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

JUAN GABRIEL HERNANDEZ, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

CAL AG RESOURCES, INC., a California
corporation; and DOES 1 through 100,
Defendants.

Case No.: VCU285149

**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, AND 516);**
- (5) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*);**
- (8) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);
AND**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Juan Gabriel Hernandez (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this Class Action Complaint (“Complaint”) against Cal Ag Resources,
3 Inc., a California corporation; J. G. Boswell Company, a California corporation; and, DOES 1 to
4 100, inclusive (collectively “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 §§ 201-203, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2,
9 1197, 1198, and 2802; and Industrial Welfare Commission Wage Order 14 (“Wage Order 14”),
10 in addition to seeking declaratory relief and restitution. This Complaint is brought pursuant to
11 California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations
12 of the California Labor Code because the amount in controversy exceeds this Court's
13 jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
16 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
17 County of Tulare. One or more of the Defendants, transact business, have agent(s) within the
18 County of Tulare, and/or otherwise are found within the County of Tulare, 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 §§ 201-203, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2802; California
28 Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”); and Wage Order 14,

1 which sets employment standards for Agricultural Occupations.

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

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

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

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

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

1 members of the Classes.

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

6 **GENERAL FACTUAL ALLEGATIONS**

7 10. Defendants are in the agricultural business and employ seasonal farm labor
8 employees to harvest agricultural goods, specifically Tomatoes. Plaintiff worked as a tractor
9 driver and irrigator. His duties included maintaining drip lines, driving tractors to carry the drip
10 lines and materials necessary to maintain them, and collecting water at Defendants tomato plant
11 to reuse in the fields. Plaintiff worked for Defendants as a non-exempt farm labor employee from
12 approximately 2015 until approximately December 2019 performing various tasks depending on
13 the season. Plaintiff was paid on an hourly basis with two separate hourly rates. He would be
14 paid a rate of \$12.75 per hour for time spent driving the tractor/van to the fields and a rate of
15 \$12.00 per hour otherwise. On information and belief, Plaintiff alleges that Defendants did not
16 employ any actual timekeeping practices and instead would just record the hours of Plaintiff
17 based upon his pre-scheduled hours. Defendants have not boarded or lodged Plaintiff during his
18 employment.

19 11. During the busy season (July-September), Plaintiff was generally tasked with
20 working six to seven days per week from 6:00 a.m. until around 6:00 p.m. Outside of the busy
21 season, Plaintiff generally worked from 6:00 a.m. until 2:30 p.m. Throughout Plaintiff's
22 employment, Defendants' foreperson failed to record the actual amount of hours Plaintiff worked
23 and instead would record his time worked based on his pre-scheduled hours, regardless if he
24 worked longer. During the busy season where Plaintiff regularly worked at least 12 hours per
25 day, he was not made to review or sign off on his hours worked which resulted in a gross
26 underpayment of wages.

27 12. Plaintiff and other non-exempt employees were regularly made to arrive at the
28 yard at job site at 5:30 a.m. so as to be out on the fields to commence working at 6:00 a.m. Despite

1 the fact that Plaintiff and other non-exempt employees regularly arrived to work thirty minutes
2 prior to beginning work on the fields, at no point were they compensated for this time spent on
3 the premises and traveling to the fields to begin performing work, all of which should have been
4 compensated as overtime hours.

5 13. Despite the fact that Plaintiff and other non-exempt employees were regularly
6 tasked with working seven days a week, Defendants as a matter of practice and policy failed to
7 pay them the proper overtime rate on their seventh day worked. Furthermore, even though during
8 the busy season Plaintiff would regularly work at least 12 hours per day, Defendants failed to
9 compensate him at the proper overtime rate for all hours worked in excess of ten in a day. Upon
10 information and belief, Defendants did not pay any overtime hours to Plaintiff and other non-
11 exempt employees when they were entitled to overtime pay. As a result, Defendants failed to
12 ensure that Plaintiff and other non-exempt employees were being paid at least the minimum wage
13 for all hours actually worked, and failed to ensure that Plaintiff and other non-exempt employees
14 received proper overtime wages for all overtime hours worked, in compliance with Wage Order
15 14.

16 14. When Plaintiff was tasked with driving the tractor for irrigation, he was not
17 properly compensated for time spent in preparation for his shift such as inspecting the tractor,
18 filling it up with gasoline, and other necessary pre-shift and post-shift maintenance of the tractor.
19 Upon information and belief, Plaintiff would not begin having his hours logged until he actually
20 started up the tractor and began working meaning that all of this time was uncompensated by
21 Defendants.

22 15. Plaintiff and other non-exempt employees were not authorized to take all legally
23 required rest periods regardless of whether they were working on a piece-rate or hourly basis.
24 During the busy season, Plaintiff and other non-exempt employees were not provided any rest
25 periods and instead would be made to work through the entirety of their shifts due to the high
26 volume of work and pressure from Defendants to complete everything in a timely manner.
27 Outside of the busy season, Plaintiff and other non-exempt employees generally received rest
28 periods however they were required to stay on the premises and were not free of employer control

as required by Labor Code §226.7. Despite Defendants' failure to authorize and permit Plaintiff and other non-exempt employees to take all lawful paid rest 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 rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, Defendants maintained no payroll code or another mechanism for the payment of rest period premiums in the event Plaintiff and other non-exempt employees were not authorized to take lawful rest periods.

