

Ari E. Moss (SBN 238579)
Jeremy F. Bollinger (SBN 240132)
Dennis F. Moss (SBN 77512)
Jorge A. Flores (SBN 333441)
MOSS BOLLINGER LLP
15300 Ventura Blvd., Ste. 207
Sherman Oaks, California 91403
Telephone: (310) 982-2984
Facsimile: (818) 963-5954
ari@mossbollinger.com
jeremy@mossbollinger.com
dennis@mossbollinger.com
anthony@mossbollinger.com

Attorneys for Plaintiff ANA E. RAMIREZ

STANSBURY BROWN LAW, PC
DANIEL J. BROWN (SBN 307604)
dbrown@stansburybrownlaw.com
2610 ½ Abbot Kinney Blvd.
Venice, CA 90291
Tel: 323-204-3124

Attorneys for Plaintiff JUAN GABRIEL HERNANDEZ

SUPERIOR COURT OF CALIFORNIA

COUNTY OF KERN

ANA E. RAMIREZ, an individual, **JUAN GABRIEL HERNANDEZ**, an individual,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

WONDERFUL ORCHARDS, LLC;
PARAMOUNT CITRUS; CAL AG
RESOURCES, INC.; and DOES 1-50,

Defendants.¹

Unlimited Civil Case

Case No. BCV-20-102050-TSC

**CLASS ACTION
FIRST AMENDED COMPLAINT**

- (1) **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 *et seq.*)**
- (2) **MINIMUM WAGE VIOLATIONS (LABOR CODE §§ 1182.12, 1194, 1194.2, AND 1197);**
- (3) **FAILURE TO PAY ALL OVERTIME WAGES (LABOR CODE §§ 204, 510, 551, 552, 558, 1194, AND 1198);**
- (4) **MEAL PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 512);**

¹ The First Amended Complaint adds J.G. Boswell Company as a defendant.

**(5) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, AND 516);**

**(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) FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS EXPENSES
(LABOR CODE § 2802).**

DEMAND FOR JURY TRIAL

1 Plaintiffs Ana E. Ramirez and Juan Gabriel Hernandez (“PLAINTIFFS”), on behalf of
2 themselves and other similarly situated employees of Defendants Cal AG Resources, Inc.,
3 Wonderful Orchards, LLC, and J.G. Boswell Company and DOES 1-50, and on behalf of the
4 State of California, hereby complains and alleges as follows:

5 **INTRODUCTION**

6
7 1. This is a class and representative action by PLAINTIFFS on behalf of themselves,
8 other similarly situated employees, and the State of California against Defendants Wonderful
9 Orchards, LLC, Cal AG Resources, Inc., and J.G. Boswell Company and Doe Defendants 1-50
10 (collectively, “DEFENDANTS”), pursuant to California Code of Civil Procedure § 382 and the
11 California Private Attorneys General Act, Labor Code sections 2698 *et seq.* (“PAGA”) to
12 recover unpaid wages and penalties under California Business & Professions Code § 17200 *et*
13 *seq.*, Labor Code §§ 201-203, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and
14 2802; and Industrial Welfare Commission Wage Order 14 (“Wage Order 14”), and civil penalties
15 (75% payable to the Labor Workforce Development Agency and 25% payable to aggrieved
16 employees) for the same underlying Labor Code violations.

17 **JURISDICTION AND VENUE**

18 2. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to
19 PAGA.

20 3. Venue is proper in this Judicial district and the County of Kern pursuant to
21 California Code of Civil Procedure § 395.5 because DEFENDANTS employed PLAINTIFFS on
22 farms located in the County of Kern and other counties, and the acts, omissions, and conduct
23 alleged by PLAINTIFFS herein occurred in this county.

24 **PARTIES**

25 4. Defendant CAL AG RESOURCES INC., a California corporation, is a labor
26 contractor that provides field workers to Defendants J.G. BOSWELL COMPANY, a California
27 corporation, and WONDERFUL ORCHARDS, LLC, a Delaware limited liability company. J.G.
28 BOSWELL COMPANY and WONDERFUL ORCHARDS, LLC grow and harvest agricultural

1 commodities in California.

