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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF TULARE**

10 ORLANDO URTIZ CORTEZ, as an
11 individual and on behalf of all others similarly
12 situated,

13 Plaintiff,

14 vs.

15 AMERICANA LABOR CONTRACTOR,
16 INC., a California corporation; and DOES 1
17 through 100,

18 Defendants.

Case No.: VCU286703

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

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

- (1) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);**
- (2) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (3) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (4) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*);**
- (5) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512); AND**
- (6) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Orlando Urtiz Cortez ("Plaintiff"), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class & Representative Action Complaint ("FAC")
3 against Americana 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 Complaint for recovery of unpaid wages and penalties under California Business & Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-205, 226 *et seq.*, 226.7, 512, 558, 2802, and 2698 *et*
9 *seq.*; and Industrial Welfare Commission Wage Order 14 ("Wage Order 14"), in addition to
10 seeking declaratory relief and restitution. This Court has jurisdiction over Defendants' violations
11 of the California Labor Code because the amount in controversy exceeds this Court's
12 jurisdictional minimum.

13 **VENUE**

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

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was and currently is, a California resident. During the four years immediately preceding
22 the filing of the Complaint in this action and within the statute of limitations periods applicable
23 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
24 employee. Plaintiff was, and is, a victim of Defendant's policies and/or practices complained of
25 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
26 §§ 201-205, 226 *et seq.*, 226.7, 512, 558, and 2802; California Business & Professions Code §
27 17200 *et seq.* ("Unfair Competition Law"); and Wage Order 14, which sets employment standards
28 for Agricultural Occupations.

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

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

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

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

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

1 9. The DOE Defendants, whose identities are currently unknown, are also jointly
2 liable with Defendant Americana Labor Contractor, Inc. for all civil legal responsibility and civil
3 liability for the payment of wages, including all sums payable to an employee or the state of
4 California based upon any failure to pay wages, pursuant to Labor Code §2810.3

5 **GENERAL FACTUAL ALLEGATIONS**

6 10. Defendants are in the agricultural business and employ seasonal farm labor
7 employees to harvest agricultural goods. Plaintiff commenced employment with Defendants as
8 a non-exempt farm labor employee on a seasonal basis from approximately December 2019 until
9 approximately May 13, 2020 when he sustained an injury while working. Plaintiff was contracted
10 by Defendants to work at various farms during his employment with Defendants. Plaintiff
11 performed pruning work at Defendants' client farms during pruning season and would pick
12 cherries at Defendants' clients farms during harvesting season. Defendants have not boarded or
13 lodged Plaintiff during his employment.

14 **Inaccurate Wage Statements**

15 11. Defendants maintained inaccurate payroll records and issued inaccurate and
16 facially deficient wage statements to Plaintiff and the other non-exempt employees throughout
17 the entirety of his employment with Defendants. For example, despite tasking Plaintiff and other
18 non-exempt employees with working at various "client-employer" farms throughout their tenure
19 with Defendants, Defendants failed to identify the names of any of these "client-employer" farms
20 on the wage statements issued to Plaintiff and the other non-exempt employees in violation of
21 Labor Code § 226(a)(8). Furthermore, Defendants also failed to include their full legal address
22 in each of the wage statements issued to Plaintiff and the other non-exempt employees during
23 their employment. For example, in the wage statement issued to Plaintiff numbered 1251
24 representing the time period between May 11, 2020 and May 23, 2020, Defendants list their
25 address as "161 W. Hanford Armona Rd., Lemoore, CA 93245", while their full legal address as
26 displayed on the State of California Secretary of State website is "161 W. Hanford Armona Rd.,
27 Ste. J #311, Lemoore, CA 93245." Defendants further issued facially noncompliant wage
28 statements by failing to include the legal names and addresses of the client-employer farms where

1 Plaintiff and the other non-exempt employees performed work (currently identified as DOES 1
2 through 100). Accordingly, by issuing Plaintiff and other non-exempt employees facially
3 inaccurate wage statements, Defendants have violated Labor Code § 226 *et seq.*

