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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

BERNARDO SANTOS, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

TORRES FARM LABOR CONTRACTOR,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: BCV-19-102470

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

- (1) FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1182.12, 1194, 1194.2, 1197);**
- (2) FAILURE TO PAY ALL
OVERTIME WAGES OWED
(LABOR CODE §§ 204, 510, 558,
1194, 1198);**
- (3) FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512, 558);**
- (4) FAILURE TO AUTHORIZE AND
PERMIT REST PERIODS (LABOR
CODE §§ 226.7, 516, 558);**

- 1 (5) **FAILURE TO PROVIDE**
2 **ACCURATE, ITEMIZED WAGE**
3 **STATEMENTS (LABOR CODE §**
4 **226 *et seq.*);**
- 5 (6) **FAILURE TO TIMELY PAY ALL**
6 **WAGES UPON TERMINATION**
7 **(LABOR CODE §§ 201-203);**
- 8 (7) **UNFAIR COMPETITION (BUS &**
9 **PROF CODE § 17200 *et seq.*; and**
- 10 (8) **CIVIL PENALTIES UNDER THE**
11 **LABOR CODE PRIVATE**
12 **ATTORNEYS GENERAL ACTION**
13 **OF 2004 (LABOR CODE § 2698 *et***
14 ***seq.*)**

15 **DEMAND FOR JURY TRIAL**
16 **UNLIMITED CIVIL CASE**

1 Plaintiff Bernardo Santos (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint (“FAC”)
3 against Torres Farm Labor Contractor, Inc., a California corporation and DOES 1 to 100,
4 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 FAC for recovery of unpaid wages and penalties under California Business and Professions Code
8 § 17200 *et. seq.*, Labor Code §§ §§ 201-204, 218 *et seq.*, 226 *et seq.*, 226.7, 510, 512, 516, 558,
9 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, and Industrial Welfare Commission Wage Order
10 14 (“Wage Order 14”), in addition to seeking declaratory relief and restitution. This FAC is
11 brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
12 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
13 this Court's jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
16 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
17 County of Kern. Defendants own, maintain offices, transact business, have agent(s) within the
18 County of Kern, and/or otherwise are found within the County of Kern, and Defendants are within
19 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 lawsuit in this action and within the statute of limitations periods applicable to
24 each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-204, 218 *et seq.*, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197,
28 1198, 2698 *et seq.*, and California Business and Professions Code § 17200 *et seq.* (“Unfair

Competition Law”); and Wage Order 14, which sets employment standards for the agricultural occupations, which includes the industry in which Plaintiff worked for Defendants.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the lawsuit and continuing to the present, Defendants did (and continue to do) business as a farm labor contractor.

5. Defendants employed Plaintiff and other, similarly-situated non-exempt employees within, among other counties, Kern County and the state of California and, therefore, were (and are) doing business in Kern County and the State of California.

6. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this FAC when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 20) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

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

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

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

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

3 **GENERAL FACTUAL ALLEGATIONS**

4 10. Plaintiff, a former non-exempt employee, was employed by Defendants from
5 approximately March 2016 through approximately November 2018. During his employment with
6 Defendants, Defendants assigned him to work at Grimmway Farms and his duties included
7 without limitation, driving a forklift.

8 11. During his employment with Defendants, Plaintiff was generally scheduled to
9 work 10- or 11-hour shifts, Monday through Saturday. Defendants did, and upon information
10 and belief, still utilize a timekeeping system which resulted in Plaintiff not being compensated
11 for hours actually worked whether by time-shaving or otherwise. Specifically, Defendants would
12 keep track of Plaintiff's time worked and would unlawfully shave Plaintiff's work time and/or
13 round Plaintiff's work time such that Plaintiff would not be fully paid all wages he was rightfully
14 owed. Plaintiff was required to work and clock in 5 minutes before the start of his scheduled shift
15 but was not compensated until his scheduled start time. Further, upon information and belief,
16 Defendants had a policy and practice of automatically deducting 15 minutes from an employee's
17 work time if he or she clocked in after the scheduled start time regardless of the actual number of
18 minutes the employee clocked in late. This time shaving/rounding practice utilized by Defendants
19 was not-even handed over time and would round and/or shave in Defendants' favor such that
20 Plaintiff was routinely underpaid for his time worked and deprived him of all minimum wages
21 owed.