2 5. Plaintiff ANA E. RAMIREZ worked as a seasonal agricultural employee of
3 DEFENDANTS from 2018 through November 2019. She was assigned to work for
4 WONDERFUL ORCHARDS, LLC by CAL AG RESOURCES INC. Plaintiff JUAN GABRIEL
5 HERNANDEZ worked as a seasonal agricultural employee of DEFENDANTS from
6 approximately 2015 until approximately December 2019. He was assigned to work for J.G.
7 BOSWELL COMPANY by CAL AG RESOURCES INC.

8 6. PLAINTIFFS are informed and believe that DOES 1 through 50 are corporations,
9 individuals, limited liability partnerships, limited liability companies, general partnerships, sole
10 proprietorships or are other business entities or organizations of a nature not currently known to
11 PLAINTIFFS.

12 7. PLAINTIFFS are unaware of the true names of Defendant DOES 1 through 50.
13 PLAINTIFFS sue said Defendants by said fictitious name, and will amend this complaint when
14 the true names and capacities are ascertained or when such facts pertaining to liability are
15 ascertained, or as permitted by law or by the Court. PLAINTIFFS are informed and believe that
16 each of the fictitiously named Defendants is in some manner responsible for the events and
17 allegations set forth in this complaint.

18 8. PLAINTIFFS are informed and believe, and thereon allege, that at all times herein
19 mentioned each Defendant, including all Defendants sued under fictitious names, was the
20 employee, or representative of each of the remaining Defendants, and in doing the things
21 hereinafter alleged, was at times acting within the course and scope of this employment, and at
22 other times, acting in his or her own individual capacity. In the alternative, each of the
23 individually named Defendants, acted in concert and in furtherance of a fraudulent plan and
24 scheme and each actively participated in the wrongful acts alleged in this complaint.

25 **FACTUAL BACKGROUND**

26 9. At all times during the liability period, DEFENDANTS employed PLAINTIFFS
27 and other similarly situated hourly paid employees to perform services at J.G. BOSWELL

1 COMPANY'S and WONDERFUL ORCHARDS, LLC'S farms in Kern County, California, and
2 other counties.

3 10. At all times during the liability period, PLAINTIFFS and other similarly situated
4 seasonal employees did not receive all money owed to them at the time their employment with
5 DEFENDANTS ceased and still have not received such pay.

6 11. DEFENDANTS, in violation of Labor Code Section 201, do not, as a matter of
7 practice, immediately pay their seasonal employees' final wages when layoffs or other forms of
8 discharge occur at the end of seasonal employment, typically paying the employees
9 approximately one week after discharge. For example, Plaintiff Ramirez's last day of work in
10 2019 was on November 9, 2019; however, DEFENDANTS did not pay her final wages until
11 November 15, 2019, six days late. DEFENDANTS' conduct in this regard was willful.

12 12. When working in DEFENDANTS' fields, Plaintiff Ramirez and other similarly
13 situated employees were suffered and permitted to work before the start of their shifts to gather
14 bags/sacks from their crew leader. These bags/sacks are used to transfer the crops onto boxes and
15 crates that are transported by a tractor bed. They performed this work with the knowledge of and
16 at the direction of their supervisors. Similarly, after the end of each shift, Plaintiff Ramirez and
17 other similarly employed persons are required to return these bags to their crew leader but are
18 only paid until the end of the scheduled shift time. Therefore, Plaintiff Ramirez and other
19 similarly employed persons are also not paid for the five minutes of work time required after
20 their scheduled shift time. Plaintiff Ramirez and other similarly situated aggrieved employees
21 were not paid all wages they were owed for the time they spent performing work during this
22 unrecorded pre-shift time in violation of Labor Code Sections 510, 1197 and IWC Wage Order
23 14-2001, subsections 3 and 4.

24 13. Plaintiff Hernandez was paid on an hourly basis with two separate hourly rates.
25 He would be paid a rate of \$12.75 per hour for time spent driving the tractor/van to the fields and
26 a rate of \$12.00 per hour otherwise. On information and belief, Plaintiff alleges that
27 DEFENDANTS did not employ any actual timekeeping practices and instead would just
28

1 record the hours of Plaintiff Hernandez based upon his pre-scheduled hours. DEFENDANTS
2 have not boarded or lodged Plaintiff during his employment.

