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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MADERA

JUSTINO MEDRANO, on behalf of himself
and all others similarly situated and the
general public,

Plaintiff,

vs.

F & F CONTRACTING, INC., a California
corporation; WONDERFUL CITRUS, LLC, a
Delaware limited liability company;
WONDERFUL CITRUS II, LLC, a Delaware
limited liability company; WONDERFUL
CITRUS PACKING, LLC, a Delaware
Limited Liability Company; WONDERFUL
CITRUS COOPERATIVE, a California
corporation; WONDERFUL CITRUS
HOLDINGS, LLC, a Delaware limited
liability company; WONDERFUL CITRUS
VENTURES, LLC, a Delaware limited
liability company; and DOES 1 through 100,

Defendants.

Case No.: MCV085748

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

CLASS ACTION

- (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 §§ 226.2, 226.7, AND
516);**
- (5) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES**
- (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**

1 Plaintiff Justino Medrano (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint (“FAC”)
3 against F & F Contracting, Inc.; Wonderful Citrus, LLC; Wonderful Citrus II, LLC; Wonderful
4 Citrus Packing, LLC; Wonderful Citrus Cooperative; Wonderful Citrus Holdings, LLC;
5 Wonderful Citrus Ventures, LLC; and DOES 1 to 100, inclusive (collectively “Defendants”), and
6 on information and belief alleges as follows:

7 **JURISDICTION**

8 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
9 Complaint for recovery of unpaid wages and penalties under California Business & Professions
10 Code § 17200 *et. seq.*, Labor Code §§ 201-205, 226 *et seq.*, 226.2, 226.7, 510, 512, 516, 551-552,
11 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2802; and Industrial Welfare Commission Wage
12 Order 14 (“Wage Order 14”), in addition to seeking declaratory relief and restitution. This
13 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
14 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
15 controversy exceeds this Court’s jurisdictional minimum.

16 **VENUE**

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

22 **PARTIES**

23 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
24 Plaintiff was and currently is, a California resident. During the four years immediately preceding
25 the filing of the Complaint in this action and within the statute of limitations periods applicable
26 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
27 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
28 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code

§§ 201-205, 226 *et seq.*, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, and 1198, 2802; California Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”); and Wage Order 14, which sets employment standards for Agricultural Occupations.

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

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

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

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

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course

1 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
2 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
3 members of the Classes.

4 9. Defendants Wonderful Citrus, LLC, Wonderful Citrus II, LLC, Wonderful Citrus
5 Packing, LLC, Wonderful Citrus Cooperative, Wonderful Citrus Holdings, LLC, and Wonderful
6 Citrus Ventures, LLC are also jointly liable with Defendant F & F Contracting, Inc. for all civil
7 legal responsibility and civil liability for the payment of wages, including all sums payable to an
8 employee or the state of California based upon any failure to pay wages, pursuant to Labor Code
9 §2810.3

10 **GENERAL FACTUAL ALLEGATIONS**

11 10. Defendants are in the agricultural business and employee seasonal farm labor
12 employees to harvest agricultural goods, namely citrus fruits. Plaintiff commenced employment
13 with Defendants as a non-exempt farm labor employee in the position of “Picker” from
14 approximately July 21, 2020 until August 19, 2020 when he sustained a workplace injury on the
15 job. Plaintiff’s job duties included harvesting various types of oranges and/or other citrus fruits.
16 Defendants’ credited Plaintiff with working approximately 5.0 to 6.0 hours per shift, five days a
17 week. However, as discussed below, Plaintiff usually worked considerably more hours per shift
18 which went wholly unrecorded by Defendants. Defendants have not boarded or lodged Plaintiff
19 during his employment.

