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Attorneys for Plaintiff

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

ROMAN MAYO, an individual,

Plaintiff,

vs.

FRANK DAVID MENDONSA dba F M
RANCH, an individual; MARCHELLE
MENDONSA dba F M RANCH, an
individual; and DOES 1 through 100,

Defendants.

Case No.: VCU287851 BY FAX

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

**FIRST AMENDED 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) **FAILURE TO PAY ALL SPLIT**
SHIFT PREMIUM WAGES (LABOR
CODE § 1197 AND WAGE ORDER
14);
- (4) **MEAL PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 512);
- (5) **REST PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 516);
- (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 § 2698 et seq.)

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

OCT 08 2021

STEPHANIE CAMERON, CLERK
BY: NICOLE RENTERIA

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**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Roman Mayo ("Plaintiff") hereby brings this First Amended Class and
2 Representative Action Complaint ("FAC") against Frank Mendonsa dba F M Ranch; Marchelle
3 Mendonsa dba F M Ranch; and DOES 1 to 100 (collectively "Defendants"), and on information
4 and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff hereby brings this Complaint for recovery of unpaid wages and penalties
7 under California Business & Professions Code § 17200 *et seq.*, Labor Code §§ 201-204, 226 *et*
8 *seq.*, 226.7, 510, 512, 516, 551-552, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*;
9 and Industrial Welfare Commission Wage Order 14 ("Wage Order 14"), in addition to seeking
10 declaratory relief and restitution. This Court has jurisdiction over Defendants' violations of the
11 California Labor Code because the amount in controversy exceeds this Court's jurisdictional
12 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 Defendants' 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 §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et*
27 *seq.*; California Business & Professions Code § 17200 *et seq.* ("Unfair Competition Law"); and
28 Wage Order 14, which sets employment standards 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 seasonal farm labor employees to harvest agricultural
4 commodities, namely dairy products, in the United States, and employed Plaintiff within Tulare
5 County and the state of California and, therefore, were (and are) doing business in Tulare County
6 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 to be subject to the unlawful employment practices, wrongs,
14 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.

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.

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10. During Plaintiff's employment with Defendants, Plaintiff and other non-exempt employees were in most workweeks paid on a predetermined flat-rate basis despite the fact that they regularly worked in excess of 11 hours per shift and often longer. Plaintiff and other non-exempt employees would work four days on, one day off, totaling six shifts per week. Plaintiff and other non-exempt employees rarely, if ever, were provided overtime compensation that was reflective of the actual number of hours they worked. Rather, Defendants would reverse engineer the timesheets and wage statements of Plaintiff and the other non-exempt employees to ensure that they received the flat-rate bi-weekly compensation as described above. For example, on Plaintiff's wage statement numbered 35214 issued on August 21, 2020, it is indicated that he worked 100 regular hours (95 under "Hourly Rate" and 5 at "Hourly-Guarantee Min") at a rate of \$13.00 per hour and 21 overtime hours at a rate of \$19.50 per hour (7.10 under "Overtime" and 13.9 at "OT Pay Guarantee Min") for a total of \$1,709.50. Similarly, and curiously, on Plaintiff's wage statement numbered 34836 issued on July 10, 2020, it is indicated that he worked 100 regular hours (85.58 under "Hourly Rate" and 14.42 at "Hourly-Guarantee Min") at a rate of \$13.00 per hour and 21 overtime hours at a rate of \$19.50 per hour (14.10 under "Overtime" and

4

First Amended Representative Action Complaint

6.9 at “OT Pay Guarantee Min”) for a total of \$1,709.50. These inconsistent numbers reflecting the hours Plaintiff worked, which all ultimately added up to \$1,709.50, were not the result of a coincidence or a strict timekeeping system. Rather, upon information and belief, this practice was a concerted effort to ensure that Plaintiff and other non-exempt employees did not receive all minimum and overtime wages due to them and instead unlawfully compensate them on a quasi-salary basis, despite the nature of their work not falling within any recognized salary exemptions.

