

Electronically filed by Superior Court of California, County of Kings, 9/1/2021 1:18 PM, Sandra Tafolla

FILED

SEP 01 2021

STANSBURY BROWN LAW
DANIEL J. BROWN (SBN 307604)
dbrown@stansburybrownlaw.com
2610 1/2 Abbot Kinney Blvd.
Venice, CA 90291
Tel: 323-207-5925

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

SANDRA TAFOLLA
DEPUTY

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KINGS

JUAN REYES, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

JOE MENDES dba HIGH ROLLER DAIRY,
an individual; and DOES 1 through 100,

Defendants.

Case No.: 21C-0149

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

- (1) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 551, 552, 558,
1194, AND 1198);**
- (2) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, §12);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, §16);**
- (4) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);**
- (5) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Juan Reyes ("Plaintiff"), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint ("Complaint")
3 against Joe Mendes dba High Roller Dairy, an individual; and, DOES 1 to 100, inclusive
4 (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 §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 551-552, 558,
9 1194, 1198, 2802, 2698 *et seq.*; and Industrial Welfare Commission Wage Order 14 ("Wage Order
10 14"), in addition to seeking declaratory relief and restitution. This Complaint is brought pursuant
11 to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants'
12 violations of the California Labor Code because the amount in controversy exceeds this Court's
13 jurisdictional minimum.

14 VENUE

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

20 PARTIES

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 551-552, 558, 1194, 1198, and 2802; California
28 Business & Professions Code § 17200 *et seq.* ("Unfair Competition Law"); and Wage Order 14,

1 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 employee farm labor employees to
4 harvest dairy products. Plaintiff was employed by Defendants as a non-exempt farm labor
5 employee on from approximately October 2016 until approximately December 24, 2020 as a
6 "milker" and "pusher". Plaintiff's job duties milking, birthing, and corralling Defendants' cows
7 to the barn. Plaintiff also operated Defendant' dairy machinery. Defendants have not boarded or
8 lodged Plaintiff during his employment.

9 10. During Plaintiff's employment with Defendants, Plaintiff was paid on an hourly
10 basis at approximately \$15.50 per hour. Plaintiff generally worked at least 10-11 hour shifts, six
11 days per week. Often, Plaintiff would work shifts over 12 hours. Furthermore, during especially
12 busy seasons, Plaintiff would frequently work seven days per week. Despite tracking the hours
13 of Plaintiff and other non-exempt employees by way of a facial recognition device, Defendants
14 as a matter of policy and practice systematically failed to pay all overtime wages. For example,
15 while under Wage Order 14 Plaintiff and other non-exempt employees are entitled to overtime
16 worked in excess of 9 hours in a day and/or 50 hours in a week, Defendants refused to pay them
17 overtime hours until after their tenth hour worked in a given day. For the pay period representing
18 December 1, 2020 and December 15, 2020, for example, it is evident that despite working in
19 excess of 9 hours a day on an almost daily basis, Defendants refused to pay overtime
20 compensation until he reached 10 hours worked in a day, in violation of the overtime requirements
21 as set forth in Wage Order 14. For this pay period alone, Plaintiff should have been entitled to at
22 least nine hours of unpaid overtime. As a result of this policy/practice, Defendant's failed to
23 properly compensate Plaintiff and other non-exempt employees for all overtime hours worked in
24 compliance with Wage Order 14. Furthermore, upon information and belief, Defencants failed
25 to pay Plaintiff and other non-exempt employees at the proper overtime rate on those occasions
26 where they were made to work seven days in a row in a workweek, instead opting to pay them
27 only their regular wages, as opposed to the overtime wages they were statutorily entitled to
28 pursuant to Wage Order 14.

1 11. Moreover, during Plaintiff's employment with Defendants, Plaintiff and other
2 non-exempt employees earned production-based bonuses in addition to other forms of non-
3 discretionary pay that must be included in the regular rate of pay (hereinafter referred to as
4 "Incentive Pay"). However, Defendants failed to properly calculate Plaintiff's and other non-
5 exempt employees' respective regular rates of pay for overtime purposes as a result of their receipt
6 of Incentive Pay. Instead, Plaintiff and non-exempt employees were paid less than one and one
7 half times (or two times in the case of double-time hours) the legal regular rate of pay for all
8 overtime hours worked.

