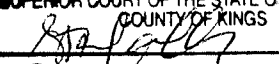


FILED

SEP 03 2021

NOCONA SOBOLESKI, CLERK OF COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KINGS

DEPUTY
SANDRA TAFOLLA

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KINGS

DANIEL MORENO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

PETERS FRUIT FARMS, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: 21C-0196

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

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

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
 - (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 551, 552, 558,
1194, AND 1198);**
 - (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**
 - (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
 - (5) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);**
 - (6) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
 - (7) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
 - (8) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*; AND**
 - (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2598 *et seq.*).**
- DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

Plaintiff Daniel Moreno ("Plaintiff"), as an individual and on behalf of all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint ("FAC") against Peters Fruit Farms, Inc.; and DOES 1 to 100, inclusive (collectively "Defendants"), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this FAC for recovery of unpaid wages and penalties under California Business & Professions Code § 17200 *et seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 512, 510, 516, 558, 1132.12, 1194, 1194.2, 1196, 1198, 2698 *et seq.*, and 2802; and Industrial Welfare Commission Wage Orders ("Wage Order"), in addition to seeking declaratory relief and restitution. This Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants' violations of the California Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

VENUE

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

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident. During the four years immediately preceding the filing of the Complaint in this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, and 2802; California Business & Professions Code § 17200 *et seq.* ("Unfair Competition

1 Law"); and the Wage Orders, which sets employment standards for Agricultural Occupations.

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

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

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

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

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

1 members of the Classes.

2 **GENERAL FACTUAL ALLEGATIONS**

3 9. Defendants are in the agricultural business and employ farm labor employees to
4 harvest agricultural goods. Plaintiff commenced employment with Defendants as a non-exempt
5 employee as a forklift driver from approximately November 2016 until approximately July 17,
6 2020, when he suffered an injury on-the-job. Plaintiff's job duties included driving the company
7 forklifts in the packing house, loading fruit boxes onto pallets, and other general labor tasks.

8 10. During Plaintiff's employment with Defendants, Plaintiff was paid on an hourly
9 basis at a rate of \$14.50 per hour. Defendants utilized a timecard machine to keep track of the
10 hours worked by Plaintiff and the other aggrieved employees. Plaintiff and the other aggrieved
11 employees worked generally at least 10 hours per day, at least six days per week.

12 **Off-The-Clock**

13 11. Defendants have failed to record employees' total hours worked each workday
14 accurately. Plaintiff and other aggrieved employees were not paid for all straight time and
15 overtime they worked due to Defendants' unlawful policies and practices including, but not
16 limited to, Defendants' practice of requiring employees to wait in line at Defendants' facilities to
17 clock in at the start of their shift. Moreover, starting in approximately May 2020, Plaintiff and
18 other aggrieved employees were also required to wait in line to have their temperature checked
19 prior to clocking in at the beginning of their shifts. As such, Defendants failed to ensure that
20 Plaintiff and other aggrieved employees were being paid at least the minimum wage for all hours
21 actually worked, and failed to ensure that Plaintiff and other aggrieved employees received proper
22 overtime wages for all overtime hours worked in compliance with Wage Orders.

23 **Rest Periods**

24 12. Plaintiff and other aggrieved employees were not authorized to take all legally
25 required rest periods. For example, while Plaintiff and other aggrieved employees were generally
26 not permitted to exercise the use of their second rest period in a timely manner, if at all. Rather,
27 the vast majority of the time, Plaintiff and the other aggrieved employees were not permitted to
28 exercise the use of their second rest period until having worked at least seven hours in their shift,

1 well past the "every four hours worked or major fraction thereof" standard as required by statute.
2 Despite Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to
3 take all lawful paid rest periods, due to their uniform and unlawful practices, Defendants did not
4 always provide Plaintiff and other aggrieved employees with an hour of pay at their regular rate
5 for each rest period violation as required by Labor Code § 226.7. Upon information and belief,
6 during at least a portion of the class period, Defendants maintained no payroll code or another
7 mechanism for the payment of rest period premiums in the event Plaintiff and other aggrieved
8 employees were not authorized to take lawful rest periods.

