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

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

Plaintiff,

vs.

HOLLAND FARMS, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: 20C-0273

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

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

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

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Jorge Martinez (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“Complaint”)
3 against Holland Farms, Inc., a California corporation; and, DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

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

14 **VENUE**

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

20 **PARTIES**

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

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

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

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

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

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

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

1 members of the Classes.

2 **GENERAL FACTUAL ALLEGATIONS**

3 9. Defendants are in the agricultural business and employ seasonal farm labor
4 employees to harvest agricultural goods. Plaintiff commenced employment with Defendants as a
5 non-exempt farm labor employee on a seasonal basis first from August 2018 to approximately
6 February 2019 and from approximately August 2019 until November 2019. Plaintiff worked as
7 a driver of harvesters, sweepers, tractors, and pick-up trucks in addition to performing pruning
8 work on Defendants' facilities. Plaintiff worked at least 11.5 and up to 12+ hours per day.
9 Plaintiff worked seven days a week during harvest season and six days per week outside of harvest
10 season. However, in practice, on information and belief, Plaintiff alleges that much of his time
11 worked was unrecorded and uncompensated. Defendants have not boarded or lodged Plaintiff
12 during his employment.

13 10. During Plaintiff's employment with Defendants, Plaintiff was in most workweeks
14 paid on an hourly basis at a rate of \$12.75 outside of harvest season and \$13.75 during harvest
15 season. However, to Plaintiff's understanding, the extra dollar per hour was compensated as a
16 lump sum bonus at the end of the harvesting season. Plaintiff's paystubs do not reflect the \$13.75
17 hourly rate.

18 11. Plaintiff and other non-exempt employees were not authorized to take all legally
19 required rest periods. Specifically, Plaintiff and other non-exempt employees would generally
20 receive legally compliant rest periods for the first eight hours of their shifts. However, they were
21 not provided any additional rest periods after their tenth hour of work, to which they were entitled.
22 Plaintiff and other non-exempt employees worked in excess of ten hours on a daily basis and
23 rarely, if ever, were provided an additional rest period. Despite Defendants' failure to authorize
24 and permit Plaintiff and other non-exempt employees to take all lawful paid rest periods, due to
25 their uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt
26 employees with an hour of pay at their regular rate for each rest period violation as required by
27 Labor Code § 226.7. Upon information and belief, during at least a portion of the class period,
28 Defendants maintained no payroll code or another mechanism for the payment of rest period

1 premiums in the event Plaintiff and other non-exempt employees were not authorized to take
2 lawful rest periods.

3 12. Defendants have also failed to record employees' total hours worked each
4 workday accurately. Specifically, Plaintiff and other non-exempt employees were required to
5 perform pre-shift preparatory work off-the-clock at least two times per week. This preparatory
6 work entailed inspecting the trucks and other farm vehicles by checking the oil, tire pressure, and
7 fuel levels. This process would take Plaintiff and other non-exempt employees at least ten
8 minutes to complete each time and was wholly unrecorded and uncompensated. Additionally,
9 Plaintiff and other non-exempt employees were forbidden from parking inside the gates of the
10 facility which was reserved for supervisors and other higher ups. As a consequence, Plaintiff and
11 other non-exempt employees would be made to park outside of the gates of the facility and walk
12 to the shop in order to punch in to begin their shifts. This would take anywhere from five to ten
13 minutes each day, all time that was wholly unrecorded and uncompensated by Defendants. As a
14 result, Defendants failed to ensure that Plaintiff and other non-exempt employees were being paid
15 at least the minimum wage for all hours actually worked, and failed to ensure that Plaintiff and
16 other non-exempt employees received proper overtime wages for all overtime hours worked, in
17 compliance with Wage Order 14.

18 13. Defendants further failed to pay Plaintiff and other non-exempt employees all
19 overtime wages because they worked 7 days in a row and were not compensated at the proper
20 overtime rate for their first eight hours worked on the 7th day pursuant to Wage Order 14.

21 14. Plaintiff was also not paid all overtime wages owed because Defendants failed to
22 include the value of non-discretionary bonuses including a "Harvest Bonus," when calculating
23 the regular rate of pay for overtime purposes, in the event that they did pay any overtime wages.

24 15. Additionally, Defendants maintained a policy where regardless of the weather
25 forecast that all employees must report to the shop every day. On those occasions where the
26 weather conditions did not permit for Plaintiff and other non-exempt employees to work, they
27 were not compensated in any manner for reporting to the facilities for their shifts. Upon
28 information and belief, Defendants did not maintain any mechanism for the payment of reporting

time pay on those occasions where they were sent home before performing any work.

16. Defendants also did not provide Plaintiff and other non-exempt employees with a legally complaint first meal period when they worked shifts in excess of 5.0 hours. Rather, Plaintiff and other non-exempt employees would be instructed by the foreperson to take their lunch at 12pm, 6 hours after their usual start time of 6:00 am. Defendants were not only aware of, but actively encouraged and facilitated this practice of providing late meal periods. Further, Defendants failed to provide second meal periods when non-exempt employees worked shifts in excess of 10.0 hours. Upon information and belief, Defendants' forepersons did not accurately record the beginning and ending of each meal period on the timecards. Defendant's also failed to record employee's meal periods. Despite Defendants' failure to provide Plaintiff and other non-exempt employees with all lawful meal periods due to their uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

17. Defendants failed to adequately reimburse Plaintiff for all reasonable and necessary work expenditures, including but not limited to, requiring Plaintiff to utilize his personal cellular phone for work related purposes while on the job on a daily basis in order to communicate with his supervisors without reimbursement.

