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14 Attorneys for Plaintiffs Cipriano Ponce and Carlos Farias, individually and on behalf of other
15 former and current employees similarly situated.

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF SAN LUIS OBISPO**

18 **CIPRIANO PONCE and CARLOS**
19 **FARIAS, individually and acting in the**
20 **interest of other current and former**
21 **employees,**

22 **Plaintiffs,**

23 **vs.**

24 **AGRO-JAL FARMING ENTERPRISES,**
25 **INC., AGRO-JAL FARMS, INC., a**
26 **California corporation; PALOMA**
27 **PACKING, INC., a California**
28 **corporation; ABEL MALDONADO, SR.,**
ABEL MALDONADO, Jr., FRANK
MALDONADO and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 15 CV-0373

CLASS ACTION

AMENDED* COMPLAINT FOR:
WAGES; PENALTIES; AND
VIOLATION OF UNFAIR
COMPETITION LAW

***AMENDED AS A MATTER OF RIGHT**
PURSUANT TO CALIFORNIA LABOR
CODE § 2699.3(a)(2)(c)

Plaintiffs CIPRIANO PONCE and CARLOS FARIAS bring this action against
Defendants AGRO-JAL FARMING ENTERPRISES, INC., AGRO-JAL FARMS, INC., a
California corporation, PALOMA PACKING, INC., a California corporation, ABEL
MALDONADO, SR., ABEL MALDONADO, Jr., FRANK MALDONADO and DOES 1
through 10, inclusive. Plaintiffs bring this action individually and on behalf of other individuals

employed or formerly employed under common circumstances and facts.

INTRODUCTION

1. This action revolves around Defendants AGRO-JAL FARMING ENTERPRISES, INC., AGRO-JAL FARMS, INC., PALOMA PACKING, INC., ABEL MALDONADO, SR., ABEL MALDONADO, Jr., FRANK MALDONADO and DOES 1 through 10, (hereinafter collectively referred to as Defendants) systematic failure to pay their California non-exempt employees in conformance with California labor law. Plaintiffs CIPRIANO PONCE and CARLOS FARIAS (hereinafter collectively referred to as Plaintiffs) were employed as non-exempt employees by Defendants in and around San Luis Obispo and Santa Barbara Counties as farm workers as directed by Defendants. Plaintiffs allege that they have suffered injury and pecuniary loss as a result of Defendants' failure to comply with labor law. Defendants' employment practices are unlawful and contrary to the public policy of the State of California. Therefore, Plaintiffs bring this action under the Labor Code Private Attorney General Act ("PAGA") (Labor Code §§ 2698, et seq.), individually and acting for the interests of other current and former employees, in order to enforce California Labor laws.

2. Plaintiffs seek restitution and other appropriate relief for Defendants' failure to pay minimum wage, overtime and double time wages; failure to reimburse expenses; failure to authorize and permit the requisite number of meal and rest periods per work period; failure to pay wages due at employment termination in a timely manner; and failure to maintain adequate time records and to provide employees with paycheck deduction statements that accurately show the number of hours they worked or otherwise conform to the requirements of the Labor Code.

3. Plaintiffs, individually and on behalf of other members of Plaintiff Class, also seek injunctive relief requiring each Defendant to comply with all applicable California labor laws and regulations in the future and preventing each Defendant from engaging in and continuing to engage in unlawful and unfair business practices. Plaintiffs also seek declaratory relief enumerating Defendants' violations so Defendants and the general public will have clarity and guidance with regard to Defendants' future employment practices.

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PARTIES

4. Plaintiff CIPRIANO PONCE is an individual who, at all times relevant herein, lived in or around the County of Santa Barbara, State of California. He was employed as a non-exempt employee by Defendants in San Luis Obispo and Santa Barbara Counties during all times relevant. As a result of the labor violations and Defendants' practices described herein, CIPRIANO PONCE has suffered injury in fact and has lost money or property.

5. Plaintiff CARLOS FARIAS is an individual who, at all times relevant herein, lived in or around the County of Santa Barbara, State of California. He was employed as a non-exempt employee by Defendants in San Luis Obispo and Santa Barbara Counties during all times relevant. As a result of the labor violations and Defendants' practices described herein, CARLOS FARIAS has suffered injury in fact and has lost money or property.

6. Plaintiffs and all other individuals currently and formerly employed under common circumstances and facts hereafter will be collectively referred to as members of the Plaintiff Class ("Plaintiff Class").

7. Plaintiffs are informed and believe and thereon allege that Defendants AGRO-JAL FARMING ENTERPRISES, INC., AGRO-JAL FARMS, INC., PALOMA PACKING, INC., and DOES 1 through 10, are in the farming business in San Luis Obispo and Santa Barbara Counties in California. Plaintiffs allege that Defendants ABEL MALDONADO, SR., ABEL MALDONADO, Jr., FRANK MALDONADO are, "persons acting on behalf of an employer" pursuant to Labor Code § 558 or a joint employer of Plaintiffs and Plaintiff Class.

8. At all time relevant herein, Plaintiffs and other members of the Plaintiff Class' wages and hours and working conditions were governed by, inter alia, Title 8, California Code of Regulations Section 11140, Industrial Welfare Commission Order No. 14 regulating Wages, Hours and Working Conditions in agricultural conditions.

9. Defendants directly or indirectly or through an agent or other person exercise control or exercised control over Plaintiffs' and other members of the Plaintiff Class' wages, hours and working conditions.

