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Madera Superior Court
Civil Division

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

MANUEL ALBERTO ALVINO, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

VALLEY AG, INC., a California corporation;
DALENA FARMS, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: MCV082822 BY FAX

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

**SECOND 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.*);**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Manuel Alberto Alvino (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this Second Amended Class and Representative Action Complaint
3 (“SAC”) against Valley Ag, Inc., a California corporation, Dalena Farms, Inc., a California
4 corporation, and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and
5 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, 558, 1182.12,
10 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*; and Industrial Welfare Commission Wage Order
11 14 (“Wage Order 14”), in addition to seeking declaratory relief and restitution. This Complaint is
12 brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
13 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
14 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 Madera. Defendants own, maintain offices, transact business, have agent(s) within the
19 County of Madera, and/or otherwise are found within the County of Madera, and Defendants are
20 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, 551-552, 558, 1182.12, 1194, 1194.2, 1197, 1198,

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

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

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, 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 Plaintiff and the Classes (as defined herein) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

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

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

3 9. Defendant Dalena Farms, Inc. is also jointly liable with Defendant Valley Ag, Inc.
4 for all civil legal responsibility and civil liability for the payment of wages, including all sums
5 payable to an employee or the state of California based upon any failure to pay wages, pursuant
6 to Labor Code §2810.3

7 **GENERAL FACTUAL ALLEGATIONS**

8 10. Plaintiff commenced employment with Defendants as a non-exempt farm labor
9 employee on a seasonal basis from approximately May 2019 to approximately July 26, 2019 in
10 the position of “Onion Topper.” Plaintiff typically worked 10.5 hours per day from 5:30 p.m. to
11 4:00 a.m., six days a week. Defendants are in the agricultural business and employ seasonal farm
12 labor employees to harvest onions. Defendants have not boarded or lodged Plaintiff during his
13 employment.

14 11. During Plaintiff’s employment with Defendants, Plaintiff was paid on a piece-rate
15 basis, whereby he was paid a set rate per bag he filled with onions. Defendants’ foreperson
16 allegedly recorded the hours Plaintiff worked; however, Plaintiff was only paid an hourly
17 minimum wage if his earned piece-rate compensation did not exceed his minimum wages earned
18 in a pay period.

19 12. During pay periods that Plaintiff and other non-exempt employees were
20 compensated on a piece-rate basis, Defendants did not properly compensate Plaintiff and other
21 non-exempt employees for rest and recovery periods, as required under Labor Code §
22 226.2(a)(3)(A)(requiring employees who are compensated on a piece-rate basis to be separately
23 compensated for all rest periods at the higher of the minimum wage or average hourly rate of pay
24 during the workweek). Although Defendants maintain a payroll code denoted as “Huron-Rest and
25 Recovery RestandRecovery,” Defendants’ payroll records reflect that Plaintiff and other non-
26 exempt employees were not paid for all rest and recovery time to which they were entitled under
27 California law. For example, Plaintiff’s wage statement numbered 106621 issued on May 23,
28 2019, states that Plaintiff earned \$117.80 for piece-work during the workweek and worked 6.53

1 hours. However, Plaintiff's rest and recovery time was paid at a rate of \$19.23 per hour, and
2 therefore Defendant only paid Plaintiff for one rest period despite Plaintiff working over 6.0
3 hours, which entitles him to at least two paid rest-periods.

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

12 14. Similarly, Defendants have failed to accurately record and compensate Plaintiff
13 and other non-exempt employees who are compensated on a piece-rate basis for non-productive
14 time. *See Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-
15 rate compensation structure that does not separately compensate employees for non-productive
16 time violates California minimum wage laws). Plaintiff alleges that, while Defendants did have a
17 pay code for non-productive time identified as "Huron-Nonproductive Time NPT," Defendants
18 have not accurately tracked and compensated employees for required non-productive time in
19 compliance with Labor Code § 226.2. For example, while Plaintiff's shift was typically scheduled
20 to start at 6:30 p.m., in practice Plaintiff was required to arrive at 5:30 p.m. to conduct preparatory
21 work, including getting all the buckets and bags ready and place them in the fields where Plaintiff
22 and other non-exempt employees would be cutting/picking onion. On information and belief, this
23 non-productive time was not compensated. As such, Defendants failed to pay Plaintiff for all
24 hours worked, including all overtime hours worked.

25 15. Defendants have also failed to record employees' total hours worked each
26 workday accurately. Specifically, Defendants' forepersons would maintain timecards for all non-
27 exempt employees, but on information and belief, such timecards did not accurately reflect the
28 times that employees began and ended each workday. For example, although Plaintiff would

1 typically work 10.0 hours per workday, Plaintiff's wage statements typically indicated that he
2 only worked between 4.0 to 8.5 hours per workday, presumably because Plaintiff's wage
3 statements were based on time records that were prepared by Defendants' forepersons, which
4 inaccurately listed he only worked 4.0 to 8.5 hours per workday. As a result, Defendants failed to
5 ensure that Plaintiff and other non-exempt employees were being paid at least the minimum wage
6 for all hours actually worked, and failed to ensure that Plaintiff and other non-exempt employees
7 received proper overtime wages for all overtime hours, in compliance with Wage Order 14.