9 12. Plaintiff and other non-exempt employees were not authorized to take all legally
10 required rest periods. At no point during Plaintiff's employment with Defendants were he and
11 the other non-exempt employees ever advised of, or permitted to, exercise the use of rest periods
12 to which they were statutorily entitled. Despite Defendants' failure to authorize and permit
13 Plaintiff and other non-exempt employees to take all lawful paid rest periods, due to their uniform
14 and unlawful practices, Defendants never provided Plaintiff and other non-exempt employees
15 with an hour of pay at their regular rate for each rest period violation as required by Labor Code
16 § 226.7. Upon information and belief, during at least a portion of the class period, Defendants
17 maintained no payroll code or another mechanism for the payment of rest period premiums in the
18 event Plaintiff and other non-exempt employees were not authorized to take lawful rest periods.

19 13. Defendants also never provided Plaintiff and other non-exempt employees with a
20 compliant first meal period when they worked shifts in excess of 5.0 hours. Instead, while Plaintiff
21 and other non-exempt employees were permitted to exercise the use of a meal period, it was
22 almost never timely. Rather, the vast majority of the time Plaintiff and other non-exempt
23 employees would exercise the use of their meal periods considerably later than their fifth hour of
24 work. In addition to Defendants' failure to provide Plaintiff and other non-exempt employees
25 with all legally required and compliant first meal periods, Defendants also failed to provide
26 second meal periods to Plaintiff and other non-exempt employees when they worked shifts in
27 excess of 10 hours (an almost daily occurrence). At no point during Plaintiff's employment with
28 Defendants were he and the other non-exempt employees ever permitted to exercise the use of a

1 second meal period. Despite Defendants' failure to provide Plaintiff and other non-exempt
2 employees with all lawful meal periods due to their uniform and unlawful practices, Defendants
3 never provided Plaintiff and other non-exempt employees with an hour of pay at their regular rate
4 for each meal period violation as required by Labor Code § 226.7.

5 14. Plaintiff and other non-exempt employees were required to sign off on a timesheet
6 at the end of each pay period prior to receiving their paychecks which contains language
7 indicating that they did in fact receive meal and rest periods. However, Plaintiff and other non-
8 exempt employees only signed off on these timesheets falsely indicating that they did in fact have
9 an opportunity to exercise the use of their meal/rest periods because Defendants' forepersons and
10 agents communicated to them that they would not receive their paychecks unless they signed the
11 document.

12 15. Defendants failed to adequately reimburse Plaintiff for all reasonable and
13 necessary work expenditures, including but not limited to, requiring Plaintiff to purchase and
14 maintain mandatory uniforms and boots without reimbursement. Rather, Defendants would
15 deduct the costs of said items from the wages of Plaintiff and other non-exempt employees.
16 Furthermore, Plaintiff and other non-exempt employees were required to conduct business on
17 their personal cellular phones at all times throughout the duration of their employment with
18 Defendants without reimbursement.

19 16. As a result of Defendants' failure to accurately compensate Plaintiff and other
20 non-exempt employees for all overtime wages, and failure to provide all required meal periods
21 and authorize all rest periods or pay premium pay in lieu thereof, Defendants have maintained
22 inaccurate payroll records, failed to timely pay all wages owed to separating employees at the
23 time of their separation, and issued inaccurate wage statements.

24 CLASS ACTION ALLEGATIONS

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

- 27 a. The Rest Period Class consists of all current and former non-exempt employees of
28 Defendants in California who worked at least one shift in excess of 3.5 hours

1 during the four years immediately preceding the filing of this lawsuit through the
2 present.

3 b. The Overtime Wage Class consists of all current and former non-exempt
4 employees of Defendants in California who worked overtime hours (based on
5 criteria set forth in Wage Order 14) during the four years immediately preceding
6 the filing of this lawsuit through the present.