3 14. During the busy season (July-September), Plaintiff Hernandez was generally
4 tasked with working six to seven days per week from 6:00 a.m. until around 6:00 p.m. Outside
5 of the busy season, Plaintiff Hernandez generally worked from 6:00 a.m. until 2:30 p.m.
6 Throughout Plaintiff Hernandez's employment, DEFENDANTS' foreperson failed to record the
7 actual amount of hours Plaintiff Hernandez worked and instead would record his time worked
8 based on his pre-scheduled hours, regardless if he worked longer. During the busy season where
9 Plaintiff Hernandez regularly worked at least 12 hours per day, he was not made to review or
10 sign off on his hours worked which resulted in a gross underpayment of wages.

11 15. Plaintiff Hernandez and other non-exempt employees were regularly made to
12 arrive at the yard at job site at 5:30 a.m. so as to be out on the fields to commence working at
13 6:00 a.m. Despite the fact that Plaintiff Hernandez and other non-exempt employees regularly
14 arrived to work thirty minutes prior to beginning work on the fields, at no point were they
15 compensated for this time spent on the premises and traveling to the fields to begin performing
16 work, all of which should have been compensated as overtime hours.

17 16. Despite the fact that Plaintiff Hernandez and other non-exempt employees were
18 regularly tasked with working seven days a week, DEFENDANTS as a matter of practice and
19 policy failed to pay them the proper overtime rate on their seventh day worked. Furthermore,
20 even though during the busy season Plaintiff Hernandez would regularly work at least 12 hours
21 per day, DEFENDANTS failed to compensate him at the proper overtime rate for all hours
22 worked in excess of ten in a day. Upon information and belief, DEFENDANTS did not pay any
23 overtime hours to Plaintiff Hernandez and other non-exempt employees when they were entitled
24 to overtime pay. As a result, DEFENDANTS failed to ensure that Plaintiff Hernandez and other
25 non-exempt employees were being paid at least the minimum wage for all hours actually
26 worked, and failed to ensure that Plaintiff Hernandez and other non-exempt employees received
27 proper overtime wages for all overtime hours worked, in compliance with Wage Order 14.

1 17. When Plaintiff Hernandez was tasked with driving the tractor for irrigation, he
2 was not properly compensated for time spent in preparation for his shift such as inspecting the
3 tractor, filling it up with gasoline, and other necessary pre-shift and post-shift maintenance of the
4 tractor. Upon information and belief, Plaintiff Hernandez would not begin having his hours
5 logged until he actually started up the tractor and began working meaning that all of this time
6 was uncompensated by DEFENDANTS.

7 18. Labor Code § 512 generally requires that employees working shifts of more than
8 five hours be provided with a meal period within the first five hours of work, and that employees
9 working shifts of more than ten hours be provided with a second meal period. Lab. Code § 512;
10 *see also* Section 11 of the applicable Wage Orders, including Wage Orders 13 and 14.
11 Employees are, therefore, entitled to one additional hour of pay at the employee's regular rate of
12 pay for every day that a meal period was not provided or is provided late. *See id.*; Lab. Code §
13 226.7(c).

14 19. During PLAINTIFFS's employment, DEFENDANTS regularly failed to provide,
15 authorize, and/or permit to PLAINTIFFS and other similarly employed persons meal periods
16 within the first five hours of work, as required by California law. DEFENDANTS released
17 PLAINTIFFS and other similarly employed persons for their meal periods five hours after the
18 scheduled start time of their shifts. For example, PLAINTIFFS were required to be at their
19 workplace in the field no later than 7:00 a.m. and was released for their meal period precisely at
20 12:00 p.m. However, DEFENDANTS required Plaintiff Ramirez to retrieve bags/sacks from her
21 crew leader at least five minutes before the start of her shift. Due to the unaccounted five minutes
22 of pre-shift work time, each meal period that was taken at 12:00 p.m. was taken after more than
23 five hours of work and was, therefore, late. Likewise, due to the intense volume of work that
24 needed to be done and the pressure imposed by DEFENDANTS to complete it in a timely
25 manner, Plaintiff Hernandez and other non-exempt employees would have their meal periods
26 prematurely interrupted or would not be provided meal periods at all. Outside of the busy
27 season, Plaintiff Hernandez and other non-exempt employees generally received meal periods,
28