10. Plaintiffs are ignorant of the true names or capacities of the Defendants sued

1 herein under the fictitious names of DOES 1 through 10, inclusive, and therefore sues
2 Defendants under such fictitious names. Plaintiffs will amend this complaint to allege the true
3 names or capacities of these Defendants once they have been ascertained. Plaintiffs are informed
4 and believe and thereon allege that each Defendant is responsible in some manner for the
5 occurrences herein alleged, and that the damages herein alleged were actually and proximately
6 caused by each Defendant's conduct.

7 11. Plaintiffs are informed and believe and thereon allege that at all times mentioned
8 herein, Defendants, including DOES, were acting as the agent of every other Defendant, and all
9 acts alleged to have been committed by any Defendants were committed on behalf of every other
10 Defendant; and, at all times mentioned herein, each alleged act was committed by each
11 Defendant and/or agent, servant, or employee of each Defendant, and each Defendant directed,
12 authorized or ratified each such act. Plaintiffs are informed and believe and thereon allege that
13 each Defendant, including DOES, was the agent, employee, coconspirator, business affiliate,
14 subsidiary, parent entity, owner and/or joint venturer of each other Defendant; and, in causing the
15 injuries herein alleged, each Defendant was acting at least in part within the course and scope of
16 such agency, employment, conspiracy, joint employership, alter ego status, and/or joint venture,
17 and with the permission and consent of each of the other Defendants.

18 JURISDICTION AND VENUE

19 12. This court has jurisdiction over all causes of action asserted herein pursuant to the
20 California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in
21 all cases except those given to other trial courts. The Court also has jurisdiction over certain
22 causes of action pursuant to Business and Professions Code §§ 17203 and 17204, which provide
23 for exclusive jurisdiction for enforcement of this statute in any court of competent jurisdiction.

24 13. Venue in San Luis Obispo County is proper under Business & Professions Code §
25 17203 and California Code of Civil Procedure § 395.5 because Defendants' unlawful conduct
26 occurred in San Luis Obispo County, Defendants' conducted substantial business in San Luis
27 Obispo County and Plaintiffs worked at Defendants' fields located in San Luis Obispo County,
28 and Defendants' liability arose in part in this county.

1 **FACTUAL ALLEGATIONS**

2 **ALLEGATIONS OF CLASS REPRESENTATIVES**

3 14. Plaintiffs worked for Defendants in various fields located in San Luis Obispo and
4 Santa Barbara Counties, California. Plaintiffs were employed as non-exempt employees who
5 performed work as a farm worker doing farm labor in an agricultural farming business that
6 plants, grows, harvests, cools, processes and ships fresh fruits and vegetables. Defendants
7 employed Plaintiff Cipriano Ponce from some time in 1984 through September 2014 and
8 Plaintiff Carlos Farias worked for Defendants on or about May 2008 through January 2010 and
9 April 2010 through April 2012.

10 15. Plaintiffs are informed and believe and thereon allege that in 2015 and in the four
11 years preceding the filing of this complaint, each Defendant has employed other individuals
12 under the same or similar circumstances as Plaintiffs, and has employed them at the same and/or
13 similar job sites as Plaintiffs, in San Luis Obispo and Santa Barbara Counties, California. These
14 individuals, along with Plaintiffs, are referred to collectively as the Plaintiff Class in this
15 Complaint.

16 16. Throughout Plaintiffs' tenure with Defendants, Defendants scheduled Plaintiffs'
17 and other members of the Plaintiff Class' workday. Plaintiffs and other members of the Plaintiff
18 Class are or were instructed and required to report to work at Defendants' place of business and
19 to work. Plaintiffs worked approximately thirteen hours per day, six days a week and six hours
20 on the seventh day.

21 17. Defendants have failed to compensate Plaintiffs and on information and belief,
22 other members of Plaintiff Class, correct minimum wages for all hours worked in a shift at the
23 required minimum wages rate. Plaintiffs and other members of the Plaintiff Class are only paid
24 for the time they actually worked even though workers have established reporting hours and must
25 be on site during those hours or risk being fired. As a result, Defendants have failed to
26 compensate Plaintiffs and on information and belief, other members of Plaintiff Class with
27 correct minimum wages for all hours worked and the correct overtime wages for all hours
28 worked in excess of ten hours in a day for Defendants.

1 18. Defendants have failed to provide Plaintiffs and, on information and belief, other
2 members of the Plaintiff Class with a full 30 minute meal period for each workday in excess of
3 10 hours without a second meal period. When Plaintiffs and other members of Plaintiff Class
4 missed their proper meal periods they were not provided with additional compensation as
5 required by California Labor Code § 512 and Wage Order 14.

6 19. Defendants have failed to provide Plaintiffs and on information and belief, and
7 other members of Plaintiff Class rest periods based on the total hours worked daily at the rate of
8 ten (10) minutes net rest time per four (4) hours or major fraction thereof. When Plaintiffs and,
9 on information and belief, other members of Plaintiff Class missed their proper rest periods they
10 were not provided with additional compensation pursuant to Labor Code § 226.7 and Wage
11 Order 14.

12 20. Defendants have failed to provide Plaintiffs and on information and belief, other
13 members of Plaintiff Class with expense reimbursements. When Plaintiffs and, on information
14 and belief, other members of Plaintiff Class' incurred work related expenses (mileage, gas, tools,
15 and equipment, etc.) they were not reimbursed for their expenses pursuant to Labor Code § 2802
16 and Wage Order 14.

17 21. As a result of the above, Defendants did not pay Plaintiffs and, on information and
18 belief, other members of Plaintiff Class for all hours worked, the correct minimum wage,
19 liquidated damages, overtime pay, doubletime pay, missed meal or rest periods, and
20 reimbursement of expenses.