22 12. Additionally, Plaintiff and other non-exempt employees often worked over ten
23 hours in a day, and Defendants' policy and practice of failing to compensate them for all hours
24 worked also deprived them of all overtime wages owed.

25 13. While working for Defendants, Plaintiff often worked in excess of ten hours per
26 workday, but did not receive overtime compensation equal to one and one-half times his regular
27 rate of pay for all such overtime hours. Specifically, upon information and belief during at least
28 a portion of the class period, Defendants paid Plaintiff weekly "Units" pay and/or bonuses. These

1 “Units” pay, bonuses, and/or other forms of pay were not excludable as a matter of law when
2 calculating an employee’s regular rate (hereinafter the aforementioned forms of pay are
3 collectively referred to as “Incentive Pay”). Despite Defendants’ payment of Incentive Pay to
4 Plaintiff, Defendants failed to include all forms of Incentive Pay when calculating Plaintiff’s
5 regular rate of pay, thereby causing Plaintiff to be underpaid all of his required and legally owed
6 overtime wages.

7 14. Throughout Plaintiff’s employment with Defendants, Plaintiff was not provided
8 all legally required meal periods due to Defendants’ meal period policies and practices, which
9 fail to provide 30-minute first meal periods before the end of the fifth hour of work, and fail to
10 provide second meal periods for shifts of over 10.0 hours. Defendants had a policy and practice
11 of staggering the meal periods for non-exempt employees, resulting Defendants providing non-
12 exempt employees with a meal period after the start of their fifth hour of work. As a result,
13 Plaintiff’s and other non-exempt employees’ meal periods were often late or otherwise unlawful.
14 Additionally, for at least a portion of the class period, Defendants would auto-deduct 30 minutes
15 of time from the work time of Plaintiff and other non-exempt employees regardless of whether
16 they actually took a meal period, and regardless of how long a meal period was if in fact taken.
17 Further, when Plaintiff worked shifts of over 10.0 hours, he was not always provided a second
18 30-minute meal period due to Defendants’ meal period policies/practices that failed to provide
19 for a second meal period for shifts of over 10.0 hours.

20 15. Although Plaintiff was not provided with all legally-compliant meal periods to
21 which he was entitled, Defendants failed to compensate Plaintiff with the required meal period
22 premium for each workday in which he experienced a meal period violation as mandated by Labor
23 Code § 226.7. Upon information and belief during at least a portion of the class period,
24 Defendants maintained no payroll code or other mechanism for the payment of meal period
25 premium payments under Labor Code § 226.7 in the event that a legally compliant meal period
26 was not provided to their non-exempt employees.

27 16. Plaintiff was also not authorized and permitted to take all required rest periods due
28 to Defendants’ rest period policies/practices. Defendants’ policy and/or practice fails to authorize

and permit all rest periods for every four hours worked, or *major fraction thereof*. Specifically, Plaintiff was not provided a third 10-minute rest period on all shifts worked in excess of 10.0 hours due to Defendants' rest period policies/practices that failed to authorize and permit a third rest period for shifts of over 10.0 hours during at least a portion of Plaintiff's employment.

17. On those occasions when Plaintiff was not authorized and permitted to take all legally-compliant rest periods to which he was entitled, Defendants failed to compensate Plaintiff with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief, during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to provide a legally compliant rest period.

18. As a result of Defendants' failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff. In addition, Defendants issued inaccurate wage statements with respect the payment of wages for "units", which is vague and ambiguous and requires Plaintiff to speculate to its meaning.

19. As a further result of Defendants' failure to pay all minimum and overtime wages and failure to pay meal and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff upon separation of his employment with Defendants.

CLASS ACTION ALLEGATIONS

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

- a. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were subjected to Defendants' timekeeping policies and practices, during the four years immediately preceding the filing of the lawsuit through the present.
- b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than ten hours per day and were subjected to Defendants' timekeeping policies and practices, during the four years

1 immediately preceding the filing of the lawsuit through December 31, 2018;
2 and/or all of Defendants' current and former non-exempt employees in California
3 who worked more than 9.5 hours per day or 55 hours per workweek and were
4 subjected to Defendants' timekeeping policies and practices, during the time
5 period January 1, 2019 to present¹ and/or received Incentive Pay during a pay
6 period when overtime was also worked, during the four years immediately
7 preceding the filing of the lawsuit through the present.