1 however, as with rest periods, they were not permitted to leave the premises and remained under
2 the control of DEFENDANTS throughout the entirety of their meal periods. DEFENDANTS
3 were not only aware of, but actively encouraged this practice. DEFENDANTS also failed to
4 provide second meal periods when non-exempt employees worked shifts in excess of 10.0 hours.
5 Upon information and belief, DEFENDANTS' forepersons did not accurately record meal
6 periods in any manner. Accordingly, DEFENDANTS did not provide PLAINTIFFS and
7 similarly employed persons with their meal periods in compliance with California law.
8 DEFENDANTS did not pay PLAINTIFFS and the other similarly situated aggrieved employees
9 an additional hour as premium pay, as required by California law. DEFENDANTS also did not
10 pay break premiums at the employee's regular rate of pay in compliance with California law,
11 which requires incentive pay to be included in the calculation of the regular rate of pay. In fact,
12 PLAINTIFFS and other similarly employed persons earned incentive pay (indicated on wage
13 statements as "Bonus").

14 20. PLAINTIFFS and other non-exempt employees were not authorized to take all
15 legally required rest periods regardless of whether they were working on a piece-rate or hourly
16 basis. During the busy season, PLAINTIFFS and other non-exempt employees were not
17 provided any rest periods and instead would be made to work through the entirety of their shifts
18 due to the high volume of work and pressure from PLAINTIFFS to complete everything in a
19 timely manner. Outside of the busy season, PLAINTIFFS and other non-exempt employees
20 generally received rest periods however they were required to stay on the premises and were not
21 free of employer control as required by Labor Code §226.7. Despite DEFENDANTS' failure to
22 authorize and permit PLAINTIFFS and other non-exempt employees to take all lawful paid rest
23 periods, due to their uniform and unlawful practices, DEFENDANTS never provided
24 PLAINTIFFS and other non-exempt employees with an hour of pay at their regular rate for each
25 rest period violation as required by Labor Code § 226.7. Upon information and belief, during at
26 least a portion of the class period, DEFENDANTS maintained no payroll code or another
27
28

1 mechanism for the payment of rest period premiums in the event PLAINTIFFS and other non-
2 exempt employees were not authorized to take lawful rest periods.

3 21. At all times during the liability period, PLAINTIFFS and other similarly
4 employed persons are paid less than two times the minimum wage. Wage Order 14, Section
5 9(B); *see also* California Code of Regulations, Title 8 §3384 (entitled “Hand Protection”,
6 requiring employers to provide gloves). As such, DEFENDANTS are required to provide all
7 necessary tools and equipment. Likewise, Labor Code § 2802 provides that “[a]n employer shall
8 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
9 in direct consequence of the discharge of his or her duties.” DEFENDANTS require employees
10 to wear gloves while they work. During the pomegranate season, DEFENDANTS provided
11 PLAINTIFFS and others with their first pair of gloves. PLAINTIFFS and other similarly
12 employed persons were then required to purchase their own replacement gloves throughout the
13 season. Typically, PLAINTIFFS bought two additional pairs of gloves during the pomegranate
14 season at an average of \$9 per pair. During the almond season, DEFENDANTS did not provide
15 any gloves. PLAINTIFFS and other aggrieved employees each purchased a box of gloves at \$8
16 per box at the beginning of the almond season. The box of gloves was used throughout the
17 season. PLAINTIFFS and other similarly employed persons were not reimbursed for these
18 purchases.

19 22. All employers in California are required to provide paid sick leave to all
20 employees, unless the employee is exempt from coverage, which PLAINTIFFS were not. Labor
21 Code § 245.5(b). Employees who work in California for 30 or more days within a year from the
22 commencement of employment are entitled to paid sick leave. Labor Code § 246. An employee
23 is entitled to use accrued paid sick leave on the 90th day of employment. *Id.* An employee who is
24 rehired by the same employer within a year is entitled to the reinstatement of all previously
25 accrued sick leave and may begin to use the sick leave on the first day of rehire. The reason for
26 the employee’s initial separation from employment does not matter. Labor Code § 246(f)(2).
27 PLAINTIFFS worked more than 90 days for DEFENDANTS and accrued paid sick leave. While
28

1 her wage statements indicated that she had accrued paid sick leave, it stated that it was not
2 available for use by PLAINTIFFS until after January 31, 2020, a date after the end of the 2019
3 season when she no longer had a guarantee of work, and a date more than 90 days from the date
4 PLAINTIFFS began working for DEFENDANTS. Accordingly, DEFENDANTS violated
5 California's paid sick leave law by prohibiting PLAINTIFFS and other similarly employed
6 persons from using accrued paid sick leave when they were eligible to use it under the law.