20 11. During Plaintiff’s employment with Defendants, Plaintiff was paid on a piece-rate
21 basis, whereby he was paid a set rate of \$24 per bin filled with citrus fruit. Defendants’
22 forepersons falsely recorded the hours worked by Plaintiff and other non-exempt employees. For
23 example, despite being credited for between 5-6 hours worked per shift, in reality, Plaintiff and
24 other non-exempt employees worked in excess of eight hours on a daily basis. Plaintiff and the
25 other non-exempt employees were required by Defendants to arrive at the fields at 4:50 a.m. every
26 morning, despite their shifts not officially beginning until 5:00 a.m. Once they arrived at the field,
27 they would be required to retrieve a ladder in the back of Defendants’ trailer and walk to the fields
28 and commence picking oranges. Defendants’ forepersons were the sole individuals in charge of

1 keeping track of the hours worked by Plaintiff and the other non-exempt employees, however
2 they would intentionally and systematically underreport their hours worked. For example, while
3 Plaintiff and other non-exempt employees would commence work at 5:00 a.m., their forepersons
4 would indicate on a hole-punch on their timesheets that they did not begin working until 5:30
5 a.m. This practice was a daily occurrence throughout Plaintiff's employment with Defendants.
6 Furthermore, at the end of their shifts, typically between 12:30 p.m. and 1:45 p.m., depending on
7 the weather conditions, Defendants' forepersons would advise Plaintiff and the other non-exempt
8 employees to stop working and would indicate that their shifts had finished on their timesheets.
9 However, in reality, after their forepersons officially punched them out on their timesheets for the
10 shift, Plaintiff and the other non-exempt employees would be required to continue working until
11 they were able to completely fill the bins that had been pre-laid out for the day for them. This
12 time was not ever recorded in any manner and would take up to hours at a time to completely fill
13 up all of the bins laid out for them after they had been officially clocked out by the forepersons.
14 Furthermore, after the bins were adequately filled, Plaintiff and the other non-exempt employees
15 would be required to walk at least ten minutes from their posts to return their ladders to the trailers,
16 time that went wholly uncompensated and unrecorded. At no point during Plaintiff's employment
17 with Defendants were he nor any of the other non-exempt employees made to sign off on or
18 confirm the amount of hours they worked on a given shift. The timesheets were in sole possession
19 of Defendants forepersons at all times during Plaintiff's employment. As a result of these
20 unlawful policies/practices, Defendants failed to ensure that Plaintiff and other non-exempt
21 employees were being paid at least the minimum wage for all hours actually worked, and failed
22 to ensure that Plaintiff and other non-exempt employees received proper overtime wages for all
23 overtime hours worked, in compliance with Wage Order 14.

24 12. Plaintiff and other non-exempt employees were also not authorized to take all
25 legally required rest periods regardless of whether they were working on a piece-rate or hourly
26 basis. While on few occasions, Plaintiff and the other non-exempt employees would be permitted
27 to take a few minutes to cool off if it became exceedingly hot in the fields, the vast majority of
28 the time Plaintiff and the other non-exempt employees were not entitled nor advised of their right

1 to exercise the use of legally compliant rest periods and were instructed to work throughout the
2 entirety of their shifts. Furthermore, while Defendants did compensate Plaintiff and the other
3 non-exempt employees for paid rest and recovery time, it was not compensated at the correct
4 average hourly rate as a consequence of their systemic policy/practice of underreporting the hours
5 that Plaintiff and the other non-exempt employees actually worked. Despite Defendants' failure
6 to authorize and permit Plaintiff and other non-exempt employees to take all lawful paid rest
7 periods, due to their uniform and unlawful practices, Defendants never provided Plaintiff and
8 other non-exempt employees with an hour of pay at their regular rate for each rest period violation
9 as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the
10 class period, Defendants maintained no payroll code or another mechanism for the payment of
11 rest period premiums in the event Plaintiff and other non-exempt employees were not authorized
12 to take lawful rest periods.

13 13. Defendants have failed to accurately record and compensate Plaintiff and other
14 non-exempt employees who are compensated on a piece-rate basis for non-productive time. *See*
15 *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-rate
16 compensation structure that does not separately compensate employees for non-productive time
17 violates California minimum wage laws). Plaintiff and other non-exempt employees were
18 required to perform work duties and activities that were not directly compensated on a piece-rate
19 basis, such as walking ladders to and from the fields at the beginning and ends of their shifts,
20 waiting for weather conditions to permit work to commence and/or resume, bathroom and water
21 breaks, and/or other mandatory duties that were not directly compensated on a piece-rate basis.
22 While Plaintiff's wage statements do contain a "Non-Productive Time" item, the amount of time
23 recorded under "Non-Productive Time" is grossly unrepresentative of the actual non-productive
24 time that Plaintiff and the other non-exempt employees experienced during their shifts. Plaintiff
25 estimates that he and other non-exempt employees experienced at least 30 minutes to an hour of
26 non-productive time per shift. Furthermore, on those occasions where they were made to wait
27 for weather conditions to permit commencement of work up, Plaintiff and other non-exempt
28 employees would experience up to 3-4 hours of non-productive time. However, as evidenced by

