necessary business expenses. Specifically, Plaintiffs and other non-exempt employees are required to wear safety gloves and other protective gear in the course of their job duties, but Defendants fail to provide this gear or reimburse Plaintiffs and other non-exempt employees for the costs of this safety gear. In fact, for at least a portion of the putative class period, Defendants would sell safety gloves to non-exempt employees, requiring employees to pay Defendants out-of-pocket for these expenses, rather than Defendants covering the expense. In addition, because Defendants caused a portion of employees' cell phone reimbursements to be deducted as described above, Defendants failed to reimburse cell phone expenses and/or failed to reimburse them at the agreed-upon rate.

16. As a result of Defendants' failure to pay all overtime and minimum wages, as well as failure to pay meal period premium wages, and unlawful deductions from wages, Defendants maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiffs.

17. As a result of Defendants' failure to pay all overtime and minimum wages, failure to pay all required meal period premium wages, and taking unlawful deductions from wages, Defendants failed to pay all wages to Plaintiff Lezama and other formerly-employed non-exempt employees at the separation of their employment.

CLASS ACTION ALLEGATIONS

18. Class Definitions: Plaintiffs bring this action on behalf of themselves and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

a. The Overtime Class consists of all of Defendants' current and former non-exempt employees who: (i) worked overtime hours and also earned Incentive Pay during a corresponding time period; and/or (ii) were subject to Defendants' time-rounding practices, during the four years immediately preceding the filing of this lawsuit through the present.

b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees who were subject to Defendants' time-rounding practices during the four years immediately preceding the filing of this lawsuit through the present.

1 c. The Meal Period Class consists of all of Defendants' current and former non-
2 exempt employees who: (i) worked at least one shift in excess of 5.0 hours without a 30-
3 minute meal period beginning prior to the end of the fifth of work; and/or (ii) worked at
4 least one shift in excess of 10.0 hours, during the four years immediately preceding the
5 filing of this lawsuit through the present.

6 d. The Unlawful Deductions Class consists of all of Defendants' current and former
7 non-exempt employees who received a business reimbursement from Defendants and had
8 that business reimbursement notated as "Bonus" (or other notation that would signify
9 taxable wages rather than reimbursements) on their wage statements, such that it was taxed
10 as taxable wages, during the four years immediately preceding the filing of this lawsuit
11 through the present.

12 e. The Expense Reimbursement Class consists of all of Defendants' current and
13 former non-exempt employees who (i) purchased safety gloves or other safety equipment
14 from Defendants in connection with their work for Defendants; (ii) purchased safety gloves
15 or other safety equipment in connection with their work for Defendants and were not
16 reimbursed by Defendants for such costs; (iii) and/or were reimbursed for business
17 expenses (including but not limited to cell phone expenses) but Defendants notated those
18 reimbursements as "Bonus" (or other notation that would signify taxable wages rather than
19 reimbursements) on their wage statements, during the four years immediately preceding
20 the filing of this lawsuit through the present.

21 f. The Wage Statement Class consists of all members of the Overtime Class,
22 Minimum Wage Class, Meal Period Class, Unlawful Deductions Class, and/or Expense
23 Reimbursement Class who received a wage statement during the one year immediately
24 preceding the filing of this lawsuit through the present.

25 g. The Waiting Time Class consists of all members of the Overtime Class, Minimum
26 Wage Class, Meal Period Class, and/or Unlawful Deductions Class, and Expense
27 Reimbursement Class who are no longer employed by Defendants and who last worked for
28 Defendants in the three years immediately preceding the filing of this lawsuit.

1 19. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
2 joinder of all members would be unfeasible and impracticable. The membership of the Classes
3 and subclasses is unknown to Plaintiffs at this time; however, it is estimated that the Classes
4 number greater than one hundred (100) individuals in each Class. The identity of such
5 membership is readily ascertainable via Defendants’ employment records.