16. Defendants also did not provide Plaintiff and other non-exempt employees with a legally compliant first meal period when they worked shifts in excess of 6.0 hours. During the busy season, Plaintiff and other non-exempt employees rarely, if ever, were able to exercise the use of a compliant meal period. Rather, due to the intense volume of work that needed to be done and the pressure imposed by Defendants to complete it in a timely manner, Plaintiff and other non-exempt employees would have their meal periods prematurely interrupted or would not be provided meal periods at all. Outside of the busy season, Plaintiff and other non-exempt employees generally received meal periods, however, as with rest periods, they were not permitted to leave the premises and remained under the control of Defendants throughout the entirety of their meal periods. Defendants were not only aware of, but actively encouraged this practice. Defendants also 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 meal periods in any manner. 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. As a result of Defendants' failure to accurately compensate Plaintiff and other non-exempt employees for non-productive time, 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, failed to timely pay all wages owed to separating employees at the time of their separation, and issued inaccurate wage

statements.

CLASS ACTION ALLEGATIONS

18. **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 Defendants in California who worked at least one shift in excess of 3.5 hours while performing work for J.G. Boswell Company, 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 Defendants in California while performing work for J.G. Boswell Company, 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 Defendants in California who worked overtime hours (based on criteria set forth in Wage Order 14) while performing work for J.G. Boswell Company, LLC during the four years immediately preceding the filing of this lawsuit through the present.
- d. The Meal Period Class consists of all current and former non-exempt employees of Defendants in California who: (i) worked at least one shift in excess of 5.0 hours while performing work for J.G. Boswell Company, LLC 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 J.G. Boswell Company, LLC in California 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 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.

f. The Waiting Time Class consists of all Defendant' 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.

19. **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.

20. **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 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;

ii. 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;

iii. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Minimum Wage Class;

iv. 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 v. 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 vi. Whether Defendants failed to reimburse members of the Employee Expense Class
4 for business expenditures necessarily incurred in the performance of their duties;
- 5 vii. Whether Defendants provided accurate, itemized wage statements to members of
6 the Classes; and
- 7 viii. Whether Defendants' policies and/or practices for the timing and amount of
8 payment of final wages to members of the Waiting Time Class at the time of
9 separation from employment were lawful.

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

18 22. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
19 Plaintiff was employed by Defendants as a non-exempt employee in California during the
20 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
21 herein, Plaintiff, like the members of the Classes, was paid on an hourly basis, was subject to
22 Defendants' meal and rest period and timekeeping policies and practices, was subject to
23 Defendants' reimbursement policies, and was not paid all wages earned at the time of his
24 separation of employment.

25 23. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
26 to represent fairly and adequately the interests of the members of the Classes. Moreover,
27 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
28 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.

24. **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 with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, 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)

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

26. 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.

27. 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.

28. 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.

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

Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGE

(AGAINST ALL DEFENDANTS)

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

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

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

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

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

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THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

36. 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.

37. 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)

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

39. 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.

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

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

WAGE STATEMENT VIOLATIONS

1 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

17 **SIXTH CAUSE OF ACTION**

18 **WAITING TIME PENALTIES**

19 **(AGAINST ALL DEFENDANTS)**

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

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

27 48. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class
28 all final wages due to them at the time of their separation including, among other things,

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.

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

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

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

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

53. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged

1 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
2 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
3 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

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

11 **EIGHTH CAUSE OF ACTION**

12 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

13 **(AGAINST ALL DEFENDANTS)**

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

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

19 58. Due to Defendants' unlawful policy and practice of requiring employees to use their
20 personal vehicles and cellular phones in the performance of their job duties, Defendants have
21 violated Labor Code § 2802.

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

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

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1 **NINTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **(AGAINST DEFENDANTS CAL AG RESOURCES, INC. AND DOES 1 THROUGH 100)**

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

- 22 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
23 Wage Class, and other aggrieved employees in violation of Labor Code §§ 558,
24 1182.12, 1194, 1194.2, 1197, and 1198;
- 25 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
26 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
27 1194, and 1198;
- 28 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 pay non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and

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

62. On November 30, 2020, Plaintiff notified Defendant Cal Ag Resources, Inc. 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 62 (a)-(i). On February 18, 2021, Plaintiff notified Defendant J.G. Boswell Company 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

1 identified in Paragraph 62 (a)-(i). Now that sixty-five days have passed from Plaintiff notifying
2 Defendants and the LWDA of these violations, and the LWDA has not provided notice that it
3 intends to investigate the violations, Plaintiff has exhausted his administrative requirements for
4 bringing a claim under the Private Attorneys General Act with respect to these violations.

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

9 **PRAYER**

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

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

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.*;

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

12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for 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 ;

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: May 3, 2021

Respectfully submitted,
STANBURY BROWN LAW



By: _____

Daniel J. Brown
Attorney for Plaintiff

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Dated: May 3, 2021



Daniel J. Brown
Attorney 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 May 3, 2021, I served the document listed below on the parties in this action as follows:

- **STIPULATION TO FILE (i) FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT (ii) ADD J.G. BOSWELL COMPANY AS A NAMED DEFENDANT; [PROPOSED] ORDER**

- ☐ (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 May 3, 2021, at Venice, California.



Daniel J. Brown

SERVICE LIST

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Seth Mehrten, Esq.
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BARSAMIAN & MOODY
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Fresno, CA 93711

Attorneys for Defendant CAL AG RESOURCES, INC.