11. Additionally, Defendants paid Plaintiff and other non-exempt employees non-discretionary bonuses and/or other forms of non-discretionary pay that are not excludable from the regular rate of pay (hereinafter the aforementioned forms of pay are referred to as “Incentive Pay”). Despite Defendants’ payment of Incentive Pay to Plaintiff and other non-exempt employees, Defendants failed account for Incentive Pay in properly calculating their regular rates of pay, thereby causing Plaintiff and other non-exempt employees to be underpaid all required overtime wages. Plaintiff and the other non-exempt employees were entitled to nondiscretionary bonuses tied to the quality of the milk that they produced. If the milk was of good quality and did not contain any bacteria, Plaintiff and other non-exempt employees would receive a bonus. Conversely, if bacteria was found in the milk, Plaintiff and other non-exempt employees would not receive any bonus. While Defendants as a matter of policy/practice generally failed to pay Plaintiff and other non-exempt employees their actual due overtime compensation, even on those occasions did Defendants provide overtime compensation to Plaintiff and other non-exempt employees, said overtime compensation did not take into account the above-mentioned Incentive Pay when calculating employees’ proper regular rates of pay for overtime purposes, which resulted in these employees further not being paid all overtime wages they were entitled to.

12. As discussed above, Defendants failed to record employees’ total hours worked each workday accurately. Defendants’ would maintain time records for all non-exempt employees, but on information and belief, such timecards did not accurately reflect the times that employees began and ended each workday. For example, although Plaintiff would typically work up to 12 hours, and sometimes longer, per workday, at no point were Plaintiff and the other non-exempt employees made to sign off on their start and end times for their shifts or meal periods.

1 This practice served to ensure that the hours worked by Plaintiff and other non-exempt employees
2 were systemically underreported. As a result, Defendants failed to ensure that Plaintiff and other
3 non-exempt employees were being paid at least the minimum wage for all hours actually worked,
4 and failed to ensure that Plaintiff and other non-exempt employees received proper overtime
5 wages for all overtime hours worked, in compliance with Wage Order 14.

6 **Failure to Pay Split-Shift Premiums**

7 13. Plaintiff and other non-exempt employees were routinely scheduled to work night
8 shifts scheduled from 6:30 p.m. to 5:00 a.m., constituting a “split-shift” as these employees would
9 end a shift in the morning and be required to report back to work that same day to start a new shift
10 during the same workday. On those occasions when Plaintiff and other non-exempt employees
11 were scheduled and required to work a split-shift, Defendants failed to compensate Plaintiff and
12 other non-exempt employees with the required split-shift premium as mandated by Wage Order
13 14, §4. Upon information and belief, during at least a portion of the putative class period,
14 Defendants failed to maintain any mechanism for the payment of split shift premium payments
15 when Plaintiff and other non-exempt employees were made to work “split-shifts”.

16 **Missed Rest Periods**

17 14. Plaintiff and other non-exempt employees were not authorized to take all legally
18 required rest periods regardless of whether they were working on a piece-rate or hourly basis. It
19 was a strict policy of Defendants that Plaintiff and other non-exempt employees were to be on the
20 job and milking cows for the entirety of their shifts outside of the brief meal periods they were
21 afforded. Furthermore, it was nearly impossible for Plaintiff and other non-exempt employees to
22 exercise the use of rest periods due to the fact that there were only two milkers working per shift
23 and they were expected and required by Defendants to milk hundreds of cows per shift. Further,
24 Plaintiff and other non-exempt employees were at no point advised by Defendants of their legal
25 right to exercise the use of rest periods. Despite Defendants’ failure to authorize and permit
26 Plaintiff and other non-exempt employees to take all lawful paid rest periods, due to their uniform
27 and unlawful practices, Defendants never provided Plaintiff and other non-exempt employees
28 with an hour of pay at their regular rate for each rest period violation as required by Labor Code

§ 226.7. Upon information and belief, during at least a portion of the time period in question, Defendants maintained no payroll code or another mechanism for the payment of rest period premiums in the event Plaintiff and other non-exempt employees were not authorized to take lawful rest periods.