9 **Meal Periods**

10 13. Defendants also failed to provide Plaintiff and other aggrieved employees with a
11 full thirty-minute meal periods when they worked shifts in excess of 6.0 hours. Rather, Plaintiff
12 and other aggrieved employees would frequently not be entitled to exercise the use of their first
13 meal period until well after their fifth hour worked, if at all. Moreover, Plaintiff and other
14 aggrieved employees were required to take on-duty meal periods. Furthermore, despite working
15 in excess of 10 hours almost every shift, Plaintiff and other aggrieved employees were not at any
16 point permitted to exercise the use of second meal periods, resulting in systemic second meal
17 period violations. While, Plaintiff did sign a second meal period waiver, this waiver did not
18 absolve Defendants of their duty to provide second meal periods, as Plaintiff and other aggrieved
19 employees were not provided compliant off-duty first meal periods and Plaintiff and other
20 aggrieved employees routinely worked shifts over 12.0 hours, for which second meal period may
21 not be waived. Despite Defendants' failure to provide Plaintiff and other aggrieved employees with
22 all lawful meal periods due to their uniform and unlawful practices, Defendants did not always
23 provide Plaintiff and other aggrieved employees with an hour of pay at their regular rate for each
24 meal period violation as required by Labor Code § 226.7. Upon information and belief, during at
25 least a portion of the class period, Defendants maintained no payroll code or another mechanism
26 for the payment of meal period premiums in the event Plaintiff and other aggrieved employees
27 were not authorized to take lawful meal periods.
28

Reimbursements

14. Defendants failed to adequately reimburse Plaintiff for all reasonable and necessary work expenditures, including but not limited to, requiring Plaintiff incur expenses related to purchasing tools, uniforms, and other necessary equipment without reimbursement.

Wage Statement Violations/Waiting Time Penalties

15. As a result of Defendants' failure to provide all required meal periods and authorize all rest periods or pay premium pay in lieu thereof, Defendants have maintained inaccurate payroll records, failed to timely pay all wages owed to separating employees at the time of their separation, and issued inaccurate wage statements. Furthermore, for at least a portion of the class period, Defendants issued facially inaccurate wage statements by unlawfully including their employees' entire social security numbers on their wage statements. For example, on Plaintiff's wage statement numbered 199670 representing the time period between June 29, 2020 and July 5, 2020, Defendants list Plaintiff's full social security number, in violation of Labor Code 226(a)(7).

CLASS ACTION ALLEGATIONS

16. **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 Off-The-Clock-Class consists of all Defendants' current and former non-exempt employees in California who were not permitted to record their actual hours worked, during the four years immediately preceding the filing of the lawsuit through the present.
- b. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, during the four years immediately preceding the filing of the Complaint through the present.
- c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours without a meal period of at least 30 minutes in duration commencing prior

to the conclusion of the fifth hour of work, and who do not have a corresponding meal period premium payment made for such shifts and/or (ii) worked at least one shift in excess of 10.0 hours without a second meal period of at least 30 minutes in duration commencing prior to the conclusion of the tenth hour of work, and who do not have a corresponding meal period premium payment made for such shifts during the four years preceding the filing of this lawsuit through the present.

d. The Employee Expense Class consists of all of Defendants' current and former non-exempt employees in California who were not reimbursed for expenses related to the purchase of necessary tools, uniforms, and equipment necessary for the performance of their job duties during the four years immediately preceding the filing of this lawsuit to the present.

e. The Wage Statement Class consists of all members of the Off-The-Clock, Rest Period Class, and/or Meal Period Class who received a wage statement from Defendants during the one year immediately preceding the filing of this lawsuit through the present.

f. The Waiting Time Class consists of all Defendants' formerly employed members of the Off-The-Clock, Rest Period Class and Meal Period Class who separated from employment during the three years immediately preceding the filing of this lawsuit through the present.

17. **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.

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

- i. Whether Defendants paid at least the minimum wages owed for all hours worked to members of the Off-The-Clock Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;
- ii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and Wage Order 8 by requiring members of the Off-The-Clock Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- iii. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- iv. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- v. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;
- vi. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and
- vii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful.

19. **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 meal and rest period policies and practices, timekeeping policies and practices, non-reimbursement, wage statement, and payment of final wages policies and practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

20. **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

1 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
 2 herein, Plaintiff, like the members of the Classes was subject to Defendants' meal and rest period
 3 and time keeping policies and practices, was subjected to Defendants' unlawful failure to
 4 reimburse business expenses, was furnished with inaccurate and incomplete wage statements, and
 5 was not paid all wages earned at the time of his separation of employment.