7 23. As a result of DEFENDANTS's failure to accurately compensate PLAINTIFFS
8 and other non-exempt employees for non-productive time, failure to pay all minimum and
9 overtime wages, and failure to provide all required meal periods and authorize all rest periods or
10 pay premium pay in lieu thereof, DEFENDANTS have maintained inaccurate payroll records,
11 failed to timely pay all wages owed to separating employees at the time of their separation, and
12 issued inaccurate wage statements.

13 **COMPLIANCE WITH NOTIFICATION REQUIREMENTS**

14 24. On June 25, 2020, Plaintiff Ramirez, through her counsel, sent a certified letter
15 to the California Labor and Workforce Development Agency ("LWDA") informing it that
16 Defendants Wonderful Orchards, LLC and Cal AG Resources, Inc. failed to meet their
17 obligations under California law with regard to the payment of final wages. A copy of the June
18 25, 2020 letter was also sent to defendants Wonderful Orchards, LLC and Cal AG Resources,
19 Inc. at the offices of their Agents for Service of Process.

20 25. On November 30, 2020, Plaintiff Hernandez notified Defendant Cal Ag
21 Resources, Inc. via certified mail, and notified the LWDA via its website, of Defendants'
22 violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties
23 under California Labor Code § 2698 *et seq.* On February 18, 2021, Plaintiff notified Defendant
24 J.G. Boswell Company via certified mail, and notified the LWDA via its website, of
25 Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for
26 civil penalties under California Labor Code § 2698 *et seq.*

26. To date, more than 65 days after the June 25, 2020, November 30, 2020, and February 18, 2021 PAGA Letters were submitted, the LWDA has not responded.

27. The PAGA Letters outlined PLAINTIFFS's claims for violations of the California Labor Code and the applicable wage orders on behalf of herself, the State of California and other aggrieved employees.

28. Accordingly, PLAINTIFFS exhausted administrative remedies as required by Labor Code § 2699.3.

CLASS ACTION ALLEGATIONS

29. **Class Definitions:** PLAINTIFFS bring this action on behalf of themselves and the following Class pursuant to § 382 of the Code of Civil Procedure:

- a. All current and former employees of Cal Ag, whom Cal Ag assigned to work at J.G. Boswell Company and/or J.G. Boswell Tomato Company, LLC, in California December 1, 2016 through January 31, 2022 (the "Class Period").

30. **Numerosity/Ascertainability:** The members of the Class are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Class is unknown to PLAINTIFFS at this time; however, it is estimated that the members of the Class number greater than two hundred (200) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

31. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to PLAINTIFFS and all other similarly situated employees, which predominate over questions affecting only individual members.

32. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Class.

33. **Typicality:** The claims of PLAINTIFFS are typical of the claims of the Class

34. **Adequacy of Representation:** PLAINTIFFS are fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Class.

Moreover, PLAINTIFFS's attorneys are ready, willing and able to fully and adequately represent the members of the Class and PLAINTIFFS. PLAINTIFFS'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 Class.

35. **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 Class make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. As such, the Class (as defined herein) is maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER PAGA

(By PLAINTIFFS and Aggrieved Employees against DEFENDANTS)

36. PLAINTIFFS incorporates all of the foregoing paragraphs of this complaint as if fully alleged herein.

37. Under the Private Attorney General Act, Labor Code §§ 2698-99 ("PAGA"), private parties may recover civil penalties for violations of the California Labor Code, including sections 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 201, 202, 203, 204, 226, 226.7, 246, 2802, 2804 and the Industrial Welfare Commission's ("IWC") Wage Orders, including IWC Wage Order 13 and 14. PAGA penalties are in addition to any other relief available under the Labor Code.

1 38. As set forth above, DEFENDANTS violated the California Labor Code by
2 consistently failing to employ PLAINTIFFS and other similarly situated employees in
3 compliance with California law.

4 39. At all times relevant to this action, PLAINTIFFS and other aggrieved employees
5 were employees of DEFENDANTS entitled to the benefits of the IWC Wage Orders, including
6 Wage Orders 13 and 14.

7 40. At all times relevant hereto, California Labor Code §§ 1194(a) and 1197 and the
8 applicable wage orders, have required DEFENDANTS to pay their employees the applicable
9 minimum wage for all hours worked.