4 **Late Meal Periods**

5 12. During Plaintiff's employment with Defendants, Plaintiff was not provided all
6 legally compliant required meal periods due to Defendant's meal periods policies which fail to
7 provide uninterrupted, duty-free 30-minute meal periods prior to the sixth hour of work
8 commencing. Rather, while Plaintiff and the other non-exempt employees would begin their
9 shifts every day at 5:30 a.m., they would not be released for their meal periods until 11:30 a.m.,
10 six hours after their shift began. As a consequence, Plaintiff and the other non-exempt employees
11 would receive non-compliant meal periods on a daily basis as they were not permitted at any point
12 to exercise the use of a duty-free uninterrupted meal period until after having worked six hours.
13 Despite Defendants failure to authorize and permit Plaintiff and other non-exempt employees to
14 take compliant meal periods, due to their uniform and unlawful practices, Defendants never
15 provided Plaintiff and other non-exempt employees with an hour of pay at their regular rate for
16 each rest period violation as required by Labor Code § 226.7.

17 13. Further, upon Information and belief, Defendants maintained no payroll code or
18 other mechanism for the payment of meal period premium payments required by Labor Code §
19 226.7 in the event that a legally compliant meal period was not provided to Plaintiff or any of
20 their other non-exempt employees.

21 **Failure to Reimburse for All Necessary Business Expenses**

22 14. Defendants failed to adequately reimburse Plaintiff and other non-exempt
23 employees for all reasonable and necessary work expenditures, including but not limited to,
24 requiring Plaintiff to purchase and maintenance of tools such as gloves and shears which
25 Defendants required Plaintiff and other non-exempt employees to purchase as a necessary
26 precondition of employment. At no point during Plaintiff's employment was he ever reimbursed
27 by Defendants for the purchase of these necessary business expenditures.

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Waiting Time Penalties

15. Additionally, Defendants are a farm labor contractor subject to the requirements of Labor Code § 205, which requires that employees be paid weekly, on a business day designated in advance, for all wages earned up to and including the fourth day before the scheduled payday. However, Defendants pay their employees on a delay of five days or more, in violation of the “fourth day” requirement found in Labor Code § 205.

16. As a result of Defendants’ failures to comply with the Labor Code as outlined above, including failures to pay all owed meal period premium wages, Defendants have failed to timely pay all wages due to Plaintiff and the other non-exempt employees at the time of their separation with Defendants.

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CLASS ACTION ALLEGATIONS

17. **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 Meal Period Class consists of all current and former non-exempt employees of Defendant Americana Labor Contractor, Inc. in California who worked at least one shift in excess of 3.5 hours while performing work for Americana Labor Contractor Inc’s client-employer farm entities (currently identified as DOES 1 through 100; who shall be named as Defendants once their identities are ascertained) without a meal period of at least 30 minutes in duration commencing prior to the conclusion of the fifth hour of work, and who do not have a corresponding meal period premium payment made for such shifts during the four years preceding the filing of this lawsuit through the present.
- b. The Employee Expense Class consists of all of Defendants’ current and former non-exempt employees in California who were not reimbursed for the purchase and maintenance of tools necessary for the performance of their job duties during the four years immediately preceding the filing of this lawsuit to the present.

1 c. The Wage Statement Class consists of all members of the Meal Period Class who
2 received a wage statement from Defendants during the one year immediately
3 preceding the filing of this lawsuit through the present.

4 d. The Waiting Time Class consists of all Defendants' formerly employed members
5 of the Meal Period Class who separated from employment during the three years
6 immediately preceding the filing of this lawsuit through the present.