7 c. The Meal Period Class consists of all current and former non-exempt employees
8 of Defendants in California who: (i) worked at least one shift in excess of 5.0 hours
9 without a meal period of at least 30 minutes in duration commencing prior to the
10 conclusion of the fifth hour of work, and who do not have a corresponding meal
11 period premium payment made for such shifts and/or (ii) worked at least one shift
12 in excess of 10.0 hours without a second meal period of at least 30 minutes in
13 duration commencing prior to the conclusion of the tenth hour of work, and who
14 do not have a corresponding meal period premium payment made for such shifts
15 during the four years preceding the filing of this lawsuit through the present.

16 d. The Employee Expense Class consists of all of Defendants' current and former
17 non-exempt employees in California who were not reimbursed for the purchase
18 and maintenance of boots, uniforms, cellular phone usage, and/or any other
19 necessary business expenditures during the four years immediately preceding the
20 filing of this lawsuit to the present.

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

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

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

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

- 10 i. Whether Defendants violated the applicable Labor Code provisions, including, but
11 not limited to, §§ 510 and 1194 and Wage Order 14 by requiring members of the
12 Overtime Wage Class to perform overtime work and not paying for said work in
13 accordance with the overtime laws of the State of California;
- 14 ii. Whether Defendants authorized and permitted legally compliant rest periods to
15 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 16 iii. 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 iv. Whether Defendants failed to reimburse members of the Employee Expense Class
19 for business expenditures necessarily incurred in the performance of their duties;
- 20 v. Whether Defendants provided accurate, itemized wage statements to members of
21 the Classes; and
- 22 vi. 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

1 overtime policies and practices, meal and rest period policies and practices, timekeeping policies
2 and practices, non-reimbursement, wage statement, and payment of final wages policies and
3 practices. As such, the common questions predominate over individual questions concerning each
4 individual class member's showing as to his or her eligibility for recovery or as to the amount of
5 his or her 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 a hourly basis, was subject to
10 Defendants' overtime policies and practices, was subjected to Defendants' meal/rest period and
11 timekeeping policies and practices, was subjected to Defendants' unlawful failure to reimburse
12 business expenses, was furnished with inaccurate and incomplete wage statements, and was not
13 paid all wages earned at the time of his separation of employment.

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

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

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

17 **FIRST CAUSE OF ACTION**
18 **FAILURE TO PAY ALL OVERTIME WAGE**
19 **(AGAINST ALL DEFENDANTS)**

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

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

25 26. At all times relevant herein, Defendants were required to properly compensate
26 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
27 Labor Code § 1194 and Wage Order 14. Wage Order 14, § 3 requires an employer to pay overtime
28 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth

1 in the Wage Order.

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

5 28. The foregoing policies and practices are unlawful and create entitlement to
6 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
7 premiums owing, including interest thereon, statutory and civil penalties, and attorneys' fees and
8 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
9 14, and Code of Civil Procedure § 1021.5.

10 **SECOND CAUSE OF ACTION**

11 **MEAL PERIOD VIOLATIONS**

12 **(AGAINST ALL DEFENDANTS)**

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

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

21 31. As a result, Defendants are responsible for paying premium compensation for meal
22 period violations including interest thereon, as well as statutory penalties, civil penalties, and
23 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 14, and Civil Code §§
24 3287(b) and 3289.

25 **THIRD CAUSE OF ACTION**

26 **REST PERIOD VIOLATIONS**

27 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

12 **(AGAINST ALL DEFENDANTS)**

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

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

18 38. Due to Defendants' unlawful policy and practice of requiring employees to
19 purchase and maintain uniforms and boots for the performance of their job duties and to utilize
20 their personal cellular phones for Defendants' business purposes, Defendants have violated Labor
21 Code § 2802.

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

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

28 **FIFTH CAUSE OF ACTION**

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

42. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff and the Wage Statement Class with accurate, itemized wage statements that included, among other requirements, accurate total gross wages earned, accurate overtime wages earned, meal and rest period premiums, and total net wages earned in violation of Labor Code §226 *et seq.*

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

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

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

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

47. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class

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

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

12 **SEVENTH CAUSE OF ACTION**

13 **UNFAIR COMPETITION**

14 **(AGAINST ALL DEFENDANTS)**

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

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

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

28 52. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged

1 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
2 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
3 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

4 53. The acts complained of herein occurred within the last four years immediately
5 preceding the filing of the Complaint in this action.