10 41. PLAINTIFFS and the other aggrieved employees were not paid by
11 DEFENDANTS, during the relevant period, the applicable minimum wage for all hours worked
12 because DEFENDANTS required PLAINTIFFS and others to perform work off the clock before
13 the start of their shift and after the end of their shift for which DEFENDANTS did not pay them,
14 as alleged above.

15 42. By failing to pay PLAINTIFFS and other aggrieved employees who performed
16 pre-shift work, DEFENDANTS willfully breached their obligations under Section 4 of the
17 applicable wage orders, including Wage Orders 13 and 14.

18 43. At all relevant times, PLAINTIFFS and other aggrieved employees were
19 employees of DEFENDANTS covered by the meal period provisions of Labor Code Sections
20 226.7 and 512, and the applicable wage orders, including Wage Orders 13 and 14.

21 44. Pursuant to Labor Code Sections 226.7 and 512, and the applicable wage orders,
22 PLAINTIFFS and other aggrieved employees were entitled to a meal period of at least 30
23 minutes for each workday they worked more than 5 hours in any workday, and one additional
24 hour of pay for every day that a timely meal period was not provided.

25 45. DEFENDANTS failed to provide PLAINTIFFS and other aggrieved employees
26 with timely, uninterrupted, duty free meal periods in accordance with Labor Code Section 226.7
27 and 512, and the applicable wage orders. During the relevant period, DEFENDANTS
28

1 maintained and continue to maintain a policy or practice of releasing aggrieved employees,
2 including PLAINTIFFS, late for their meal periods, as alleged above.

3 46. DEFENDANTS failed to provide PLAINTIFFS and other aggrieved employees
4 the additional hour of pay required by Labor Code Section 226.7 and the applicable wage orders
5 for the meal period violations alleged herein. PLAINTIFFS are informed and believe and
6 thereon allege that at all relevant times within the relevant period, DEFENDANTS maintained
7 and continue to maintain a policy or practice of not paying additional pay to employees for meal
8 period violations and at the correct regular rate of pay to factor in all forms of incentive pay.

9 47. PLAINTIFFS and the other similarly aggrieved employees were seasonal
10 employees of DEFENDANTS covered by Labor Code Section 201 whose seasonal employment
11 was terminated by DEFENDANTS during the relevant period.

12 48. Labor Code Section 201 provides: “(a) If an employer discharges an employee,
13 the wages earned and unpaid at the time of discharge are due and payable immediately. An
14 employer who lays off a group of employees by reason of the termination of seasonal
15 employment in the curing, canning, or drying of any variety of perishable fruit, fish or
16 vegetables, shall be deemed to have made immediate payment when the wages of said
17 employees are paid within a reasonable time as necessary for computation and payment thereof;
18 provided, however, that the reasonable time shall not exceed 72 hours, and further provided that
19 payment shall be made by mail to any employee who so requests and designates a mailing
20 address therefor.”

21 49. A layoff, for purposes of Labor Code Section 201, irrespective of the promise or
22 prospect of reemployment for another season, is a discharge.

23 50. Pursuant to Labor Code Section 201, PLAINTIFFS and other similarly aggrieved
24 employees were entitled upon cessation of employment with DEFENDANTS to timely payment
25 of all wages earned and unpaid prior to termination and/or discharge, including layoff.
26 Employees who were discharged were entitled to payment of all wages earned and unpaid prior
27 to discharge immediately upon termination.

1 51. DEFENDANTS failed to pay PLAINTIFFS and other similarly employed persons
2 all wages earned and unpaid prior to termination timely in accordance with Labor Code Section
3 201 and 202. PLAINTIFFS are informed and believe and thereon allege that at all relevant times
4 within the applicable limitations period, DEFENDANTS maintained and continue to maintain a
5 policy or practice of not paying terminated and laid off seasonal employees all their final wages
6 earned before termination or layoff due under Labor Code Section 201.

7 52. DEFENDANTS' failure to pay PLAINTIFFS and other similarly employed
8 persons all wages earned prior to termination in accordance with Labor Code Section 201 was
9 willful. DEFENDANTS had the ability to pay all wages earned by employees prior to
10 termination in accordance with Labor Code Section 201, but intentionally adopted policies or
11 practices incompatible with the requirements of Labor Code Section 201.