Missed/Late/Shortened Meal Periods

15. Defendants also rarely provided Plaintiff and other non-exempt employees with a legally compliant first meal period when they worked shifts in excess of 6.0 hours. Instead, Plaintiff and other non-exempt employees would exercise their meal period well after their fifth hour worked the vast majority of the shifts that they worked with Defendants. Further, even on those occasions where Plaintiff and other non-exempt employees were able to exercise the use of a meal period, they were generally only permitted between 15-20 minutes to do so before they would be called back to resume work. Furthermore, despite working shifts in excess of 10 hours on an almost daily basis, at no point were Plaintiff and other non-exempt employees permitted to exercise the use of a legally compliant second meal period. Upon information and belief, Defendants did not accurately record the beginning and ending of each meal period on the timecards. Despite Defendants' failure to provide Plaintiff and other non-exempt employees with all lawful meal periods due to their uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

Wage Statement Violations/Waiting Time Penalties

16. As a result of Defendants' failure to pay all minimum and overtime wages, and 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, by and through their practice of manufacturing reverse engineered timesheets and wage statements that were in no way reflective of the actual amount of hours that Plaintiff and other non-exempt employees, Defendants have issued facially inaccurate wage statements.

FIRST CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

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

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

20. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff has sustained economic damages, including but not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 14.

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

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

9 24. At all times relevant herein, Defendants were required to properly compensate
10 Plaintiff for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order
11 14. Wage Order 14, § 3 requires an employer to pay overtime wages when an employee's hours
12 worked cross certain thresholds or meet certain criteria set forth in the Wage Order.

13 25. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
14 employees to work overtime hours but did not compensate Plaintiff at one and one-half times
15 their regular rate of pay for such hours.

16 26. The foregoing policies and practices are unlawful and create entitlement to
17 recovery by Plaintiff in a civil action for the unpaid amount of overtime premiums owing,
18 including interest thereon, statutory and civil penalties, and attorneys' fees and costs of suit
19 according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 14, and Code
20 of Civil Procedure § 1021.5.

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO PAY ALL SPLIT SHIFT PREMIUM WAGES**

23 **(AGAINST ALL DEFENDANTS)**

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

25 28. At all times relevant Plaintiff was an hourly non-exempt employee of Defendants
26 covered by labor Code § 1197 and Wage Order 14.

27 29. Wage Order 14 subdivision 4(C) states that: 'When an employee works a split
28 shift, one (1) hour's pay at minimum wage shall be paid in addition to the minimum wage for that

workday, except when the employee resides at the place of employment.”

30. Wage Order 14 subdivision (2)(N) defines a split shift as: “Split shift means a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

31. Defendants violated Wage Order 14 by scheduling Plaintiff for split shifts in which his work schedule was interrupted by non-paid, non-working periods established by Defendants which were not bona fide rest or meal periods, and did not pay the required split shift premium wage.

32. The foregoing policies/practices alleged herein are unlawful and create entitlement to recovery by Plaintiff and the members of the Split Shift Class in a civil action for the unpaid amount of minimum wages, including interest thereon, statutory penalties, civil penalties, attorneys’ fees, and costs of suit according to California Labor Code §§ 1197 and 218.5.

FOURTH CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

34. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 14, § 11. Despite Defendants’ violations, Defendants did not pay an additional hour of pay to Plaintiff at his respective regular rate of compensation, in accordance with California Labor Code §§ 226.7, and 512.

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

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1 **FIFTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

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

8 38. As alleged herein, Defendants failed to authorize and permit Plaintiff to take all
9 legally compliant rest periods.

10 39. The foregoing violations create an entitlement to recovery by Plaintiff in a civil
11 action for the unpaid amount of rest period premiums owing, including interest thereon, as well
12 as statutory penalties, civil penalties, and costs of suit according to California Labor Code §§
13 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

14 **SIXTH CAUSE OF ACTION**

15 **WAGE STATEMENT VIOLATIONS**

16 **(AGAINST ALL DEFENDANTS)**

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

18 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
20 with accurate, itemized wage statements that included, among other requirements, accurate time
21 records, total gross wages earned, meal and rest period premiums, and total net wages earned in
22 violation of Labor Code §226 *et seq.*

23 42. Defendants' failure to furnish Plaintiff with complete and accurate, itemized wage
24 statements resulted in actual injury, as said failures led to, among other things, the non-payment
25 of all of their meal and rest period premiums, and deprived him of the information necessary to
26 identify discrepancies in Defendants' reported data.

27 43. Defendants' failures created an entitlement to Plaintiff in a civil action for
28 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.*

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

45. 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.