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

12 19. **Common Questions of Law and Fact Predominate/Well Defined Community**
13 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
14 situated employees, which predominate over questions affecting only individual members. Those
15 common questions include, without limitation:

- 16 i. Whether Defendants provided all legally compliant meal periods to members of
17 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
18 ii. Whether Defendants failed to reimburse members of the Employee Expense Class
19 for business expenditures necessarily incurred in the performance of their duties;
20 iii. Whether Defendants provided accurate, itemized wage statements to members of
21 the Classes; and
22 iv. Whether Defendants' policies and/or practices for the timing and amount of
23 payment of final wages to members of the Waiting Time Class at the time of
24 separation from employment were lawful.

25 20. **Predominance of Common Questions:** Common questions of law and fact
26 predominate over questions that affect only individual members of the Classes. The common
27 questions of law set forth above are numerous and substantial and stem from Defendants' policies
28 and/or practices applicable to each individual class member, such as Defendants' uniform meal

1 period policies and practices, non-reimbursement policies and practices, wage statement policies
2 and practices, and the policies and practices regarding the timely payment of final wages. As such,
3 the common questions predominate over individual questions concerning each individual class
4 member's showing as to his or her eligibility for recovery or as to the amount of his or her
5 damages.

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

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

19 23. **Superiority:** The California Labor Code is broadly remedial in nature and serves
20 an important public interest in establishing minimum working conditions and standards in
21 California. These laws and labor standards protect the average working employee from
22 exploitation by employers who have the responsibility to follow the laws and who may seek to
23 take advantage of superior economic and bargaining power in setting onerous terms and
24 conditions of employment. The nature of this action and the format of laws available to Plaintiff
25 and members of the Classes make the class action format a particularly efficient and appropriate
26 procedure to redress the violations alleged herein. If each employee were required to file an
27 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
28 would be able to exploit and overwhelm the limited resources of each individual plaintiff with

1 their vastly superior financial and legal resources. Moreover, requiring each member of the
2 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
3 employees who would be disinclined to file an action against their former and/or current employer
4 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
5 employment. Further, the prosecution of separate actions by the individual class members, even
6 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
7 with respect to the individual class members against Defendants herein; and which would
8 establish potentially incompatible standards of conduct for Defendants; and/or legal
9 determinations with respect to individual class members which would, as a practical matter, be
10 dispositive of the interest of the other class members not parties to adjudications or which would
11 substantially impair or impede the ability of the class members to protect their interests. Further,
12 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
13 individual prosecution considering all of the concomitant costs and expenses attending thereto.
14 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
15 Civil Procedure.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

18 **(AGAINST ALL DEFENDANTS)**

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

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

24 26. Due to Defendants’ unlawful policy and practice of requiring employees to
25 purchase and maintain tools necessary for the performance of their job duties at their expense,
26 Defendants have violated Labor Code § 2802.

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

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

5 **SECOND CAUSE OF ACTION**
6 **WAGE STATEMENT VIOLATIONS**
7 **(AGAINST ALL DEFENDANTS)**

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

9 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
11 and the Wage Statement Class with accurate, itemized wage statements that included, among other
12 requirements, meal period premiums, the proper legal address of the employer entity as well as the
13 legal names and address of the client-employer farm entities in violation of Labor Code §226 *et*
14 *seq.*

15 31. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
16 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
17 failures led to, among other things, the non-payment of all of their rest period premiums and
18 deprived them of the information necessary to identify discrepancies in Defendants' reported data
19 as well as the information necessary to identify the unnamed DOE Defendants.

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

24 **THIRD CAUSE OF ACTION**
25 **WAITING TIME PENALTIES**
26 **(AGAINST ALL DEFENDANTS)**

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

28 34. This cause of action is brought pursuant to Labor Code §§ 201-203, which require

1 an employer to pay all wages immediately at the time of termination of employment in the event
2 the employer discharges the employee or the employee provides at least 72 hours of notice of
3 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
4 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
5 employee's last date of employment.

6 35. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class
7 all final wages due to them at the time of their separation including, among other things, unpaid
8 meal period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges,
9 that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the
10 Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the
11 requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful
12 within the meaning of Labor Code § 203.