12 53. Pursuant to Labor Code Section 203, PLAINTIFFS and other similarly employed
13 persons were entitled to continuation of their wages, from the day their earned and unpaid wages
14 were due upon termination until paid, up to a maximum of 30 days. DEFENDANTS did not
15 comply with their obligations under Section 203.

16 54. As alleged above, DEFENDANTS violated Labor Code Section 2802 and Section
17 9(B) of Wage Order 14, DEFENDANTS failed to reimburse PLAINTIFFS and other similarly
18 employed persons for business expenses, including the purchase of gloves and replacement
19 gloves needed to perform the work for DEFENDANTS.

20 55. As alleged above, DEFENDANTS violated Labor Code Section 246 by
21 prohibiting PLAINTIFF and other similarly employed persons from using accrued paid sick
22 leave when they were eligible to use it under the law.

23 56. Under the PAGA, PLAINTIFFS and all other aggrieved employees are entitled to
24 recover the maximum civil penalties permitted by law from DEFENDANT for the Labor Code
25 violations alleged in this Complaint.

26 57. PLAINTIFFS and all other aggrieved employees are also entitled to recover their
27 attorneys' fees and costs under Labor Code § 2699.

MINIMUM WAGE VIOLATIONS

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

60. 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.

62. 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 Class in a civil action for the unpaid amount of minimum wages, liquidated

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

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY ALL OVERTIME WAGE**

6 **(Against Defendants Cal Ag Resources, Inc. and J.G. Boswell Company)**

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

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

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

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

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

25 **FOURTH CAUSE OF ACTION**

26 **MEAL PERIOD VIOLATIONS**

27 **(Against Defendants Cal Ag Resources, Inc. and J.G. Boswell Company)**

1 68. Plaintiff re-allege and incorporate by reference all previous paragraphs.

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

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

13 **FIFTH CAUSE OF ACTION**

14 **REST PERIOD VIOLATIONS**

15 **(Against Defendants Cal Ag Resources, Inc. and J.G. Boswell Company)**

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

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

20 73. As alleged herein, Defendants failed to authorize and permit Plaintiffs and
21 members of the Class to take all legally compliant rest periods.

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

27 **SIXTH CAUSE OF ACTION**

1 **WAGE STATEMENT VIOLATIONS**

2 **(Against Defendants Cal Ag Resources, Inc. and J.G. Boswell Company)**

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

4 76. Plaintiffs are informed and believe, and based thereon allege, that Defendants
5 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish
6 Plaintiffs and the Class with accurate, itemized wage statements that included, among other
7 requirements, accurate total gross wages earned, meal and rest period premiums, and total net
8 wages earned in violation of Labor Code §226 *et seq.*

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

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

18 **SEVENTH CAUSE OF ACTION**

19 **WAITING TIME PENALTIES**

20 **(Against Defendants Cal Ag Resources, Inc. and J.G. Boswell Company)**

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

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

1 81. Defendants failed to timely pay Plaintiffs and members of the Class all final
2 wages due to them at the time of their separation including, among other things, underpaid
3 overtime and minimum wages owed, and meal and rest period premium wages. Further,
4 Plaintiffs are informed and believe, and based thereon allege, that as a matter of uniform policy
5 and practice, Defendants continue to fail to pay members of the Class all earned wages at the
6 end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-
7 203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code §
8 203.

9 82. Defendants' willful failure to timely pay Plaintiffs and the members of the Class
10 their earned wages upon separation from employment results in a continued payment of wages
11 up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of
12 the Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable
13 attorneys' fees and costs of suit.

14 **EIGHTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

16 **(Against Defendants Cal Ag Resources, Inc. and J.G. Boswell Company)**

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

18 84. Defendants have engaged and continue to engage in unfair and/or unlawful
19 business practices in California in violation of California Business and Professions Code §
20 17200 *et seq.*, by failing to pay Plaintiffs and the Class all overtime and minimum wages,
21 failing to provide all required meal periods, failing to authorize and permit all required rest
22 periods, failing to pay meal and rest period premium wage payments, failing to furnish accurate
23 wage statements, failing to reimburse necessary business expenditures, and willfully failing to
24 timely pay Plaintiffs and members of the Waiting Time Class all final wages upon separation of
25 employment.