8 16. Although Defendants did provide Plaintiff and other non-exempt employees with
9 one meal period per workday, the meal periods did not always start before the end of the fifth
10 hour of work, and were often less than 30 minutes in duration. Plaintiff and other non-exempt
11 employees would be provided a meal period and would be told when to return to work by the
12 foreperson, often after only 20 minutes. Defendants also never provided Plaintiff and other non-
13 exempt employees with a second meal period when they worked shifts in excess of 10.0 hours.
14 Upon information and belief, Defendants' forepersons did not accurately record the beginning
15 and ending of each meal period on the timecards. Despite Defendants' failure to provide Plaintiff
16 and other non-exempt employees with all lawful meal periods due to their uniform and unlawful
17 practices, Defendants never provided Plaintiff and other non-exempt employees with an hour of
18 pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

19 17. Defendants failed to adequately reimburse Plaintiff for all reasonable and
20 necessary work expenditures, including but not limited to, requiring Plaintiff to purchase and
21 maintain scissors and gloves for the harvesting of onions without reimbursement.

22 18. As a result of Defendants' failure to accurately compensate Plaintiff and other
23 non-exempt employees for rest periods and non-productive time, failure to pay all minimum and
24 overtime wages, and failure to provide/authorize all required meal and rest periods or pay
25 premium pay in lieu thereof, Defendants have maintained inaccurate payroll records, failed to
26 timely pay all wages owed to separating employees at the time of their separation, and issued
27 inaccurate wage statements.

28 19. Additionally, Valley Ag, Inc. is a farm labor contractor subject to the requirements

of Labor Code § 205, which requires that employees be paid weekly, on a business day designated in advance, for all wages earned up to and including the fourth day before the scheduled payday. However, prior to 2019 Defendants paid their employees on a delay of five days or more, in violation of the “fourth day” requirement found in Labor Code § 205.

CLASS ACTION ALLEGATIONS

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

- a. The Rest Period Class consists of all current and former non-exempt employees of Defendant Valley Ag, Inc. in California who worked at least one shift in excess of 3.5 hours while performing work for Defendant Dalena Farms, Inc. that was compensated on a piece-rate basis during the four years immediately preceding the filing of this lawsuit through the present.
- b. The Minimum Wage Class consists of all current and former non-exempt employees of Defendant Valley Ag, Inc. in California who performed work for Defendant Dalena Farms, Inc. that was compensated on a piece-rate basis during the four years immediately preceding the filing of this lawsuit through the present.
- c. The Overtime Wage Class consists of all current and former non-exempt employees of Defendant Valley Ag, Inc. in California who worked overtime hours (based on the criteria set forth in Wage Order 14) while performing work for Defendant Dalena Farms, Inc. during the four years immediately preceding the filing of this lawsuit through the present.
- d. The Meal Period Class consists of all current and former non-exempt employees of Defendant Valley Ag, Inc. in California who: (i) worked at least one shift in excess of 5.0 hours while performing work for Defendant Dalena Farms, Inc. without a meal period of at least 30 minutes in duration commencing prior to the conclusion of the fifth hour of work, and who do not have a corresponding meal period premium payment made for such shifts and/or (ii) worked at least one shift in excess of 10.0 hours while performing work for Defendant Dalena Farms, Inc.

without a second meal period of at least 30 minutes in duration commencing prior to the conclusion of the tenth hour of work, and who do not have a corresponding meal period premium payment made for such shifts during the four years preceding the filing of this lawsuit through the present.

e. The Employee Expense Class consists of all current and former non-exempt employees of Defendant Valley Ag, Inc. in California who were not reimbursed for the purchase and maintenance of tools necessary for the performance of their job duties while performing work for Defendant Dalena Farms, Inc. during the four years immediately preceding the filing of this lawsuit to the present.

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

g. The Waiting Time Class consists of all Defendants' formerly employed members of the Rest Period Class, 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.

21. **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 two hundred (200) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

22. **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;

- 1 ii. Whether Defendants paid all minimum wages owed for all hours worked to
2 members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194,
3 1194.2, and 1197;
- 4 iii. Whether Defendants violated the applicable Labor Code provisions, including, but
5 not limited to, §§ 510 and 1194 by requiring members of the Overtime Wage Class
6 to perform overtime work and not paying for said work in accordance with the
7 overtime laws of the State of California;
- 8 iv. Whether Defendants' timekeeping policies/practices resulted in the failure to
9 properly compensate members of the Minimum Wage Class;
- 10 v. Whether Defendants provided all legally compliant meal periods to members of
11 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 12 vi. Whether Defendants failed to reimburse members of the Employee Expense Class
13 for business expenditures necessarily incurred in the performance of their duties;
- 14 vii. Whether Defendants provided accurate, itemized wage statements to members of
15 the Classes; and
- 16 viii. Whether Defendants' policies and/or practices for the timing and amount of
17 payment of final wages to members of the Waiting Time Class at the time of
18 separation from employment were lawful.