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

12 **22. Superiority:** The California Labor Code is broadly remedial in nature and serves
 13 an important public interest in establishing minimum working conditions and standards in
 14 California. These laws and labor standards protect the average working employee from
 15 exploitation by employers who have the responsibility to follow the laws and who may seek to
 16 take advantage of superior economic and bargaining power in setting onerous terms and
 17 conditions of employment. The nature of this action and the format of laws available to Plaintiff
 18 and members of the Classes make the class action format a particularly efficient and appropriate
 19 procedure to redress the violations alleged herein. If each employee were required to file an
 20 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
 21 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
 22 their vastly superior financial and legal resources. Moreover, requiring each member of the
 23 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
 24 employees who would be disinclined to file an action against their former and/or current employer
 25 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
 26 employment. Further, the prosecution of separate actions by the individual class members, even
 27 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
 28 with respect to the individual class members against Defendants herein; and which would

1 establish potentially incompatible standards of conduct for Defendants; and/or legal
2 determinations with respect to individual class members which would, as a practical matter, be
3 dispositive of the interest of the other class members not parties to adjudications or which would
4 substantially impair or impede the ability of the class members to protect their interests. Further,
5 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
6 individual prosecution considering all of the concomitant costs and expenses attending thereto.
7 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
8 Civil Procedure.

9 **FIRST CAUSE OF ACTION**

10 **MINIMUM WAGE VIOLATIONS**

11 **(AGAINST ALL DEFENDANTS)**

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

13 24. The Wage Orders and California Labor Code §§ 1197 and 1182.12 establish the
14 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
15 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
16 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
17 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
18 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
19 their pay practices to the requirements of the law by failing to pay Plaintiff and the Off-The-Clock
20 Class for all hours actually worked including, but not limited to, all hours they were subject to the
21 control of Defendants and/or suffered or permitted to work under the California Labor Code and
22 the Wage Orders.

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

28 26. As a direct and proximate result of Defendants' unlawful conduct as alleged

1 establish potentially incompatible standards of conduct for Defendants; and/or legal
 2 determinations with respect to individual class members which would, as a practical matter, be
 3 dispositive of the interest of the other class members not parties to adjudications or which would
 4 substantially impair or impede the ability of the class members to protect their interests. Further,
 5 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
 6 individual prosecution considering all of the concomitant costs and expenses attending thereto.
 7 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
 8 Civil Procedure.

9 **FIRST CAUSE OF ACTION**

10 **MINIMUM WAGE VIOLATIONS**

11 **(AGAINST ALL DEFENDANTS)**

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

13 24. The Wage Orders and California Labor Code §§ 1197 and 1182.12 establish the
 14 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
 15 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
 16 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
 17 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
 18 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
 19 their pay practices to the requirements of the law by failing to pay Plaintiff and the Off-The-Clock
 20 Class for all hours actually worked including, but not limited to, all hours they were subject to the
 21 control of Defendants and/or suffered or permitted to work under the California Labor Code and
 22 the Wage Orders.

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

28 26. As a direct and proximate result of Defendants' unlawful conduct as alleged

1 herein, Plaintiff and the Off-The-Clock Class have sustained economic damages, including but
2 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
3 entitled to recover economic and statutory damages and penalties and other appropriate relief as
4 a result of Defendants' violations of the California Labor Code and the Wage Orders.

5 27. Defendants' practice and uniform administration of corporate policy regarding
6 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
7 members of the Off-The-Clock Class in a civil action for the unpaid amount of minimum wages,
8 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
9 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
10 Civil Procedure § 1021.5.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY ALL OVERTIME WAGES**

13 **(AGAINST ALL DEFENDANTS)**

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

15 29. This cause of action is brought pursuant to Labor Code §§ 204, 51C, 558, 1194,
16 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
17 overtime hours worked, and provide a private right of action for the failure to pay all overtime
18 compensation for overtime work performed.

19 30. At all times relevant herein, Defendants were required to properly compensate
20 Plaintiff and members of the Off-The-Clock for all overtime hours worked pursuant to California
21 Labor Code § 1194 and the Wage Orders. The Wage Orders requires an employer to pay overtime
22 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth
23 in the Wage Orders.

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

27 32. The foregoing policies and practices are unlawful and create entitlement to
28 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime

1 premiums owing, including interest thereon, statutory and civil penalties, and attorneys' fees and
2 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, the Wage
3 Orders, and Code of Civil Procedure § 1021.5.

4 **THIRD CAUSE OF ACTION**

5 **MEAL PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

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

8 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 failed in their affirmative obligation to provide all of their non-exempt employees in California,
10 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
11 in accordance with the mandates of the California Labor Code and the Wage Orders. Despite
12 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
13 of the Meal Period Class at their respective regular rates of compensation, in accordance with
14 California Labor Code §§ 226.7, and 512.

15 35. As a result, Defendants are responsible for paying premium compensation for meal
16 period violations including interest thereon, as well as statutory penalties, civil penalties, and
17 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, the Wage Orders, and Civil Code
18 §§ 3287(b) and 3289.

19 **FOURTH CAUSE OF ACTION**

20 **REST PERIOD VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

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

23 37. The Wage Orders and California Labor Code §§ 226.7 and 516 establish the right
24 of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes
25 net rest time for each four (4) hour period worked, or major fraction thereof.