8 c. The Meal Period Class consists of all of Defendants' current and former non-
9 exempt employees who: (1) worked at least one shift in excess of 5.0 hours; and/or
10 (2) worked at least one shift in excess of 10.0 hours, during the four years
11 immediately preceding the filing of the lawsuit through the present.

12 d. The Rest Period Class consists of all of Defendants' current and former non-
13 exempt employees who worked at least one shift of 6.0 hours or more during the
14 four years immediately preceding the filing of the lawsuit through the present.

15 e. The Wage Statement Class consists of all members of the: (i) Minimum Wage
16 Class; (ii) Overtime Class; (iii) Meal Period Class; (iv) Rest Period Class; and/or
17 (v) non-exempt employees who received a wage statement that failed to include
18 the address of Defendants, during the one year immediately preceding the filing
19 of the lawsuit through the present.

20 f. The Waiting Time Penalty Class consists of all members of the: (i) Minimum
21 Wage Class; (ii) Overtime Class; (iii) Meal Period Class; (iv) Rest Period Class;
22 and/or (v) Wage Statement Class who separated their employment with
23

24 ¹ Depending on when the motion for class certification for class certification is filed, the number of hours worked
25 per day or workweek may change based on the regulation in effect at the time the motion for class certification is filed
26 given the amendments to Wage Order 14 (i.e. Plaintiff will seek to define the class as all of Defendants' current and
27 former non-exempt employees in California who worked more than 9 hours per day or 50 hours per workweek and
28 were subjected to Defendants' timekeeping policies and practices during the time period January 1, 2020 to December
31, 2020; and/or all of Defendants' current and former non-exempt employees in California who worked more than
8.5 hours per day or 45 hours per workweek and were subjected to Defendants' timekeeping policies and practices,
during the time period January 1, 2021 to December 31, 2021; and/or all of Defendants' current and former non-
exempt employees in California who worked more than 8 hours per day or 40 hours per workweek and were subjected
to Defendants' timekeeping policies and practices, during the time period January 1, 2022 to present (depending when
the motion for class certification is filed).

Defendants during the three years immediately preceding the filing of the lawsuit through the present.

- g. The UCL Class consists of members of the: (i) Minimum Wage Class; (ii) Overtime Class; (iii) Meal Period Class; (iv) Rest Period Class; (v) Wage Statement Class and/or (vi) Waiting Time Penalty Class.

21. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

22. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

23. **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' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Overtime and Minimum Wage Classes for all hours actually worked;
- ii. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 510 and 1194 by requiring overtime work and not paying for said work according to the overtime laws of the State of California;
- iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- v. Whether Defendants furnished legally compliant wage statements to members of

the Wage Statement Class pursuant to Labor Code § 226;

vi. Whether Defendants paid all wages owed to its terminated/separated employees at the time of said termination/separation pursuant to Labor Code §§ 201-203; and

vii. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

24. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping, minimum wage payment, overtime wage payment, and meal and rest period policies and practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

25. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the FAC. As alleged herein, Plaintiff, like the members of the Classes, was not provided all legally required minimum and overtime wages, was not provided with all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when he was not provided compliant meal and rest periods, was not provided with accurate, itemized wage statements, and was not provided with all wages upon termination.

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

27. **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 identified in Paragraph 20 are maintainable as a Class under § 382 of the Code of Civil Procedure.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL MINIMUM WAGES OWED**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

20 31. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and
21 members of the Minimum Wage Class seek penalties pursuant to Wage Order 14 § 20(A); interest
22 pursuant to California Labor Code §§ 218.6 and 1194 and Civil Code §§ 3287 and 3289;
23 liquidated damages pursuant to California Labor Code § 1194.2; attorneys' fees and costs of suit
24 pursuant to California Labor Code § 1194 *et seq.*; and damages and/or penalties pursuant to
25 California Labor Code § 558(a).