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

11 **EIGHTH CAUSE OF ACTION**

12 **PRIVATE ATTORNEYS GENERAL ACT**

13 **(AGAINST ALL DEFENDANTS)**

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

16 56. Defendants have committed several Labor Code violations against Plaintiff,
17 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
18 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
19 employees, brings this representative action against Defendants to recover the civil penalties due
20 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
21 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
22 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
23 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
24 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
25 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
26 employee per pay period (3) \$100.00 for each initial violation and \$250.00 for each subsequent
27 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
28 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per

1 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
2 subsequent violation per employee per pay period for those violations of the Labor Code for
3 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 4 a. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
5 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
6 1194, and 1198;
- 7 b. Failing to provide all legally required meal periods, and failure to pay meal
8 period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
9 employees at the regular rate of compensation in violation of Labor Code §§
10 226.7, 512, 558, and 1198;
- 11 c. Failing to authorize and permit all legally required rest periods, and failure to
12 pay rest period premium wages, to Plaintiff, the Rest Period Class, and other
13 aggrieved employees at the regular rate of compensation in violation of Labor
14 Code §§ 226.7, 516, 558, and 1198;
- 15 d. Failing to reimburse Plaintiff, the Employee Expense Class, and other
16 aggrieved employees for all necessary work expenses incurred in violation of
17 Labor Code §§ 2802 and 2804;
- 18 e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
19 employees with complete, accurate, itemized wage statements in violation of
20 Labor Code § 226;
- 21 f. Failing to timely pay all final wages and compensation earned by Plaintiff, the
22 Waiting Time Class, and other aggrieved employees at the time of separation
23 in violation of Labor Code §§ 201, 202, and 203;
- 24 g. Failing to pay non-exempt employees all earned wages at least twice during
25 each calendar month in violation of Labor Code § 204; and
- 26 h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
27 employees in violation of Labor Code § 1174.

28 57. On May 11, 2021, and again on June 21, 2021, Plaintiff notified Defendants via
certified mail, and notified the California Labor and Workforce Development Agency

1 ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's
 2 intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect
 3 to violations of the California Labor Code identified in Paragraph 56 (a)-(h). Now that sixty-five
 4 days have passed from Plaintiff's notifying Defendants and the LWDA of these violations, and
 5 the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has
 6 exhausted his administrative requirements for bringing a claim under the Private Attorneys
 7 General Act with respect to these violations.

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

12 PRAYER

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

- 15 1. For an order certifying the proposed Classes;
- 16 2. For an order appointing Plaintiff as representative of the Classes;
- 17 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 18 4. Upon the First Cause of Action, for compensatory, consequential, general, and
 19 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 20 5. Upon the Second Cause of Action, for compensatory, consequential, general and
 21 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 22 6. Upon the Third Cause of Action, for compensatory, consequential, general and
 23 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 24 7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
 25 special damages according to proof pursuant to Labor Code § 2802;
- 26 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
 27 226, et seq.;
- 28 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to

1 Labor Code § 201-203;

2 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
3 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
4 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
5 *seq.*;

6 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
7 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
8 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
9 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
10 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
11 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
12 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
13 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
14 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
15 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
16 each initial violation and \$200 for each subsequent violation per employee per pay period for
17 those violations of the Labor Code for which no civil penalty is specifically provided, based on
18 the following Labor Code violations;

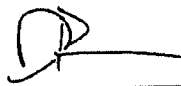
19 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor
20 Code § 218.6 and Civil Code §§ 3287 and 3289;

21 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
22 §§ 226, 1194 *et seq.*, 2698 *et seq.*, and 2699(g); and Code of Civil Procedure § 1021.5; and

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

24
25 Dated: September 1, 2021

Respectfully submitted,
STANBURY BROWN LAW

26
27 By: 

Daniel J. Brown
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

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

Dated: September 1, 2021

Respectfully submitted,
STANBURY BROWN LAW

By:



Daniel J. Brown
Attorneys for Plaintiff