6 20. **Common Questions of Law and Fact Predominate/Well Defined Community**
7 **of Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly
8 situated employees, which predominate over questions affecting only individual members
9 including, without limitation to:

- 10 i. Whether Defendants’ overtime practices violate the applicable Labor Code
11 provisions including, but not limited to, Sections 510 and 1194 by
12 requiring overtime work and not paying the Overtime Class for said work
13 according to the overtime laws of the State of California;
- 14 ii. Whether Plaintiffs and members of the Minimum Wage Class were
15 compensated for all hours worked;
- 16 iii. Whether Defendants provided legally compliant meal periods to members
17 of the Meal Period Class;
- 18 iv. Whether Plaintiffs and members of the Unlawful Deduction Class had
19 taxes withheld from business reimbursements as a result of Defendants’
20 notating them as “bonuses” on employee wage statements;
- 21 v. Whether Defendants failed to reimburse members of the Expense
22 Reimbursement Class for necessary work expenses;
- 23 vi. Whether Defendants furnished legally compliant wage statements to
24 members of the Wage Statement Class pursuant to Labor Code § 226; and
- 25 vii. Whether Defendants’ policies and/or practices for the timing and amount
26 of payment of final wages to members of the Waiting Time Class at the
27 time of separation were lawful.

28 ///

1 21. **Predominance of Common Questions:** Common questions of law and fact
2 predominate over questions that affect only individual members of the Classes. The common
3 questions of law set forth above are numerous and substantial and stem from Defendants' policies
4 and/or practices applicable to each individual class member, such as Defendants' overtime rate,
5 timekeeping, deductions, wage statement, meal period, expense reimbursement, and final wage
6 policies/practices. As such, the common questions predominate over individual questions
7 concerning each individual class member's showing as to his or her eligibility for recovery or as
8 to the amount of his or her damages.

9 22. **Typicality:** Plaintiffs' claims are typical of the claims of the Classes because
10 Plaintiffs were employed by Defendants as non-exempt employee in California during the
11 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As
12 alleged herein, Plaintiff, like the members of the Classes, were deprived of all earned overtime
13 and minimum wages, were subject to Defendants' uniform meal period policies/practices, were
14 subject to Defendants' uniform expense reimbursement policies/practices, were furnished with
15 inaccurate and incomplete wage statements, and/or were deprived of all final wages upon their
16 separation of employment from Defendants.

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

23 24. **Superiority:** The California Labor Code is broadly remedial in nature and serves
24 an important public interest in establishing minimum working conditions and standards in
25 California. These laws and labor standards protect the average working employee from
26 exploitation by employers who have the responsibility to follow the laws and who may seek to
27 take advantage of superior economic and bargaining power in setting onerous terms and
28 conditions of employment. The nature of this action and the format of laws available to Plaintiffs

1 and members of the Classes make the class action format a particularly efficient and appropriate
2 procedure to redress the violations alleged herein. If each employee were required to file an
3 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
4 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
5 their vastly superior financial and legal resources. Moreover, requiring each member of the
6 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
7 employees who would be disinclined to file an action against their former and/or current employer
8 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
9 employment. Further, the prosecution of separate actions by the individual class members, even
10 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
11 with respect to the individual class members against Defendants herein; and which would
12 establish potentially incompatible standards of conduct for Defendants; and/or legal
13 determinations with respect to individual class members which would, as a practical matter, be
14 dispositive of the interest of the other class members not parties to adjudications or which would
15 substantially impair or impede the ability of the class members to protect their interests. Further,
16 the claims of the individual members of the classes are not sufficiently large to warrant vigorous
17 individual prosecution considering all of the concomitant costs and expenses attending thereto.
18 As such, the Classes identified in Paragraph 18 are maintainable under Code Civ. Proc. § 382 of
19 the Code of Civil Procedure.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY ALL OVERTIME WAGES**