1 Plaintiff's wage statement numbered 310387 representing the time period between July 30, 2020
2 until August 5, 2020, he was only compensated for exactly 0.17 hours (~10 minutes) of non-
3 productive time per shift worked, a gross underrepresentation of the actual amount of non-
4 productive time experienced during his shifts. This practice was mirrored on Plaintiff's wage
5 statement numbered 311119 representing the time period between August 13, 2020 and August
6 19, 2020 as well as Plaintiff's wage statement numbered 311087 representing the time period
7 between August 6, 2020 and August 12, 2020, evidencing a systemic policy/practice of only
8 paying Plaintiff and other non-exempt employees 0.17 hours of non-productive time per shift. At
9 no point during Plaintiff's employment with Defendants was he ever compensated for more than
10 0.17 hours of non-productive time per shift despite experiencing non-productive time well in
11 excess of 0.17 on a daily basis. Accordingly, Defendants have not accurately tracked and
12 compensated employees' non-productive time in compliance with Labor Code § 226.2.

13 14. Moreover, in addition to not properly compensating or recording all time actually
14 worked as described above, Plaintiff's wage statements indicate that he was not paid at least the
15 minimum wage for all time Defendants did credited him for working, which was less than the
16 actual time he worked. For example, Plaintiff's wage statement numbered 309699 credits him
17 with working 6.33 hours picking time, 0.17 hours for non-productive time, 0.34 hours for rest and
18 recovery time, and an additional 1.0 of further picking time, for a total of 7.84 hours worked for
19 the day of July 21, 2020 and Plaintiff's wage statement indicates that he was compensated a total
20 of \$88.92 for work performed on that day. However, at a minimum Plaintiff should have been
21 compensated \$101.92 (6.33 hours * \$13.00 hourly minimum wage). As such, Defendants
22 systemically failed to pay Plaintiff and other non-exempt employees paid on a piece-rate basis at
23 at least the minimum wage for all time worked.

24 15. Defendants also never provided Plaintiff and other non-exempt employees with a
25 first meal period when they worked shifts in excess of 6.0 hours. Instead, Plaintiff and other non-
26 exempt employees would be forced to eat while continuing to work and still on the fields. At no
27 point during Plaintiff's employment with Defendants were he nor any of the other non-exempt
28 employees advised of their legal right to exercise the use of meal periods. Furthermore, upon

information and belief, Defendants' forepersons did not accurately record the beginning and ending of each meal period on the timecards, if at all. Defendants' forepersons at no point ever scheduled any meal periods and either knew or should have known that Plaintiff and the other non-exempt employees were not exercising the use of meal periods. 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.

16. Defendants failed to adequately reimburse Plaintiff for all reasonable and necessary work expenditures, including but not limited to, requiring Plaintiff to purchase and maintain their own gloves and shears for the purpose of harvesting of citrus fruit for the benefit of Defendants without reimbursement.

17. As a result of Defendants' failure to accurately compensate Plaintiff and other non-exempt employees for non-productive time, 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, as a consequence of intentionally and willfully failing to properly record the amount of hours that Plaintiff and other non-exempt employees actually worked, Defendants have issued facially inaccurate wage statements.

CLASS ACTION ALLEGATIONS

18. **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 Minimum Wage Class consists of all current and former non-exempt employees of Defendant F & F Contracting, Inc. in California that were compensated on a piece-rate or hourly basis during the four years immediately preceding the filing of this lawsuit through the present.