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

27 24. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
28 Plaintiff was employed by Defendants as a non-exempt employee in California during the

statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was paid on a piece-rate and hourly basis, was subject to Defendants' meal and rest period and timekeeping policies and practices, was subjected to Defendants' unlawful failure to reimburse business expenses, was furnished with inaccurate and incomplete wage statements, and was not paid all wages earned at the time of his separation of employment.

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

26. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications

1 with respect to the individual class members against Defendants herein; and which would
2 establish potentially incompatible standards of conduct for Defendants; and/or legal
3 determinations with respect to individual class members which would, as a practical matter, be
4 dispositive of the interest of the other class members not parties to adjudications or which would
5 substantially impair or impede the ability of the class members to protect their interests. Further,
6 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
7 individual prosecution considering all of the concomitant costs and expenses attending thereto.
8 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
9 Civil Procedure.

10 **FIRST CAUSE OF ACTION**

11 **MINIMUM WAGE VIOLATIONS**

12 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

6 31. Defendants' practice and uniform administration of corporate policy regarding
7 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
8 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
9 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
10 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
11 Civil Procedure § 1021.5.

12 **SECOND CAUSE OF ACTION**
13 **FAILURE TO PAY ALL OVERTIME WAGE**
14 **(AGAINST ALL DEFENDANTS)**

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

16 33. This cause of action is brought pursuant to Labor Code §§ 204, 510, 551-552, 558,
17 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all
18 overtime hours worked, and provide a private right of action for the failure to pay all overtime
19 compensation for overtime work performed.

20 34. At all times relevant herein, Defendants were required to properly compensate
21 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
22 Labor Code §§ 551-552, 1194. Labor Code § 551 states "every person employed in any
23 occupation of labor is entitled to one days rest therefrom in seven" and Labor Code § 552, states
24 "no employer of labor shall cause his employees to work more than six days in seven." Defendants
25 caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the
26 Overtime Class at one and one-half times their regular rate of pay for such hours.

27 35. The foregoing policies and practices are unlawful and create entitlement to
28 recovery by Plaintiff 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, 510, 551-552, 558, 1194, and 1198, Wage Order 14, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

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

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

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

42. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums

owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

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

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

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

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

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

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

1 the Wage Statement Class with wage statements that unlawfully included the employees entire
2 social security number.

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

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

12 **SEVENTH CAUSE OF ACTION**

13 **WAITING TIME PENALTIES**

14 **(AGAINST ALL DEFENDANTS)**

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

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

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

1 pay all final wages was willful within the meaning of Labor Code § 203.

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

7 **EIGHTH CAUSE OF ACTION**

8 **UNFAIR COMPETITION**

9 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

28 60. The acts complained of herein occurred within the last four years immediately

preceding the filing of the Complaint in this action.

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

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

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

a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum

1 Wage Class, and other aggrieved employees in violation of Labor Code §§ 558,
2 1182.12, 1194, 1194.2, 1197, and 1198;

3 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
4 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
5 1194, and 1198;

6 c. Failing to provide all legally required meal periods, and failure to pay meal
7 period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
8 employees at the regular rate of compensation in violation of Labor Code §§
9 226.7, 512, 558, and 1198;

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

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

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

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

23 h. Failing to pay non-exempt employees all earned wages at least twice during
24 each calendar month in violation of Labor Code § 204;

25 i. Failing to compensate Plaintiff and other aggrieved employees at least once
26 every week on a business day designated in advance and including all wages
27 earned up to and including the fourth day before such payday in violation of
28 Labor Code § 205; and

j. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved

employees in violation of Labor Code § 1174.

64. On September 16, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 63 (a)-(j). Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

65. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the 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).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself 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 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;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
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;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

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

3 9. Upon the Sixth Cause of Action, for actual damages, statutory and civil penalties
4 pursuant to Labor Code § 226;

5 10. Upon the Seventh Cause of Action, for statutory penalties pursuant to Labor Code
6 § 226, *et seq.*;

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

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

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

26 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
27 §§ 226, 1194 *et seq.*, 2698 *et seq.*, and 2699(g); and Code of Civil Procedure §§ 1021.5 and all
28 other applicable statutes; and

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

2
3 Dated: November 23, 2020

Respectfully submitted,
STANBURY BROWN LAW

4
5 By:



Daniel J. Brown
Attorneys for Plaintiff

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7 **DEMAND FOR JURY TRIAL**

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

9
10 Dated: November 23, 2020

Respectfully submitted,
STANBURY BROWN LAW

11
12 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 November 23, 2020 I served the document listed below on the parties in this action as follows:

- **SECOND 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 November 23, 2020 at Venice, California.



Daniel J. Brown

SERVICE LIST

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