21 22. Plaintiffs and, on information and belief, other members of Plaintiff Class have
22 left the employment of Defendants and have not been paid the correct minimum wage, overtime
23 pay, doubletime pay, missed meal and rest periods, and reimbursement of expenses.
24 Defendants either terminated the employment of Plaintiffs and, on information and belief, other
25 members of Plaintiff Class or they voluntarily left their employment with Defendants.

26 23. Defendants violated Labor Code § 201 or 202 by failing to pay Plaintiffs and, on
27 information and belief, other members of Plaintiff Class all wages due on the date of Plaintiffs'
28 or members of Plaintiff Class' involuntary termination or within 72 hours of receipt of notice of

1 Employee's voluntary termination.

2 24. Throughout Plaintiffs' tenure with Defendants, Defendants have failed to maintain
3 or furnish time records reflecting the true hours that Plaintiffs and, on information and belief,
4 other members of Plaintiff Class have worked, and have otherwise failed to keep and provide
5 required employment records in violation of California Labor Code and Regulations.

6 25. The additional factual allegations below are likely to have evidentiary support
7 after a reasonable opportunity for further investigation and discovery.

8 26. Plaintiffs and, on information and belief, other members of Plaintiff Class are
9 aggrieved employees as defined in Labor Code § 2699.

10 27. Defendants committed the following violations of the California Labor Code
11 against Plaintiffs and, on information and belief, against members of Plaintiff Class:

12 a. Defendants violated Labor Code §§ 210, 216, 223, 558, 1194, 1197, 1197.1, 1198,
13 and 8 Cal. Code of Regulations § 11140 by failing to pay Plaintiffs and, on
14 information and belief, other members of Plaintiff Class all wages due for all
15 hours worked.

16 b. Defendants violated Labor Code §§ 226, 558, 1174, 1197, 1197.1, 1198 and 1199
17 and provisions of the IWC Wage Order 14 by failing to pay minimum wage and
18 overtime/doubletime wages for all hours worked; failing to keep accurate
19 information with respect to all hours worked, including the beginning and ending
20 of each work and meal period.

21 c. Defendants violated Labor Code §§ 226.7, 512 and 558 by failing to permit and
22 provide Plaintiffs and, on information and belief, other members of Plaintiff Class
23 all meal and rest periods in accordance with IWC Wage Order 14.

24 d. Defendants violated Labor Code §§ 201 and/or 202 by failing to pay Plaintiffs
25 and, on information and belief, other members of Plaintiff Class all wages due on
26 the date of employee's involuntary termination or within 72 hours of receipt of
27 notice of employee's voluntary termination.

28 e. Defendants violated Labor Code §§ 226 and 226.3 by failing to maintain and

furnish to Plaintiffs and, on information and belief, other members of Plaintiff Class accurate time records showing all hours worked, including but not limited to the actual time worked and the actual time scheduled and spent on lunch breaks.

f. Defendants violated Labor Code § 2802 by failing to indemnify Plaintiffs and, on information and belief, other members of Plaintiff Class for all necessary expenditures or losses incurred in direct consequences of the discharge of their duties and their obedience to the direction of Defendants.

g. Defendants violated Labor Code §§ 1197.1, 1198 and 1199 by causing Plaintiffs and on information and belief, other members of Plaintiff Class to work more than the maximum hours and below the standard condition of labor fixed by the commission, and to be paid a wage less than the minimum fixed by the commission.

CLASS ALLEGATIONS

28. Proposed Class. Pursuant to California Code of Civil Procedure § 382, Plaintiffs Cipriano Ponce and Carlos Farias, as Class Representatives, bring this action on their own behalf and on behalf of a class comprised of: all Defendants employees who have worked as farm workers who are not exempt from minimum wage and overtime laws and covered by IWC Wage Order 14 and 8 Cal. Code of Regulations § 11140 ("nonexempt ") at Agro-Jal Farming Enterprises, Inc., Agro-Jal Farms, Inc., and Paloma Packing, Inc., during the period beginning four years prior to the filing of the complaint in this action to the present ("Plaintiff Class").

29. Superiority of Class Action Mechanism. Class certification is appropriate because Defendants have implemented a scheme that is generally applicable to the Plaintiff Class, making it appropriate to issue final injunctive relief and corresponding declaratory relief with respect to the Plaintiff Class as a whole. Class certification is also appropriate because the common questions of law and fact predominate over any questions affecting only individual members of the class. Each member of the proposed Plaintiff Class has been injured and is entitled to recover. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Further, the

1 prosecution of separate actions against Defendants by individual class members would create a
2 risk of inconsistent or varying adjudications that would establish incompatible standards of
3 conduct for Defendants. Plaintiffs are informed and believe and thereon allege that the proposed
4 Plaintiff Class consists of well more than 100 current and former employees. Members of the
5 class are ascertainable but so numerous that joinder is impracticable. For all these and other
6 reasons, a class action is superior to other available methods for the fair and efficient
7 adjudication of the controversy set forth in this complaint.