22 **(AGAINST ALL DEFENDANTS)**

23 25. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

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

28 ///

27. At all times relevant herein, Defendants were required to properly compensate Plaintiffs and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 14. Wage Order 14, § 3 requires an employer to pay an employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess of 10 hours per work day and/or in excess of 6 days in any workweek. Wage Order 14, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Beginning January 1, 2019, that section of Wage Order 14 further requires an employer to pay “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess of 9½ hours per workday and/or in excess of 55 hours per workweek, with incremental changes each January 1 thereafter until January 1, 2022, when employers will be required to pay 1½ times the regular rate of pay for work in excess of 8 hours in a workday and/or 40 hours in a workweek. Defendants caused Plaintiffs to work overtime hours, but did not compensate Plaintiffs or members of the Overtime Class at one and one-half times their regular rate of pay for such hours.

28. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiffs and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, and attorneys’ fees and costs of suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, Wage Order 14, and Code of Civil Procedure § 1021.5.

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

29. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

30. Wage Order 14, § 4 and Cal. Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys’ fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and

1 interest accrued thereon. At all relevant times, Defendants failed to conform their pay practices
2 to the requirements of the law by failing to pay Plaintiffs and the Minimum Wage Class for all
3 hours worked including, but not limited to, all hours they were subject to the control of Defendants
4 and/or suffered or permitted to work under the California Labor Code and Wage Order 14.

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

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

15 33. Defendants' practice and uniform administration of company policy regarding
16 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiffs
17 and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum
18 wages, liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and
19 costs of suit according to California Labor Code §§ 204, 218.6, 558, 1194 *et seq.*, 1197, 1198,
20 and Code of Civil Procedure § 1021.5.

21 **THIRD CAUSE OF ACTION**

22 **MEAL PERIOD VIOLATIONS**

23 **(AGAINST ALL DEFENDANTS)**

24 34. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

25 35. Plaintiffs are informed and believe, and based thereon allege, that Defendants
26 failed in their affirmative obligation to provide all of their hourly non-exempt employees,
27 including Plaintiffs and members of the Meal Period Class, with all required meal periods in
28 accordance with the mandates of the California Labor Code and Wage Order 14, for the reasons

1 set forth in the factual allegations and class definitions sections of this Complaint.

2 36. As a result, Defendants are responsible for paying premium compensation for meal
3 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to
4 Wage Order 14, Labor Code §§ 226.7 and 512, and Civil Code §§ 3287(b) and 3289.

5 **FOURTH CAUSE OF ACTION**

6 **UNLAWFUL DEDUCTIONS FROM WAGES**

7 **(AGAINST ALL DEFENDANTS)**

8 37. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

9 38. As alleged above, Defendants caused unlawful deductions to be taken from
10 Plaintiffs' earned wages in the form of tax withholdings for cell phone and/or other
11 reimbursements that were denoted as "bonuses" (and/or other terms that denote taxable wages
12 rather than reimbursements) on the wage statements. As a result, Defendants failed to pay all
13 wages owed to Plaintiffs and members of the Unlawful Deductions Class, in violation of Labor
14 Code §§ 221-224, which prohibit, among other things, deductions from earned wages except in
15 certain enumerated circumstances not applicable here.

16 39. Defendants' failure to pay all earned wages is unlawful and creates an entitlement
17 to recovery by Plaintiffs and the members of the Unlawful Deductions Class for unpaid wages,
18 interest on said wages, and attorneys' fees pursuant to Labor Code §§ 218.5 and 218.6, and Code
19 of Civil Procedure § 1021.5.

20 **FIFTH CAUSE OF ACTION**

21 **WAGE STATEMENT VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

23 40. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

24 41. Plaintiffs are informed and believe, and based thereon allege, that Defendants
25 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiffs
26 and the Wage Statement Class with accurate and complete itemized wage statements that
27 included, among other requirements, all minimum, overtime, and meal period premium wages
28 earned in violation of Labor Code § 226.