26 85. Defendants' utilization of these unfair and/or unlawful business practices
27 deprived Plaintiff and continues to deprive members of the Class of compensation to which they
28

1 are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair
2 advantage over Defendants' competitors who have been and/or are currently employing workers
3 and attempting to do so in honest compliance with applicable wage and hour laws.

4 86. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct
5 alleged herein, Plaintiff for himself and on behalf of the members of the Class, seeks full
6 restitution of monies, as necessary and according to proof, to restore any and all monies
7 withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code
8 §§ 17203 and 17208.

9 87. The acts complained of herein occurred within the last four years immediately
10 preceding the filing of the Complaint in this action.

11 88. Plaintiffs were compelled to retain the services of counsel to file this court action
12 to protect their interests and those of the Class, to obtain restitution and injunctive relief on
13 behalf of Defendants' current non-exempt employees, and to enforce important rights affecting
14 the public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and
15 costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

16 **NINTH CAUSE OF ACTION**

17 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

18 **(Against Defendants Cal Ag Resources, Inc. and J.G. Boswell Company)**

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

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

24 91. Due to Defendants' unlawful policy and practice of requiring employees to use
25 their personal vehicles and cellular phones in the performance of their job duties, Defendants
26 have violated Labor Code § 2802.

27 92. Plaintiffs and members of the Class are entitled to attorneys' fees and costs of suit
28

1 pursuant to Labor Code § 2802(c) for bringing this action.

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

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, on behalf of himself and all other aggrieved employees and the
8 State of California, prays for relief and judgment against Defendants as follows:

- 9 1. For an order certifying the proposed Class;
- 10 2. For an order appointing Plaintiffs as representatives of the Class;
- 11 3. For an order appointing Counsel for Plaintiffs as Counsel for the Class;
- 12 4. Upon the First Cause of Action, civil penalties under Labor Code Section 2699
13 (75% payable to the LWDA and 25% payable to aggrieved employees);
- 14 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
15 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
16 1197;
- 17 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
18 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 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, 512, 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 §§ 226.7, 516, and 558;
- 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

1 Class of all money and/or property unlawfully acquired by Defendants by means of any acts or
2 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
3 *seq.*;

4 12. Upon the Ninth Cause of Action, for compensatory, consequential, general and
5 special damages according to proof pursuant to Labor Code § 2802;

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

8 14. 14. On all causes of action, for attorneys' fees and costs as provided by Code
9 of Civil Procedure § 1021.5 and all other applicable statutes; and

10 15. Such other and further relief as this Court may deem just and proper.

11 Dated: April 24, 2023

MOSS BOLLINGER LLP



12 By: _____

13 Jeremy F. Bollinger

14 Attorneys for Plaintiff ANA E. RAMIREZ

15 Dated: April 24, 2023

STANSBURY BROWN LAW, PC



16 By: _____

17 Daniel J. Brown

18 Attorneys for Plaintiff JUAN GABRIEL
19 HERNANDEZ
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF KERN

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is: 15300 Ventura Blvd, Suite 207,
Sherman Oaks, CA 91403. On April 26, 2023, I served the foregoing document(s) described as:

5 **FIRST AMENDED COMPLAINT**

6 on the interested party(ies) below, using the following means:

7
8 **ATTORNEYS FOR DEFENDANT**
WONDERFUL ORCHARDS, LLC
9 **Roll Law Group**
Reid P. Davis reid.davis@roll.com
10 Eric Brin eric.brin@roll.com

11 **ATTORNEYS FOR PLAINTIFF**
JUAN GABRIEL HERNANDEZ
12 **Stansbury Brown Law**
Daniel J. Brown
13 dbrown@stansburybrownlaw.com
14

15
16 **ATTORNEYS FOR DEFENDANT**
CAL AG. RESOURCES, INC.
17 **Barsamian & Moody**
Seth G. Mehrten
smehrten@theemployerslawfirm.com

18 **ATTORNEYS FOR DEFENDANT**
J.G. BOSWELL COMPANY.
19 **Musick Peeler**
Jon McNutt
J.McNutt@musickpeeler.com
20

21 ☒ BY ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service
22 by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail
23 address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the
24 transmission, any electronic message or other indication that the transmission was unsuccessful

25 ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct.

27 Executed on April 26, 2023 at Los Angeles, California.

28 Jeremy F. Bollinger

[Print Name of Person Executing Proof]



[Signature]

PROOF OF SERVICE