8 30. Community of Interest. Defendants, by their practices and policies, have violated
9 the rights of their employees under California's Unfair Competition Law (Business &
10 Professions Code §§ 17200 *et seq.*), and the California Labor Code. The questions raised by this
11 complaint are of common or general interest to the Plaintiff Class members, who have a well-
12 defined community of interest in the questions of law and fact raised in this action. On
13 information and belief, the common questions of law and fact affecting the rights of all Class
14 members include, but are not necessarily limited to:

- 15 a. Whether Defendants' pay practices conform to the requirements of the
16 California Labor Code;
- 17 b. Whether Defendants violated Labor Code §1194, and the applicable Wage
18 Order by failing to pay the overtime premiums owed to non-exempt
19 employees who worked in excess of ten (10) hours in one work day;
- 20 c. Whether Defendants failed to pay members of the Plaintiff Class their full
21 wages when due upon termination in violation of Labor Code §§ 201, 202
22 and 203;
- 23 d. Whether Defendants failed to pay minimum wages to members of the
24 Plaintiff Class for all hours worked, as required by Labor Code §§ 1197,
25 1194(a), 1194.2, and the minimum wage provisions of Wage Order 14;
- 26 e. Whether Defendants are required to pay liquidated damages to Class
27 members who were not paid the minimum wage for all hours worked as
28 required by Labor Code § 1194.2;

- 1 f. Whether Defendants are required to pay waiting time penalties to Class
2 members who were not paid wages due upon termination during the
3 relevant statutory period, as required by Labor Code §§ 201, 202 and 203;
4 g. Whether Defendants violated Labor Code § 226.7 and the meal and rest
5 period provisions of Wage Order 14 and Labor Code §§ 512 and 558 by
6 failing to provide adequate off-duty meal periods and/or by failing to
7 authorize and permit members of the Plaintiff Class to take all rest periods
8 to which they were entitled;
9 h. Whether Defendants violated Labor Code § 226.7 by failing to pay
10 members of the Plaintiff Class the premium compensation mandated by
11 that statute for missed meal and rest periods;
12 i. Whether Defendants failed to provide accurate itemized wage statements
13 to members of the Plaintiff Class, as required by Labor Code § 226;
14 j. Whether Defendants violated Labor Code § 1174 and the record keeping
15 provisions of the applicable Wage Order by failing to keep accurate
16 records of employees' hours of work and other required documentation;
17 k. What relief is necessary to remedy Defendants' unfair and unlawful
18 conduct as herein alleged;
19 l. Other questions of law and fact.

20 31. Adequacy of Plaintiffs as Class Representatives. The Class Representatives can
21 adequately and fairly represent the interests of the Plaintiff Class as defined above because their
22 individual interests are consistent with, not antagonistic to, the interests of the class. The claims
23 of the Plaintiffs are typical of the claims of the class as a whole in that they arise from
24 Defendants' overall failure to conform their wage and hour practices to the requirements of the
25 California Labor Code and the applicable Wage Order. Each of the Plaintiffs was employed by
26 Defendants as a nonexempt farm worker, in San Luis Obispo County, for Agro-Jal Farming
27 Enterprises, Inc., Agro-Jal Farms, Inc., Paloma Packing, Inc., during the relevant statutory period.
28 Each of the Plaintiffs were underpaid because of Defendants' unlawful employment policies and

1 practices.

2 32. Adequacy of Counsel for the Class. Counsel for Plaintiffs possess the
3 requisite resources and ability to prosecute this case as a class action and are experienced labor
4 and employment attorneys who have successfully litigated other cases and class actions involving
5 similar issues.

6 **FIRST CAUSE OF ACTION**
7 **FAILURE TO PAY MINIMUM WAGE**
8 **(LABOR CODE §1197, 1197.1, 1194(A), 1194.2 & WAGE ORDER 14)**
9 **PLAINTIFFS AGAINST ALL DEFENDANTS**

10 33. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.
11 This action is brought by Plaintiffs for themselves and, on information and belief, as a
12 representative of other members of Plaintiff Class under Labor Code §§ 558, 1194 and 1194.2,
13 which provides that any employee receiving less than the legal minimum wage is entitled to
14 recover the unpaid balance of the full amount of this minimum wage compensation in a civil
15 action plus an additional equal amount as liquidated damages, interest thereon, reasonable
16 attorney's fees, and costs of suit.

17 34. Plaintiffs for themselves and, on information and belief, as a representative of
18 other members of Plaintiff Class are or were employees in the State of California and each
19 Defendant was and is an employer employing persons in the State of California. As such,
20 Plaintiffs for themselves and, on information and belief, as a representative of other members of
21 Plaintiff Class, were the type of persons contemplated to be protected by Labor Code §§ 1194
22 and 1194.2 and said provisions were intended to apply to Defendants and to prevent the type of
23 injury and damage set forth herein.

24 35. Plaintiffs for themselves and, on information and belief, other members of
25 Plaintiff Class required to work thirteen (13) hour shifts six (6) to seven (7) days a week without
26 the proper compensation. As such, Plaintiffs for themselves and, on information and belief, other
27 members of Plaintiff Class have not been paid the California minimum wage for all hours
28 worked.

36. As a result of Defendants' conduct in not paying Plaintiffs for themselves and, on

1 information and belief, other members Plaintiff Class the legal minimum wage for all hours
2 worked, Plaintiffs for themselves and, on information and belief, other members of Plaintiff
3 Class have been deprived of the legal minimum wage for all hours they worked.

4 37. Plaintiffs, individually and on behalf of other current and former employees, bring
5 this action for minimum wage, interest, and costs of suit pursuant to California Labor Code §
6 1194(a).

7 WHEREFORE, Plaintiffs and other current and former members of Plaintiff Class are
8 entitled to recover the unpaid minimum wages, liquidated damages in an amount equal to the
9 minimum wages unlawfully unpaid pursuant to California Labor Code § 1194.2, interest thereon,
10 costs of suit; as well as reasonable attorney's fees. Defendants' acts and omissions as alleged
11 herein were willful, in bad faith, and without reasonable grounds for believing that the acts or
12 omissions were not a violation of state law.