42. Defendants' failure to furnish Plaintiffs and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their overtime and minimum wages and meal period premium wages, unlawful deductions from wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

43. Defendants' failures create an entitlement to recovery by Plaintiffs and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit according to California Labor Code §§ 226 and 226.3.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

44. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

45. This cause of action is brought pursuant to Cal. Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

46. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed to timely pay Plaintiffs and members of the Waiting Time Class all final wages due to them at their separation from employment, including (but not limited to) unpaid overtime and minimum wages, unpaid meal premium wages, unpaid business expense reimbursements, and unlawfully withheld wages.

47. Further, Plaintiffs are informed and believe, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiffs and members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Cal. Labor Code §§ 201-203.

1 48. Defendants' failure to pay all final wages was willful within the meaning of Cal.
2 Labor Code § 203. Defendants' willful failure to timely pay Plaintiffs and the members of the
3 Waiting Time Class their earned wages upon separation from employment results in a continued
4 payment of daily wages up to thirty days from the time the wages were due. Plaintiffs and
5 members of the Waiting Time Class are entitled to compensation pursuant to Cal. Labor Code §
6 203, plus reasonable attorneys' fees and costs of suit.

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

9 **(AGAINST ALL DEFENDANTS)**

10 49. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

11 50. It was necessary for Plaintiffs and members of the Expense Reimbursement Class
12 to purchase safety gloves and/or other safety equipment to perform their job duties, as well as the
13 use of personal cell phones. Although Plaintiffs and members of the Expense Reimbursement
14 Class incurred these expenses in the direct discharge of their job duties, Defendants did not
15 reimburse these employees for such necessary work expenditures during the four years preceding
16 the filing of this lawsuit. Indeed, Defendants even sold safety gloves to their non-exempt
17 employees rather than provide them to employees.

18 51. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
19 states that "an employer shall indemnify his or her employees for all necessary expenditures or
20 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
21 his or her obedience to the directions of the employer."

22 52. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
23 states, "any contract or agreement, express or implied, made by any employee to waive the
24 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
25 employee or his personal representative of any right or remedy to which he is entitled under the
26 laws of this State."

27 53. As a proximate result of Defendants' policies and/or practices in violation of Labor
28 Code §§ 2802 and 2804, Plaintiffs and members of the Employee Expense Class were damaged

1 in sums, which will be shown according to proof.

2 54. Plaintiffs and members of the Expense Reimbursement Class are entitled to
3 attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.
4 Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary
5 expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiffs and
6 members of the Expense Reimbursement Class are entitled to interest, which shall accrue from
7 the date on which they incurred the initial necessary expenditure.

8 **EIGHTH CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

10 **(AGAINST ALL DEFENDANTS)**

11 55. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

12 56. Defendants have engaged, and continue to engage, in unfair and/or unlawful
13 business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay
14 Plaintiffs and the Classes all overtime and minimum wages, failing to provide meal periods or
15 pay meal period premium wages, causing unlawful deductions from wages, failing to reimburse
16 necessary business expenses, failing to furnish accurate and complete itemized wage statements
17 in violation of Labor Code § 226, and failing to pay all earned wages to Waiting Time Class
18 members at the time of their separation of employment.

19 57. Defendants' utilization of these unfair and/or unlawful business practices has
20 deprived Plaintiffs and members of the Classes of compensation and/or reimbursements to which
21 they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair
22 advantage over Defendants' competitors who have been and/or are currently employing workers
23 and attempting to do so in honest compliance with applicable wage and hour laws.

24 58. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct
25 alleged herein, Plaintiffs for themselves, and on behalf of the members of the Classes, seek full
26 restitution of monies as necessary and according to proof, to restore any and all monies withheld,
27 acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and
28 17208.

59. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

60. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their 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. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs, which they are entitled to recover under Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION

**PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)**

61. Plaintiffs re-allege and incorporate by reference all prior paragraphs as though fully set forth herein.

62. Defendants have committed several Labor Code violations against Plaintiffs, members of the Classes, and other aggrieved employees. Plaintiffs, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.* ("PAGA"), acting on behalf of themselves and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiffs, 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 of Lab. Code § 226 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 compensate Plaintiffs and other aggrieved employees all overtime wages earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to compensate Plaintiffs and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 204, 558, 1182.12, 1194, 1194.2, 1197 and 1198;
- c. Failing to provide Plaintiffs and other aggrieved employees with their statutorily mandated meal periods and failing to pay meal period premiums in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Causing unlawful deductions to be withheld from Plaintiffs’ and other aggrieved employees’ wages, and by causing aggrieved employees to be paid less than the agreed-upon wage, in violation of Labor Code §§ 221-224;
- e. Failing to furnish Plaintiffs and other aggrieved employees with complete and accurate itemized wage statements in violation of Labor Code § 226;
- f. Failing to reimburse Plaintiffs and other aggrieved employees for all necessary business expenses in violation of Labor Code §§ 2802 and 2804, and requiring aggrieved employees to purchase safety gloves from Defendants in violation of Labor Code § 450;
- g. Failing to pay Plaintiffs and other aggrieved employees all wages earned at least twice each calendar month in violation of Labor Code § 204;
- h. Failing to timely pay all final wages due to Plaintiffs and other aggrieved former employees upon their separation of employment in violation of Labor Code §§ 201-203; and
- i. Failing to maintain accurate records on behalf of Plaintiffs and other aggrieved employees in violation of Labor Code §§ 558 and 1174.

63. On April 30, 2019, Plaintiff Agapito notified La Verne Nursery, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website,

of Defendants’ violations of the California Labor Code and Plaintiff Agapito’s intent to bring a claim for civil penalties under the PAGA with respect to violations of the California Labor Code identified herein. On June 2, 2020, Plaintiff Lezama notified La Verne Nursery, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff Lezama’s intent to bring a claim for civil penalties under the PAGA with respect to violations of the California Labor Code identified herein.

64. Now that sixty-five days have passed from Plaintiffs notifying Defendants and the LWDA of these violations, Plaintiffs have exhausted their administrative requirements for bringing a claim under the PAGA with respect to these violations.

65. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have thereby incurred attorneys’ fees and costs, which they are entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiffs as representative of the Classes;
3. For an order appointing counsel for Plaintiffs as counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second 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 and 512;

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1 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 221-224;

3 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
4 226, *et seq.*;

5 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
6 Labor Code §§ 201-203;

7 10. Upon the Seventh Cause of Action, for compensatory, consequential, general and
8 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

9 11. Upon the Eighth Cause of Action, for restitution to Plaintiffs and members of the
10 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
11 practices declared by this Court to be in violation of Business and Professions Code § 17200, *et*
12 *seq.*;

13 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiffs, other
14 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
15 558 and 2699(a) and (f) including, but not limited to: 1) \$100.00 for each initial violation for each
16 failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional
17 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
18 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent
19 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
20 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
21 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
22 violation of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or
23 (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per
24 pay period for those violations of the Labor Code for which no civil penalty is specifically
25 provided, based on the violations of Labor Code sections cited in Paragraph 62 (a)-(i) above;

26 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
27 §§ 218.6, 1194(a), and 2802(b) and Civil Code §§ 3287 and 3289;

28 ///

1 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
2 218.5, 226(e), 1194 *et seq.*, 2802(c), 2699(g), and Code of Civil Procedure § 1021.5; and

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

4
5 Date: August 19, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

6
7 By:


Paul K. Haines
Attorney for Plaintiffs

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9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs hereby demand a jury trial with respect to all issues triable by jury.

11
12
13 Dated: August 19, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

14
15 By:


Paul K. Haines
Attorney for Plaintiffs

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Ventura County Superior Court Case No. 56-2019-00527470-CU-OE-VTA

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 180, El Segundo, California 90245.

SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

Arthur F. Silbergeld, Esq.
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Los Angeles, California 90067
Attorneys for Defendant LA VERNE NURSERY, INC.

[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 19, 2020, at El Segundo, California.

Alma Hernandez