18. As a result of Defendants' failure to pay all minimum and overtime wages, and failure to provide all required meal periods and authorize all rest periods or pay premium pay in lieu thereof, Defendants have maintained inaccurate payroll records, and issued inaccurate wage statements.

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

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:

- 1 a. The Rest Period Class consists of all current and former non-exempt employees of
2 Defendants in California who worked at least one shift in excess of 3.5 hours
3 during the four years immediately preceding the filing of this lawsuit through the
4 present.
- 5 b. The Minimum Wage Class consists of all current and former non-exempt
6 employees of Defendants in California that were compensated on a hourly basis
7 during the four years immediately preceding the filing of this lawsuit through the
8 present.
- 9 c. The Overtime Wage Class consists of all current and former non-exempt
10 employees of Defendants in California who worked overtime hours (based on
11 criteria set forth in Wage Order 14) during the four years immediately preceding
12 the filing of this lawsuit through the present.
- 13 d. The Meal Period Class consists of all current and former non-exempt employees
14 of Defendants in California who: (i) worked at least one shift in excess of 5.0 hours
15 without a meal period of at least 30 minutes in duration commencing prior to the
16 conclusion of the fifth hour of work, and who do not have a corresponding meal
17 period premium payment made for such shifts and/or (ii) worked at least one shift
18 in excess of 10.0 hours without a second meal period of at least 30 minutes in
19 duration commencing prior to the conclusion of the tenth hour of work, and who
20 do not have a corresponding meal period premium payment made for such shifts
21 during the four years preceding the filing of this lawsuit through the present.
- 22 e. The Employee Expense Class consists of all of Defendants' current and former
23 non-exempt employees in California who were not reimbursed for the purchase
24 and maintenance of tools necessary for the performance of their job duties,
25 including but not limited to the use of personal cellular phones during the four
26 years immediately preceding the filing of this lawsuit to the present.
- 27 f. The Wage Statement Class consists of all members of the Rest Period Class,
28 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 one hundred (100) 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;
- ii. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;
- iii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and Wage Order 14 by requiring members of the Overtime Wage Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- iv. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Minimum Wage Class;
- v. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

- 1 vi. Whether Defendants provided all legally compliant meal periods to members of
2 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 3 vii. Whether Defendants properly compensated members of the Minimum Wage class
4 on those instances where they reported to Defendants facilities but were unable to
5 perform any work;
- 6 viii. Whether Defendants failed to reimburse members of the Employee Expense Class
7 for business expenditures necessarily incurred in the performance of their duties;
- 8 ix. Whether Defendants provided accurate, itemized wage statements to members of
9 the Classes; and
- 10 x. Whether Defendants' policies and/or practices for the timing and amount of
11 payment of final wages to members of the Waiting Time Class at the time of
12 separation from employment were lawful.

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

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

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

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

individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

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

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

31. Defendants' practice and uniform administration of corporate policy regarding

1 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
2 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
3 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
4 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
5 Civil Procedure § 1021.5.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY ALL OVERTIME WAGE**

8 **(AGAINST AL DEFENDANTS)**

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

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

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

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

22 36. The foregoing policies and practices are unlawful and create entitlement to
23 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
24 premiums owing, including interest thereon, statutory and civil penalties, and attorneys' fees and
25 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
26 14, and Code of Civil Procedure § 1021.5.

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1 **THIRD CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

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

12 39. As a result, Defendants are responsible for paying premium compensation for meal
13 period violations including interest thereon, as well as statutory penalties, civil penalties, and
14 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 14, and Civil Code §§
15 3287(b) and 3289.

16 **FOURTH CAUSE OF ACTION**

17 **REST PERIOD VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

9 46. Due to Defendants’ unlawful policy and practice of requiring employees to
10 purchase and maintain tools necessary for the performance of their job duties, including but not
11 limited to requiring them to use their personal cellular phones in order to perform their daily tasks,
12 Defendants have violated Labor Code § 2802.

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

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

19 **SIXTH CAUSE OF ACTION**

20 **WAGE STATEMENT VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

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

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

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

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

4 **EIGHTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION**

6 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

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)

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

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

a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198;

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

1194, and 1198;

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

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

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

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

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

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

65. On October 2, 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)-(i). 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

1 respect to these violations.

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

6 **PRAYER**

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

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

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

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

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

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

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

Dated: December 7, 2020

Respectfully submitted,
STANBURY BROWN LAW

By:



Daniel J. Brown
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: December 7, 2020

Respectfully submitted,
STANBURY BROWN LAW



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 December 7, 2020 I served the document listed below on the parties in this action as follows:

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

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- X (BY EMAIL) In accordance with California Code of Civil Procedure section 1010.6 in compliance with the Judicial Council's Appendix I, Emergency Rules Related to Covid-19, Emergency Rule 12, I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 7, 2020 at Venice, California.



Daniel J. Brown

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SERVICE LIST

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McCormick Barstow LLP
7647 North Fresno Street
Fresno, CA 93720

Attorneys for Defendant Dalena Farms, Inc.