13 **SECOND CAUSE OF ACTION**
14 **FAILURE TO PAY OVERTIME COMPENSATION**
15 **(LABOR CODE §§ 558, 1194 & 1194.2)**
PLAINTIFFS AGAINST ALL DEFENDANTS

16 38. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

17 39. As described herein, Defendants violated California Labor Code § 558, 1194
18 and the Wage Order 14 by employing Plaintiffs and other members of Plaintiff Class, in excess
19 of ten (10) hours in one day, without paying the required overtime rate.

20 40. Plaintiffs seek to enforce this provision pursuant to Labor Code §1194(a).
21 Plaintiffs and, on information and belief, other members Plaintiff Class were employees in the
22 State of California and Defendants were an employer in the State of California. As such,
23 Plaintiffs and, on information and belief, other members of Plaintiff Class were the type of
24 person contemplated to be protected by and the Labor Code and said regulations were intended to
25 apply to Defendants and to prevent the type of injury and damage set forth herein.

26 41. As a result of Defendants' conduct in requiring Plaintiffs and, on information and
27 belief, other members of Plaintiff Class to work in excess of ten (10) hours per day without
28 paying the required overtime, Plaintiffs and, on information and belief, as a representative of

1 other members of Plaintiff Class have sustained and will sustain damages in the amount of the
2 unpaid overtime for all overtime hours worked together with interest thereon and attorneys' fees
3 and costs of suit.

4 WHEREFORE, Plaintiffs request relief as described herein and below.

5
6 **THIRD CAUSE OF ACTION**
7 **FAILURE TO PAY WAGES DUE AT TERMINATION IN TIMELY MANNER**
8 **(LABOR CODE §§ 201, 202 & 203)**
9 **PLAINTIFFS AGAINST ALL DEFENDANTS**

10 42. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

11 43. Defendants failed to pay Plaintiffs, and on information and belief, other members
12 of Plaintiff Class as herein alleged.

13 44. California Labor Code §§ 201 and 202 provide that all wages are due an employee
14 immediately upon discharge or within seventy-two (72) hours of termination where an employee
15 quits without providing seventy-two (72) hour notice.

16 45. Defendants failed to pay, in a timely manner, Plaintiffs, and, on information and
17 belief, other members of Plaintiff Class all of their wages due for work performed, and this
18 failure continued through the time in which Plaintiffs, and other members of Plaintiff Class quit
19 or were discharged from their employment with Defendants. As a result, Defendants have
20 violated California Labor Codes §§ 201 and 202.

21 46. California Labor Code § 203 provides for a penalty of one day of wages, for up to
22 thirty (30) days, for each day the employer willfully fails to pay terminated employees.

23 47. Defendants violated California Labor code §§ 201 and 202 by failing to pay
24 employees who quit or were discharged all of the wages due pursuant to the time lines provided
25 in those sections. Defendants willfully failed to pay all wages due because, among other things,
26 the failure to pay was not inadvertent or accidental.

27 48. Plaintiffs, and, on information and belief, as a representative of other members of
28 Plaintiff Class, have not received all compensation due, entitling them to penalties under Labor
Code § 203.

49. More than 30 days have passed since Plaintiffs, and, on information and belief,

1 members of Plaintiff Class, have left Defendants' employ without receiving payment pursuant to
2 Labor Code §§ 201 or 202, as applicable. As a consequence of Defendants' willful conduct in not
3 paying all earned wages, Plaintiffs, and as a representative of certain members of Plaintiff Class
4 are entitled to thirty (30) working days' wages as a penalty under Labor Code § 203.

5 WHEREFORE, Plaintiffs request relief as described herein and below.

6 **FOURTH CAUSE OF ACTION**
7 **FAILURE TO REIMBURSE EXPENSES**
8 **(LABOR CODE § 2802)**
9 **PLAINTIFFS AGAINST ALL DEFENDANTS**

10 50. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

11 51. Defendants failed to pay Plaintiffs, and on information and belief, other members
12 of Plaintiff Class as herein alleged.

13 52. California Labor Code § 2802 provides employers shall indemnify their
14 employees for all necessary expenditures or losses incurred by the employees in direct
15 consequence of the discharge of their duties or of their obedience to the directions of the
16 employer.

17 53. IWC Wage Order 14 Section 9(B) provides that when tools or equipment are
18 required by the employer or are necessary to the performance of a job, such tools and equipment
19 shall be provided and maintained by the employer, except that an employee whose wages are at
20 least two (2) times the minimum wage provided herein may be required to provide and maintain
21 hand tools and equipment customarily required by the trade or craft.

22 54. During the relevant statutory time period, Defendants have required Plaintiffs and
23 other members of Plaintiff Class, to expend monies in direct consequence of the discharge of
24 their duties or of their obedience to the directions of the employer for items including, but not
25 limited to, purchasing gasoline to drive from work site to work site and other locations, and for
26 purchasing drinking water, gas for use of personal truck, knives used to cut down harvest and
27 protective gear such as boots, overalls, and rain gear.

28 55. As a direct and proximate result of Defendants' conduct as alleged above,
Plaintiffs and other members of Plaintiff Class have sustained damages in the amount of the

monies expended by them in direct consequence of the discharge of their duties or of their obedience to the directions of the employer for items including, but not limited to, cost of gasoline to drive from work site to work site and the various work sites, and for purchasing drinking water, gas for use of personal truck, knives used to cut down harvest protective gear, such as boots, overalls and jackets all used while working.

WHEREFORE, Plaintiffs request relief as described herein and below.