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1 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 failed in their affirmative obligation to provide all of their non-exempt employees in California,
3 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
4 in accordance with the mandates of the California Labor Code and Wage Order 14, § 11. Despite
5 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
6 of the Meal Period Class at their respective regular rates of pay, in accordance with California
7 Labor Code §§ 204, 210, 226.7, and 512.

8 39. As a result, Defendants are responsible for paying premium compensation for meal
9 period violations pursuant to Labor Code §§ 226.7, 512, and 558, and Wage Order 14, including
10 interest thereon, statutory penalties, civil penalties, and costs of suit.

11 **FOURTH CAUSE OF ACTION**

12 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

13 **(AGAINST ALL DEFENDANTS)**

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

15 41. Wage Order 14, § 12 and California Labor Code §§ 226.7, 516 and 558 establish
16 the right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
17 minutes net rest time for each four (4) hour period worked, or *major fraction thereof*.

18 42. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
19 of the Rest Period Class to take all required rest periods.

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

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

26 **(AGAINST ALL DEFENDANTS)**

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

1 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
3 and members of the Wage Statement Class with complete and accurate wage statements with
4 respect to their actual regular and overtime hours worked, total gross wages earned, total net
5 wages earned, and address of employer in violation of Labor Code § 226 *et seq.*

6 46. Defendants' failures in furnishing Plaintiff and members of the Wage Statement
7 Class with complete and accurate itemized wage statements resulted in actual injury, as said
8 failures led to, among other things, the non-payment of all earned overtime and minimum wages,
9 and meal and rest period premium wages, and deprived them of the information necessary to
10 identify the discrepancies in Defendants' reported data.

11 47. Defendants' failures create an entitlement to recovery by Plaintiff and members of
12 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
13 Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
14 costs of suit according to California Labor Code § 226 *et seq.*

15 **SIXTH CAUSE OF ACTION**

16 **FAILURE TO PAY ALL WAGES OWED UPON TERMINATION**

17 **(AGAINST ALL DEFENDANTS)**

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

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

25 50. Defendants failed to timely pay Plaintiff all of his final wages at the time of
26 termination, which include, among other things, underpaid minimum, regular and overtime wages
27 and meal period and rest period premium wages. Further, Plaintiff is informed and believes, and
28 based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail

1 to pay members of the Waiting Time Penalty Class all earned wages at the end of employment in
2 a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to
3 pay all final wages was willful within the meaning of Labor Code § 203.

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

9 **SEVENTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 **(AGAINST ALL DEFENDANTS)**

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

13 53. Defendants have engaged and continue to engage in unfair and/or unlawful
14 business practices in California in violation of California Business and Professions Code § 17200
15 *et seq.*, by failing to properly pay all minimum and overtime wages, provide all required meal
16 periods and authorize and permit all required rest periods, or pay premium payments in lieu
17 thereof.

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

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

27 56. The acts complained of herein occurred within the last four years immediately
28 preceding the filing of the lawsuit in this action.

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

6 **EIGHTH CAUSE OF ACTION**

7 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**
8 **(AGAINST ALL DEFENDANTS)**

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

10 59. Defendants have committed several Labor Code violations against Plaintiff and
11 other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code
12 § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this
13 representative action against Defendants to recover the civil penalties due to Plaintiff, the other
14 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558
15 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each
16 failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional
17 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
18 amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each
19 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for
20 each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per
21 employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each
22 subsequent violation per employee per pay period for those violations of the Labor Code for which
23 no civil penalty is specifically provided, based on the following Labor Code violations:

- 24 a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to
25 pay Plaintiff and other aggrieved employees all overtime compensation earned;
26 b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay
27 Plaintiff and other aggrieved employees the statutory minimum wage for all
28 hours worked;

- 1 c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all
2 legally required meal periods and failing to pay meal period premiums to
3 Plaintiff and other aggrieved employees;
- 4 d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all
5 legally required rest periods and failing to pay rest period premiums to Plaintiff
6 and other aggrieved employees;
- 7 e) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other
8 aggrieved employees with accurate and compliant itemized wage statements;
- 9 f) Defendants violated Labor Code § 204 by failing to pay Plaintiff and other
10 aggrieved employees all earned wages at least twice during each calendar month;
- 11 g) Defendants violated Labor Code § 1174 by failing to maintain accurate records
12 on behalf of Mr. Santos and other aggrieved employees; and
- 13 h) Defendants violated Labor Code § 203 by failing to pay Plaintiff and other
14 aggrieved employees for all wages owed at the time of their termination of
15 employment.