- b. The Overtime Wage Class consists of all current and former non-exempt employees of Defendant F & F Contracting, Inc. in California who worked overtime hours (based on criteria set forth in Wage Order 14) during the four years immediately preceding the filing of this lawsuit through the present.
- c. The Rest Period Class consists of all current and former non-exempt employees of Defendant F & F Contracting, Inc. in California who worked at least one shift in excess of 3.5 hours during the four years immediately preceding the filing of this lawsuit through the present.
- d. The Meal Period Class consists of all current and former non-exempt employees of Defendant F & F Contracting, Inc. in California who 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 during the four years preceding the filing of this lawsuit through the present.
- e. The Employee Expense Class consists of all of Defendant F & F Contracting, Inc.'s current and former non-exempt employees in California who were not reimbursed for the purchase and maintenance of tools necessary for the performance of their job duties during the four years immediately preceding the filing of this lawsuit to the present.
- f. The Wage Statement Class consists of all members of the Rest Period Class, Minimum Wage Class, Overtime Class, and/or Meal Period Class who received a wage statement from Defendant F & F Contracting, Inc. during the one year immediately preceding the filing of this lawsuit through the present.
- g. The Waiting Time Class consists of all formerly employed members of the Rest Period Class, Minimum Wage Class, Overtime Class, and/or Meal Period Class who separated from employment during the three years immediately preceding the filing of this lawsuit through the present.
19. **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 two hundred (200) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

20. **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 correctly compensated employees for rest periods pursuant to Labor Code § 226.2;
- ii. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;
- iii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and Wage Order 14 by requiring members of the Overtime Wage Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- iv. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Minimum Wage Class;
- v. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- vi. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- vii. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;
- viii. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and
- ix. Whether Defendants' policies and/or practices for the timing and amount of

1 payment of final wages to members of the Waiting Time Class at the time of
2 separation from employment were lawful.

3 21. **Predominance of Common Questions:** Common questions of law and fact
4 predominate over questions that affect only individual members of the Classes. The common
5 questions of law set forth above are numerous and substantial and stem from Defendants' policies
6 and/or practices applicable to each individual class member, such as Defendants' uniform piece-
7 rate pay structure, meal and rest period policies and practices, timekeeping policies and practices,
8 non-reimbursement, wage statement, and payment of final wages policies and practices. As such,
9 the common questions predominate over individual questions concerning each individual class
10 member's showing as to his or her eligibility for recovery or as to the amount of his or her
11 damages.

12 22. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
13 Plaintiff was employed by Defendants as a non-exempt employee in California during the
14 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
15 herein, Plaintiff, like the members of the Classes, was paid on a piece-rate basis, was subject to
16 Defendants' meal and rest period and timekeeping policies and practices, was subjected to
17 Defendants' unlawful failure to reimburse business expenses, was furnished with inaccurate and
18 incomplete wage statements, and was not paid all wages earned at the time of his separation of
19 employment.

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

26 24. **Superiority:** The California Labor Code is broadly remedial in nature and serves
27 an important public interest in establishing minimum working conditions and standards in
28 California. These laws and labor standards protect the average working employee from

1 exploitation by employers who have the responsibility to follow the laws and who may seek to
2 take advantage of superior economic and bargaining power in setting onerous terms and
3 conditions of employment. The nature of this action and the format of laws available to Plaintiff
4 and members of the Classes make the class action format a particularly efficient and appropriate
5 procedure to redress the violations alleged herein. If each employee were required to file an
6 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
7 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
8 their vastly superior financial and legal resources. Moreover, requiring each member of the
9 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
10 employees who would be disinclined to file an action against their former and/or current employer
11 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
12 employment. Further, the prosecution of separate actions by the individual class members, even
13 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
14 with respect to the individual class members against Defendants herein; and which would
15 establish potentially incompatible standards of conduct for Defendants; and/or legal
16 determinations with respect to individual class members which would, as a practical matter, be
17 dispositive of the interest of the other class members not parties to adjudications or which would
18 substantially impair or impede the ability of the class members to protect their interests. Further,
19 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
20 individual prosecution considering all of the concomitant costs and expenses attending thereto.
21 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
22 Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

26. Wage Order 14, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
27 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
28

1 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
2 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
3 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
4 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
5 their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum
6 Wage Class for all hours actually worked including, but not limited to, all hours they were subject
7 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
8 and Wage Order 14.