FIFTH CAUSE OF ACTION
UNPAID MEAL PERIODS
(LABOR CODE §§ 226.7 & 512)
PLAINTIFFS AGAINST ALL DEFENDANTS

56. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

57. This action is brought by Plaintiffs for themselves and, on information and belief, as a representative of other members of Plaintiff Class for unpaid Meal Periods under Labor Code §§ 226.7 and 512 and Section 11 of Wage Order 14, which provide that employers must provide employees who work more than five (5) hours per day with a thirty (30) minute meal period wherein the employee is relieved of all duties. Further, pursuant to Labor Code § 226.7©, if an employer fails to provide an employee a meal period in accordance with Wage Order 14, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

58. Plaintiffs and, on information and belief, other members of Plaintiff Class were not provided with thirty (30) minute meal periods during their employment with Defendants. As a direct and proximate result of Defendants' conduct as alleged above, Plaintiffs and, on information and belief, other members of Plaintiff Class have sustained damages in the amount of one hour of wages for each day they missed their thirty (30) minute meal periods.

WHEREFORE, Plaintiffs request relief as described herein and below.

SIXTH CAUSE OF ACTION
UNPAID REST PERIODS
(LABOR CODE §§ 226.7)
PLAINTIFFS AGAINST ALL DEFENDANTS

59. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

1 60. This action is brought by Plaintiffs for themselves and, on information and belief,
2 other members of Plaintiff Class, under Labor Code § 226.7 and Section 12 of Wage Order 14,
3 which provides that employers shall authorize and permit employees to take a rest period of ten
4 (10) minutes net rest time per four (4) hours, or major fraction thereof, worked. This action is
5 further brought under Labor Code § 226.7© and Section 12 of Wage Order 14, which provides
6 that if an employer fails to provide an employee with a rest period, the employer shall pay the
7 employee one hour of pay for each work day that a rest period was missed.

8 61. Plaintiffs and, on information and belief, other members of Plaintiff Class were
9 not provided rest periods during their employment with Defendants.

10 62. As a direct and proximate result of Defendants' conduct as alleged above,
11 Plaintiffs and, on information and belief, other members of Plaintiff Class have sustained
12 damages in the amount of one hour of wages for each day they missed their a rest period.

13 WHEREFORE, Plaintiffs request relief as described herein and below.

14 **SEVENTH CAUSE OF ACTION**
15 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH**
16 **ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS**
 (CALIFORNIA LABOR CODE § 226)
 PLAINTIFFS AGAINST ALL DEFENDANTS

17 63. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

18 64. This action is brought by Plaintiffs for themselves and, on information and belief,
19 other members of Plaintiff Class under Labor Code § 226, which sets reporting requirements for
20 employers when paying wages, including,

21 "Every employer shall, semimonthly or at the time of each payment of
22 wages, furnish each of his or her employees, either as a detachable part of the
23 check, draft, or voucher paying the employee's wages, or separately when wages
24 are paid by personal check or cash, an accurate itemized statement in writing
25 showing ... (2) total hours worked by the employee, ... (4) all deductions, provided
26 that all deductions made on written orders of the employee may be aggregated and
27 shown as one item, (5) net wages earned, ... (8) the name and address of the legal
28 entity that is the employer, and (9) all applicable hourly rates in effect during the

1 pay period and the corresponding number of hours worked at each hourly rate by
2 the employee.”

3 Subdivision (e) provides, “An employee suffering injury as a result of a
4 knowing and intentional failure by an employer to comply with subdivision (a) is
5 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the
6 initial pay period in which a violation occurs and one hundred dollars (\$100) per
7 employee for each violation in a subsequent pay period, not exceeding an
8 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
9 costs and reasonable attorney’s fees.”

10 Subdivision (g) provides, “An employee may also bring an action for
11 injunctive relief to ensure compliance with this section, and is entitled to an award
12 of costs and reasonable attorney’s fees.”

13 65. Defendants knowingly and intentionally failed to provide paycheck deduction
14 statements that complied with Labor Code § 226 to Plaintiffs and, on information and belief,
15 other members of Plaintiff Class by, *inter alia*, failing to document the total hours worked by the
16 employee, all deductions, net wages earned, the name and address of the legal entity that is the
17 employer, and/or all applicable hourly rates in effect during the pay period and the corresponding
18 number of hours worked at each hourly rate.

19 66. Plaintiffs and, on information and belief, other members of Plaintiff Class have
20 been damaged by Defendants’ failure to comply with Labor Code § 226 by, *inter alia*, being
21 unaware of, and therefore having to prove to this Court, the total hours worked by the employee,
22 all deductions, net wages earned, the name and address of the legal entity that is the employer,
23 and/or all applicable hourly rates in effect during the pay period and the corresponding number of
24 hours worked at each hourly rate.

25 67. As a direct and proximate result of Defendants’ conduct as alleged above,
26 Plaintiffs and, as a representative of and on information and belief, other members of Plaintiff
27 Class are entitled to a civil penalty of fifty dollars (\$50) for the initial pay period, and one
28 hundred dollars (\$100) for each subsequent pay period for which Defendants violated the

1 reporting requirements of Labor Code § 226, up to a maximum of \$4,000, together with interest
2 thereon and attorneys' fees and costs.

3 WHEREFORE, Plaintiffs request relief as described herein and below.

4 **EIGHTH CAUSE OF ACTION**
5 **UNFAIR AND UNLAWFUL ACTS IN VIOLATION OF UNFAIR COMPETITION LAW**
6 **(CALIFORNIA BUS. & PROF CODE § 17200 ET SEQ.)**
7 **PLAINTIFFS AGAINST ALL DEFENDANTS**

8 68. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

9 69. By this cause of action, Plaintiffs seek to enforce important rights affecting the
10 public interest.