16 60. On March 9, 2021, Plaintiff notified Defendants via certified mail, and the
17 California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’
18 violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties
19 under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code
20 identified in Paragraph 59 (a)-(h). Now that sixty-five days have passed from Plaintiff notifying
21 Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing
22 a claim under the Labor Code Private Attorneys General Act with respect to these violations.

23 61. Plaintiff was compelled to retain the services of counsel to file this court action to
24 protect his interests and the interests of other aggrieved employees, and to assess and collect the
25 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which
26 he is entitled to receive under California Labor Code § 2699.

27 **PRAYER**

28 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf

1 this suit is brought against Defendants, as follows:

- 2 1. For an order certifying the proposed Classes;
- 3 2. For an order appointing Plaintiff as representative of the Classes;
- 4 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 5 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
6 damages, and penalties according to proof pursuant to Labor Code §§ 1194, 1194.2 and 1197;
- 7 5. Upon the Second Cause of Action, for compensatory, consequential, general and
8 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 9 6. Upon the Third Cause of Action, for compensatory, consequential, general and
10 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 11 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
12 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 13 8. Upon the Fifth Cause of Action, for statutory wage statement penalties pursuant
14 to Labor Code § 226 *et seq.*;
- 15 9. Upon the Sixth Cause of Action, for waiting time penalties pursuant to Labor §
16 203;
- 17 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
18 Class of all money and/or property unlawfully acquired by Defendants by means of any acts or
19 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
20 *seq.*;
- 21 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
22 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
23 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
24 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
25 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
26 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for
27 each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3)
28 \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor

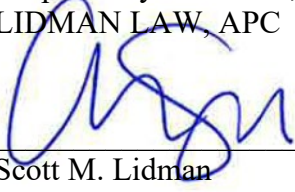
Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations cited in Paragraph 59 (a)-(h) above;

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

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

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

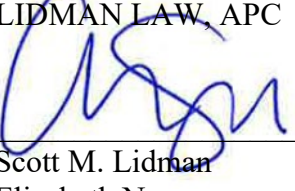
Dated: April 30, 2021

Respectfully submitted,
LIDMAN LAW, APC

By: _____
Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Romina Tamiry
Attorneys for Plaintiff
BERNARDO SANTOS

DEMAND FOR JURY TRIAL

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

Dated: April 30, 2021

Respectfully submitted,
LIDMAN LAW, APC

By: _____
Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Romina Tamiry
Attorneys for Plaintiff
BERNARDO SANTOS

PROOF OF SERVICE

Bernardo Santos v. Torres Farm Labor Contractor, Inc.
Kern County Superior Court Case No. BCV-19-102470

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 and not a party to the within action; my business address is 2155 Campus Drive, Suite 150, El Segundo, California 90245.

On April 30, 2021, I served the foregoing document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested party(ies) in this action as follows:

Thomas P. Feher, Esq.
Email: tfeher@lebeauthelen.com
LEBEAU THELEN, LLP
5001 E. Commercenter Drive, Ste. 300
P.O. Box 12092
Bakersfield, CA 93389-2092

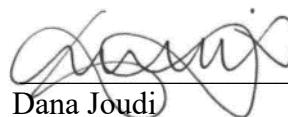
(BY ELECTRONIC SERVICE) Electronic Filing through One Legal, an electronic filing system of the Kern County Superior Court, pursuant to Local Rules, which will send notification of such filing to the e-mail addresses denoted on the case's Electronic Service List.

Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

(BY ELECTRONIC TRANSMISSION) I caused a true and correct copy of the document(s) described above to be electronically transmitted to the Labor and Workforce Development Agency ("LWDA") by uploading them to the LWDA's online system under LWDA Case No. LWDA-CM-824851-21.

[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 April 30, 2021 at El Segundo, California.


Dana Joudi