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

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

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

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PAY ALL OVERTIME WAGE**

27 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

18 **THIRD CAUSE OF ACTION**

19 **MEAL PERIOD VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

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

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

1 37. As a result, Defendants are responsible for paying premium compensation for meal
2 period violations including interest thereon, as well as statutory penalties, civil penalties, and
3 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 14, and Civil Code §§
4 3287(b) and 3289.

5 **FOURTH CAUSE OF ACTION**

6 **REST PERIOD VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

20 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

7 **SIXTH CAUSE OF ACTION**

8 **WAGE STATEMENT VIOLATIONS**

9 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

25 **SEVENTH CAUSE OF ACTION**

26 **WAITING TIME PENALTIES**

27 **(AGAINST ALL DEFENDANTS)**

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

52. 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.

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

54. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Class their 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 and members of the Waiting Time Class are 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)

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

56. 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 and the Classes 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 reimburse for necessary business

1 expenditures, and failing to furnish accurate, itemized wage statements, and willfully failing to
2 timely pay Plaintiff and members of the Waiting Time Class all final wages upon separation of
3 employment.

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

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

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

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

20 **NINTH CAUSE OF ACTION**

21 **PRIVATE ATTORNEYS GENERAL ACT**

22 **(AGAINST ALL DEFENDANTS)**

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

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

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

- 13 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
14 Wage Class, and other similarly aggrieved employees in violation of Labor
15 Code §§ 226.2, 1182.12, 1194, 1194.2, and 1197;
- 16 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
17 earned overtime compensation in violation of Labor Code §§ 204, 226.2, 510,
18 558, 1194, and 1198;
- 19 c. Failing to provide all legally required meal periods, and failing to pay meal
20 period premium pay, to Plaintiff, the Meal Period Class, and other similarly
21 aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 22 d. Failing to timely pay all final wages and compensation earned by Plaintiff, the
23 Waiting Time Class, and other aggrieved employees at the time of separation
24 in violation of Labor Code §§ 201, 202, and 203;
- 25 e. Failing to authorize and permit all legally required rest periods, and failing to
26 pay rest period premiums, to Plaintiff, the Rest Period Class, and other similarly
27 aggrieved employees in violation of Labor Code §§ 226.7, 512, and 558;
- 28 f. Failing to reimburse Plaintiff, the Employee Expense Class, and other
aggrieved employees for all necessary work expenses incurred in violation of

Labor Code §§ 2802 and 2804;

- g. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- h. Failing to pay non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174.

63. On July 19, 2021, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 62 (a)-(i). The LWDA has not provided notice that it intends to investigate the violations, and therefore Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

PRAYER

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

- 1. For an order certifying the proposed Classes;
- 2. For an order appointing Plaintiff as representative of the Classes;
- 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;

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

3 6. Upon the Third Cause of Action, for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

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

7 8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and
8 special damages according to proof pursuant to Labor Code § 2802;

9 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
10 226, *et seq.*;

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

13 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
14 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
15 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
16 *seq.*;

17 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
18 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
19 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
20 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
21 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
22 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
23 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
24 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
25 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
26 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
27 each initial violation and \$200 for each subsequent violation per employee per pay period for
28 those violations of the Labor Code for which no civil penalty is specifically provided, based on

1 the following Labor Code violations;

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

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

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

7
8 Dated: January 8, 2022

Respectfully submitted,
STANBURY BROWN LAW

9
10 By:



Daniel J. Brown
Attorneys for Plaintiff

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12
13 **DEMAND FOR JURY TRIAL**

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

15
16 Dated: January 8, 2022

Respectfully submitted,
STANBURY BROWN LAW

17
18 By:



Daniel J. Brown
Attorneys for Plaintiff

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PROOF OF SERVICE

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

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

On February 22, 2022 I served the document listed below on the parties in this action as follows:

PROOF OF SERVICE OF FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- X (BY EMAIL) In accordance with California Code of Civil Procedure Section 1010.6 in compliance with SB 1146 effective 9/18/20, which codifies parts of Emergency Rules 11 and 12, as amended, and CRC rule 2.251, I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 22, 2022 at Venice, California.



Daniel J. Brown

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