11 70. Plaintiffs, as a representative of and on information and belief, other members of
12 Plaintiff Class suffered injury-in-fact and have lost money as a result of Defendants' unfair
13 competition alleged herein. Among the persons adversely affected by the unfair business
14 practices of Defendants as alleged herein are Defendants' employees.

15 71. Defendants are engaged in unlawful and unfair activity prohibited by Business and
16 Professions Code §§ 17200 et seq. The actions of Defendants as alleged within this complaint,
17 constitute unlawful and unfair business practices with the meaning of Business and Professions
18 Code §§ 17200 et seq.

19 As described above, Defendants have violated the following California laws:

20 a. violation of California Labor Code § 201 by failing to pay all wages earned and
21 unpaid at the time of Plaintiffs' or other members of Plaintiff Class' discharge from employment
22 by Defendants;

23 b. violation of California Labor Code § 202 by failing to pay all wages earned and
24 unpaid within 72 hours of the time of quitting by Plaintiffs or members of Plaintiff Class from
25 their employment by Defendants;

26 c. violation of California Labor Codes §§ 204 and 210 for failure to pay wages due;

27 d. violation of California Labor Code §§ 216 and 225.5 by willfully refusing to pay
28 wages due and payable after demand was made while having the ability to pay, and by falsely
denying the amount or validity thereof, or that the same is due, with intent to secure for

1 themselves any discount upon such indebtedness, and with intent to annoy, harass, oppress,
2 hinder, delay, or defraud, Plaintiffs or other members of Plaintiff Class to whom such
3 indebtedness is due;

4 e. violation of California Labor Code § 223 by secretly paying a lower wage to
5 Plaintiffs or other members of Plaintiff Class while purporting to pay the wage designated by
6 statute or by contract;

7 f. violation of California Labor Code § 226.3 by failing to provide Plaintiffs or other
8 current and former members of Plaintiff Class with accurate wage statements;

9 g. violation of California Labor Code § 226.6 by knowingly and intentionally
10 violating the provisions of California Labor Code § 226;

11 h. violation of California Labor Code § 226.7 by requiring Plaintiffs or other
12 members of Plaintiff Class to work during meal periods and rest breaks mandated by Wage Order
13 14 and failing to provide said Plaintiffs and other members of Plaintiff Class one (1) hour
14 additional wages at the non-exempt employee's regular rate of compensation for each work day
15 that the meal period is not provided and one (1) hour additional wages at the non-exempt
16 employee's regular rate of compensation for each work day that a rest break is not provided;

17 i. violation of California Labor Code § 2802 by failing to indemnify Plaintiff and
18 other members of Plaintiff Class for all necessary expenditures or losses incurred by them in
19 direct consequences of the discharge of their duties and their obedience to the direction of
20 Defendants.

21 j. violation of California Labor Code § 512 by failing to provide Plaintiffs and other
22 members of Plaintiff Class with a meal period of not less than 30 minutes for every work period
23 of more than five hours per day and by not providing Plaintiffs and other members of Plaintiff
24 Class with a second meal period of not less than 30 minutes for a work period of more than 10
25 hours per day;

26 k. Defendants violated Labor Code § 558 and provisions of IWC Wage Order 14 by
27 failing to pay minimum wage, overtime wages for all hours worked; failing to authorize and
28 permit rest periods and provide meal periods and failing to keep accurate information with

1 respect to all hours worked, including the beginning and ending of each day of work and meal
2 period.

3 1. violation of Wage Order 14 for failing to authorize and permit all employees to
4 take rest periods, which insofar as practicable shall be in the middle of each work period, based
5 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
6 major fraction thereof;

7 m. violation of California Labor Code §§ 1197 and 1198 by failing to pay minimum
8 and/or overtime wages for all hours worked by Plaintiffs and other members of Plaintiff Class;

9 n. violation of California Labor Code § 1197.1 by failing to pay minimum and/or
10 overtime wages for all hours worked by Plaintiffs and other members of Plaintiff Class;

11 o. violation of California Labor Code §§ 1198 and 1199 by violating or causing
12 violations of the IWC Wage Order 14.

13 p. violation of Labor Code § 2802 by failing to indemnify Plaintiffs and, on
14 information and belief, other members of Plaintiff Class for all necessary expenditures or losses
15 incurred in direct consequences of the discharge of their duties and their obedience to the
16 direction of Defendants.

17 72. Defendants' acts and omissions alleged herein also constitute unfair and unlawful
18 practices in violation of Cal. Bus. & Prof. Code §§ 17200 et seq. because Defendants' practices
19 violate the above noted laws, and/or violate an established public policy and/or the practice is
20 immoral, unethical, oppressive, unscrupulous and substantially injurious to Plaintiffs and other
21 members of Plaintiff Class, and the public.

22 73. As a result of their unlawful acts, Defendants have reaped and continue to reap
23 unfair benefits and unlawful profits at the expense of Plaintiffs and other members of Plaintiff
24 Class. Defendant should be enjoined from this activity and ordered to restore to Plaintiffs and
25 other members of Plaintiff Class, their wrongfully withheld wages pursuant to Business and
26 Professions Code § 17203. Plaintiffs are informed and believe and other members of Plaintiff
27 Class, and thereon allege, that Defendant is unjustly enriched through its failure to pay legal and
28 contractual wages, and/or other compensation. Plaintiffs are informed and believe and other

1 members of Plaintiff Class, thereon allege, that Plaintiffs and other members of Plaintiff Class
2 are prejudiced by Defendants' unfair trade practices.