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

28 39. The foregoing violations create an entitlement to recovery by Plaintiff and

1 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
2 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
3 according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

6 **(AGAINST ALL DEFENDANTS)**

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

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

12 42. Due to Defendants’ unlawful policy and practice of requiring employees to
13 purchase and maintain tools, equipment, and uniforms necessary for the performance of their job
14 duties, Defendants have violated Labor Code § 2802.

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

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

21 **SIXTH CAUSE OF ACTION**

22 **WAGE STATEMENT VIOLATIONS**

23 **(AGAINST ALL DEFENDANTS)**

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

25 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
27 and the Wage Statement Class with accurate, itemized wage statements that included, among
28 other requirements, accurate total gross wages earned, meal and rest period premiums, total net

1 wages earned, in addition to unlawfully including the entirety of their employees' social security
2 numbers on their wage statements in violation of Labor Code §226 *et seq.*

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

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

12 **SEVENTH CAUSE OF ACTION**

13 **WAITING TIME PENALTIES**

14 **(AGAINST ALL DEFENDANTS)**

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

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

22 51. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class
23 all final wages due to them at the time of their separation including, among other things, unpaid
24 meal and rest period premium wages, underpaid overtime and minimum wages owed. Further,
25 Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy
26 and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned
27 wages at the end of employment in a timely manner pursuant to the requirements of Labor Code
28 §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor

1 Code § 203.

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

7 **EIGHTH CAUSE OF ACTION**

8 **UNFAIR COMPETITION**

9 **(AGAINST ALL DEFENDANTS)**

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

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

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

24 56. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
25 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
26 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
27 and/or converted by Defendants pursuant to Business and Professions Code §§ 17201 and 17208.

28 57. The acts complained of herein occurred within the last four years immediately

preceding the filing of the Complaint in this action.

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

NINETH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

60. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 et seq., acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, 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:

a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum

1 Wage Class, and other aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194,
2 1194.2, 1197, and 1198;

3 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
4 earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

5 c. Failing to provide all legally required meal periods, and failure to pay meal period
6 premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular
7 rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;

8 d. Failing to authorize and permit all legally required rest periods, and failure to pay
9 rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at
10 the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;

11 e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
12 employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;

13 f. Failing to timely pay all final wages and compensation earned by Plaintiff, the
14 Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor
15 Code §§ 201, 202, and 203;

16 g. Failing to reimburse Plaintiff, the Employee Expense Class, and other aggrieved
17 employees for all necessary work expenses incurred in violation of Labor Code §§ 2802 and 2804;

18 h. Failing to pay non-exempt employees all earned wages at least twice during each
19 calendar month in violation of Labor Code § 204;

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

22 61. On June 21, 2021, Plaintiff notified Defendants via certified mail, and notified the
23 California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants'
24 violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties
25 under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code
26 identified in Paragraph 60 (a)-(i). Now that sixty-five days have passed from Plaintiff's notifying
27 Defendants and the LWDA of these violations, and the LWDA has not provided notice that it
28 intends to investigate the violations, Plaintiff has exhausted his administrative requirements for

1 bringing a claim under the Private Attorneys General Act with respect to these violations.

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

6 **PRAYER**

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

- 9 1. For an order certifying the proposed Classes;
- 10 2. For an order appointing Plaintiff as representative of the Classes;
- 11 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 12 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
13 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
14 1197;
- 15 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
16 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198
- 17 6. Upon the Third Cause of Action, for compensatory, consequential, general and
18 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 19 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
20 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 21 8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and
22 special damages according to proof pursuant to Labor Code § 2802;
- 23 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
24 226, *et seq.*;
- 25 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
26 to Labor Code § 201-203;
- 27 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
28 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or

1 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
2 *seq.*;

3 12. Upon the Ninth Cause of Action, (1) \$100.00 for each initial violation for each
4 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
5 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
6 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
7 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
8 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
9 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
10 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
11 each initial violation and \$200 for each subsequent violation per employee per pay period for the
12 violations of the Labor Code Sections cited in Labor Code § 2699.5;

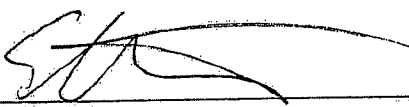
13 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor
14 Code § 218.6 and Civil Code §§ 3287 and 3289;

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

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

18
19 Dated: August 30, 2021

Respectfully submitted,
STANBURY BROWN LAW

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21 By: 

Daniel J. Brown
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

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

Dated: August 30, 2021

Respectfully submitted,
STANBURY BROWN LAW

By: _____

Daniel J. Brown
Attorneys for Plaintiff

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