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

18 **FOURTH CAUSE OF ACTION**

19 **UNFAIR COMPETITION**

20 **(AGAINST ALL DEFENDANTS)**

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

22 38. Defendants have engaged and continue to engage in unfair and/or unlawful business
23 practices in California in violation of California Business and Professions Code § 17200 *et seq.*,
24 by failing to pay Plaintiff and the Classes all required meal periods, failing to pay meal premium
25 wage payments, failing to reimburse for necessary business expenditures, and failing to furnish
26 accurate, itemized wage statements, and willfully failing to timely pay Plaintiff and members of
27 the Waiting Time Class all final wages upon separation of employment.

28 39. Defendants' utilization of these unfair and/or unlawful business practices deprived

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

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

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

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

16 **FIFTH CAUSE OF ACTION**

17 **MEAL PERIOD VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

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

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

27 45. As a result, Defendants are responsible for paying premium compensation for meal
28 period violations including interest thereon, as well as statutory penalties, civil penalties, and costs

1 of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 14, and Civil Code §§ 3287(b)
2 and 3289.

3 **SIXTH CAUSE OF ACTION**
4 **PRIVATE ATTORNEYS GENERAL ACT**
5 **(AGAINST ALL DEFENDANTS)**

6 46. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
7 fully set forth herein.

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

- 23 a. Failing to provide all legally required meal periods, and failure to pay meal
24 period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
25 employees at the regular rate of compensation in violation of Labor Code §§
26 226.7, 512, 558, and 1198;
- 27 b. Failing to reimburse Plaintiff, the Employee Expense Class, and other
28 aggrieved employees for all necessary work expenses incurred in violation of

1 Labor Code §§ 2802 and 2804;

- 2 c. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
3 employees with complete, accurate, itemized wage statements in violation of
4 Labor Code § 226;
- 5 d. Failing to timely pay all final wages and compensation earned by Plaintiff, the
6 Waiting Time Class, and other aggrieved employees at the time of separation
7 in violation of Labor Code §§ 201, 202, and 203;
- 8 e. Failing to pay non-exempt employees all earned wages at least twice during
9 each calendar month in violation of Labor Code § 204; and
- 10 f. Failing to compensate Plaintiff and other aggrieved employees at least once
11 every week on a business day designated in advance and including all wages
12 earned up to and including the fourth day before such payday in violation of
13 Labor Code § 205.

14 48. On April 22, 2021, Plaintiff notified Defendants via certified mail, and notified the
15 California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants'
16 violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties
17 under California Labor Code § 2698 et seq. with respect to violations of the California Labor
18 Code identified in Paragraph 47 (a)-(e). Now that sixty-five days have passed from Plaintiff's
19 notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice
20 that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements
21 for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

26 PRAYER

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

1. For an order certifying the proposed Classes;

2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code § 2802;
5. Upon the Second Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
6. Upon the Third Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 201-203;
7. Upon the Fourth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
8. Upon the Fifth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
9. Upon the Sixth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations;
10. Prejudgment interest on all due and unpaid wages pursuant to California Labor

1 Code § 218.6 and Civil Code §§ 3287 and 3289;

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

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

5
6 Dated: June 28, 2021

Respectfully submitted,
STANBURY BROWN LAW

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8 By:



Daniel J. Brown
Attorneys for Plaintiff

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11 **DEMAND FOR JURY TRIAL**

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

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14 Dated: June 28, 2021

Respectfully submitted,
STANBURY BROWN LAW

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16 By:



Daniel J. Brown
Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

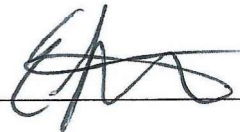
I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

On June 28, 2021 I served the document listed below on the parties in this action as follows:

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

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

Executed on June 28, 2021 at Redondo Beach, California.



Ethan C. Surls

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SERVICE LIST

Mario Piceno Guevara
161 W. Hanford Armona Rd., Ste. J #311
Lemore, CA 93245

Registered Agent for Service of Process for Defendant
Americana Labor Contractor, Inc.