3 74. Business & Professions Code §§ 17200 *et seq.* defines unfair competition to
4 include any "unfair," "unlawful," or "deceptive" business practice. Business & Professions Code
5 §§ 17200 *et seq.* provides for injunctive and restitutionary relief for violations. Defendants'
6 failure to provide their employees with the lawful minimum or overtime wages, meal or rest
7 period premiums, travel time compensation and reimbursement of expenses, constitutes an
8 unfair, unlawful and deceptive business practice.

9 75. Under Business & Professions Code §§ 17200 and 17203, Plaintiffs and other
10 members of Plaintiff Class are also entitled to recover penalties under Labor Code §§ 203 and
11 226.

12 WHEREFORE, Plaintiffs request relief as described herein and below.

13 **NINTH CAUSE OF ACTION**
14 **PENALTIES PURSUANT TO THE LABOR CODE**
15 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**
California Labor Code §§ 226.3, 558, 1198, 2699
PLAINTIFF AGAINST ALL DEFENDANTS

16 76. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

17 77. Plaintiff submits this Amended Complaint to include allegations pursuant to
18 Labor Code § 2699 *et seq.* (The Private Attorney General Act). Labor Code § 2699.3(a)(2)©,
19 provides that, notwithstanding any other provision of law, Plaintiffs may as a matter of right
20 amend an existing complaint to add a cause of action arising under §§ 2699 *et seq.*

21 78. Plaintiffs are an aggrieved employees as defined in Labor Code § 2699(a).

22 Labor Code § 2699(f) provides:

23 For all provisions of this code except those for which a civil
24 penalty is specifically provided, there is established a civil penalty for a
25 violation of these provisions, as follows: . . . (2) If, at the time of the
26 alleged violation, the person employs one or more employees, the civil
27 penalty is one hundred dollars (\$100) for each aggrieved employee per pay
28 period for the initial violation and two hundred dollars (\$200) for each

aggrieved employee per pay period for each subsequent violation.

Plaintiffs seek civil penalties as provided under applicable Labor Code sections for violations of the Labor Code alleged herein pursuant to Labor Code § 2699(a). To the extent that any violation alleged herein does not carry a penalty, Plaintiffs seek civil penalties pursuant to Labor Code § 2699(f) for Defendants' violations of those sections. The pre lawsuit notice requirements set forth in Labor Code § 2699.3 have been satisfied by written notice by certified mail to Defendant and to the Labor and Workforce Development Agency of the Labor Code and IWC Wage Order violations averred herein. The Agency failed to timely notify Plaintiff it would investigate these violations.

79. Plaintiff seek penalties on behalf of themselves and on behalf of members of Plaintiff Class similarly situated as provided by Labor Code § 2699(I).

80. Defendants are liable to Plaintiffs for the civil penalties set forth in this Complaint. Plaintiffs are also entitled to an award of attorneys' fees and costs as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For unpaid minimum wages, according to proof, together with interest thereon, for Plaintiffs and other members of Plaintiff Class;

2. For an amount equal to the unpaid minimum wages, according to proof, together with interest thereon under Labor Code § 1194.2, together with interest thereon, for Plaintiffs and other members of Plaintiff Class;

3. For an award of all unpaid overtime wages in an amount to be proven at trial.

4. For 30-day penalties under Labor Code § 203, according to proof, together with interest thereon, for Plaintiffs and other members of Plaintiff Class;

5. For reimbursement of all expenses incurred in direct consequence of the discharge of their duties or of their obedience to the directions of the employer according to proof, together with interest thereon;

6. For one hour of pay for each workday that a meal period was missed, according to proof, for Plaintiffs;

1 7. For one hour of pay for each workday that a rest period was missed, according to
2 proof, for Plaintiffs;

3 8. For a wage premium of fifty dollars (\$50) for the first period for which
4 Defendants supplied Plaintiffs and other members of Plaintiff Class paycheck deduction
5 statements in violation of Labor Code § 226 and one hundred dollars (\$100) for each subsequent
6 pay period for which Defendants supplied Plaintiff and members of Plaintiff Class paycheck
7 deduction statements in violation of Labor Code § 226, for Plaintiffs and other members of
8 Plaintiff Class;

9 9. For an order enjoining Defendants from continuing to not provide paycheck
10 deduction statements violating Labor Code § 226;

11 10. For restitution of full amounts, plus interest at the legal rate, of all unpaid
12 minimum or overtime wages, travel time, meal or rest period premiums, and rest period premium
13 wages for Plaintiffs; Reimbursement of expenses and indemnification Labor Code § 2802;

14 11. For an order enjoining Defendants from continuing to engage in the
15 aforementioned unlawful business practice in violation of Business & Professions Code § 17200;

16 12. For all provisions of the Labor Code that state a specific penalty, penalties for
17 each aggrieved employee as specifically provided;

18 13. Where the statute does not provide a specific penalty, for a civil penalty of one
19 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
20 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
21 violation.

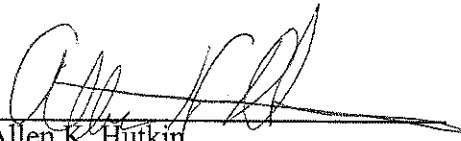
22 14. For attorneys' fees, expenses and costs under Labor Code §§ 226 and 1194;

23 15. For interest under Labor Code §§ 218.6, 226, and 1194; and

24 16. For such other and further relief as the Court deems just and proper.
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1 DATED: September 1, 2015.

HUTKIN LAW FIRM

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5 Allen K. Hutkin
6 Attorney for Plaintiffs Cipriano Ponce
7 and Carlos Farias for themselves and
8 on behalf of others similarly situated
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