46. Defendants failed to timely pay Plaintiff all final wages due at the time of his separation including, among other things, underpaid overtime and minimum wages owed, and meal and rest period premium wages. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

47. Defendants' willful failure to timely pay Plaintiff his earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff is entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

49. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay Plaintiff all overtime and minimum wages, provide all required meal periods and failing to authorize and permit all required rest periods, failing to pay meal and rest

period premium wage payments, failing to furnish accurate, itemized wage statements, and willfully failing to timely pay Plaintiff all final wages upon separation of employment.

50. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff of compensation to which he is legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

51. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

53. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests 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.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

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

55. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the 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

1 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
2 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
3 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
4 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
5 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
6 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
7 \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay
8 period for those violations of the Labor Code for which no civil penalty is specifically provided,
9 based on the following Labor Code:

- 10 a. Failing to pay minimum wages for all hours worked to Plaintiff and other
11 aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194,
12 1194.2, 1197, and 1198;
- 13 b. Failing to pay Plaintiff and other aggrieved employees all earned overtime
14 compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 15 c. Failing to provide all legally required meal periods, and failure to pay meal
16 period premium wages, to Plaintiff and other aggrieved employees at the
17 regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558,
18 and 1198;
- 19 d. Failing to authorize and permit all legally required rest periods, and failure to
20 pay rest period premium wages, to Plaintiff and other aggrieved employees at
21 the regular rate of compensation in violation of Labor Code §§ 226.7, 516,
22 558, and 1198;
- 23 e. Failing to furnish Plaintiff and other aggrieved employees with complete,
24 accurate, itemized wage statements in violation of Labor Code § 226;
- 25 f. Failing to timely pay all final wages and compensation earned by Plaintiff and
26 other aggrieved employees at the time of separation in violation of Labor Code
27 §§ 201, 202, and 203;
- 28 g. Failing to pay non-exempt employees all earned wages at least twice during

1 each calendar month in violation of Labor Code § 204;

2 h. FM violated Labor Code § 1197 by failing to pay Mr. Mayo and other
3 aggrieved employees all split shift premium wages; and

4 i. FM violated Labor Code §§ 1174 and 1198 by failing to maintain accurate
5 records on behalf of Mr. Mayo and other aggrieved employees.

6 56. July 19, 2021, Plaintiff notified Defendants via certified mail, and notified the
7 California Labor and Workforce Development Agency (“LWDA”) via its website, of
8 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
9 civil penalties under California Labor Code § 2698 et seq. with respect to violations of the
10 California Labor Code identified in Paragraph 55 (a)-(i). Now that sixty-five days have passed
11 from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not
12 provided notice that it intends to investigate the violations, Plaintiff has exhausted his
13 administrative requirements for bringing a claim under the Private Attorneys General Act with
14 respect to these violations.

15 57. Plaintiff was compelled to retain the services of counsel to file this court action to
16 protect his interests and the interests of other similarly aggrieved employees, and to assess and
17 collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and
18 costs, which she is entitled to receive under California Labor Code § 2699(g).

19 **PRAYER**

20 WHEREFORE, Plaintiff prays for judgment as follows:

21 1. Upon the First Cause of Action, for payment of minimum wages, liquidated
22 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
23 1197;

24 2. Upon the Second Cause of Action, for compensatory, consequential, general, and
25 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

26 3. Upon the Third Cause of Action, for compensatory, consequential, general and
27 special damages according to proof pursuant to Labor Code § 1197;

28 4. Upon the Fourth Cause of Action, for compensatory, consequential, general and

special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

5. Upon the Fifth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

6. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;

7. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 201-203;

8. Upon the Eighth Cause of Action, for restitution 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.*;

9. Upon the Ninth Cause of Action, (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 the violations of the Labor Code Sections cited in Labor Code § 2699.5.

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

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

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

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1 Dated: October 7, 2021

Respectfully submitted,
STANBURY BROWN LAW

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3 By: _____



Daniel J. Brown
Attorneys for Plaintiff

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5 **DEMAND FOR JURY TRIAL**

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

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8 Dated: October 7, 2021

Respectfully submitted,
STANBURY BROWN LAW

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10 By: _____



Daniel J. Brown
Attorneys for Plaintiff

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SERVICE LIST

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