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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **FOR THE COUNTY OF MERCED**

9 ELISEO OCHOA, as an individual and on
10 behalf of all others similarly situated,

11 Plaintiff,

12 vs.

13 VIERA AGRICULTURAL ENTERPRISES,
14 LLC, a California limited liability company;
15 and DOES 1 through 100,

16 Defendants.

ELECTRONICALLY FILED
Merced Superior Court
9/20/2021 11:15 AM
Amanda Toste
Clerk of the Superior Court
By: Tawn Saepanh, Deputy

Case No.: 21CV-02299
Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

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

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

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(9) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).

DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE

1 Plaintiff Eliseo Ochoa ("Plaintiff"), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint ("Complaint")
3 against Vieira Agricultural Enterprises, LLC, a California limited liability company; and DOES
4 1 to 100, inclusive (collectively "Defendants"), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business & Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 221, 226 *et seq.*, 226.7, 510, 512, 516, 558,
9 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, and 2802; and Industrial Welfare Commission
10 Wage Order 14 ("Wage Order 14"), in addition to seeking declaratory relief and restitution. This
11 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
12 jurisdiction over Defendants' violations of the California Labor Code because the amount in
13 controversy exceeds this Court's 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 Merced. Defendants own, maintain offices, transact business, have agent(s) within the
18 County of Merced, and/or otherwise are found within the County of Merced, and Defendants are
19 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

1 Law”); and Wage Order 14, which sets employment standards for the Agricultural Industry.

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) agricultural business in California and the greater United States, and employed
5 Plaintiff and other, similarly-situated non-exempt employees within Merced County and the state
6 of California and, therefore, were (and are) doing business in Merced County and the State of
7 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 to be subject to the unlawful employment
15 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

1 members of the Classes.

2 GENERAL FACTUAL ALLEGATIONS

3 9. Plaintiff commenced employment with Defendants as a non-exempt employee as
4 a general farm laborer from approximately May 25, 2020, until around August 15, 2020. Plaintiff
5 and other aggrieved employees would typically work Monday through Saturday from 6:00 a.m.
6 until around 3:30 p.m., however as discussed in further detail below, Plaintiff and other aggrieved
7 employees worked considerably more hours than they were credited for. Furthermore, beginning
8 around August of 2020, Plaintiff and other aggrieved employees were made to work from 4:00
9 a.m. until around 2:30 p.m., equating to at least ten hours per day and sixty hours per week.
10 Plaintiff's job duties included generally harvesting sweet potatoes grown at Defendants' facilities.

11 **Late/Shortened Meal Periods**

12 10. During Plaintiff's employment with Defendants, Plaintiff was not provided all
13 required meal periods due to Defendants' meal period policies/practices which fail to provide
14 uninterrupted, duty-free 30-minute meal periods prior to the sixth hour of work commencing.
15 Rather, as a matter of policy and practice, Defendants would not permit Plaintiff and other
16 aggrieved employees to commence their meal periods until at least thirty minutes after their fifth
17 hour worked. For example, on Plaintiff's timesheet representing the time period between June
18 15 and June 21, 2020, he was not able to exercise the use of his meal period until 11:30 a.m., 5.5
19 hours after the scheduled beginning of his shift at 6:00 a.m.. This practice was uniform
20 throughout the company as Plaintiff and other aggrieved employees all would exercise the use of
21 their meal periods at 11:30 a.m. on each shift worked constituting daily meal period violations.
22 As a result of this policy/practice, Mr. Ochoa and other aggrieved employees were not permitted
23 to exercise the use of timely legally-complaint off-duty meal periods. Despite experiencing meal
24 period violations nearly every shift that they worked, Plaintiff and the other aggrieved employees
25 were not provided with meal period premiums as mandated by Labor Code § 226.7.

26 11. In addition to Defendants' failure to provide Plaintiff and other aggrieved

1 10.0 hours.

2 12. On those occasions when Plaintiff and the putative class were not provided with
3 all legally-compliant meal periods to which they were entitled, Defendants failed to compensate
4 Plaintiff and the putative class with the required meal period premium for each workday in which
5 they experienced a meal period violation as mandated by Labor Code § 226.7. Further, upon
6 information and belief during at least a portion of the class period, Defendants maintained no
7 payroll code or other mechanism for the payment of meal period premium payments required by
8 Labor Code § 226.7 in the event that a legally compliant meal period was not provided to their
9 non-exempt employees.

10 **Missed/Shortened Rest Periods**

11 13. Plaintiff and the other aggrieved employees were also not authorized and permitted
12 to take all required rest periods due to Defendants' rest period policies/practices, which fail to
13 authorize and permit all rest periods for every four hours worked, or major fraction thereof.
14 Plaintiff and the other aggrieved employees were rarely permitted to exercise legally compliant
15 rest periods. Plaintiff and other aggrieved employees would constantly have their rest periods cut
16 short to attend to their work duties and were not allowed to leave the facility during their shifts at
17 any point during their employment with Defendants. As a result of these policies/practices,
18 Defendants failed to authorize and permit Plaintiff and the other aggrieved employees with off-
19 duty rest periods that were completely free of employer control, in violation of California law.
20 On those occasions when Plaintiff and the putative class were not authorized and permitted to
21 take all legally-compliant rest periods to which they were entitled, Defendants failed to
22 compensate Plaintiff and the other non-exempt employees with the required rest period premium
23 for each workday in which they experienced a rest period violation as mandated by Labor Code
24 § 226.7. Furthermore, upon information and belief during at least a portion of the class period,
25 Defendants maintained no payroll code or other mechanism for the payment of rest period
26 premium payments under Labor Code § 226.7 in the event that a legally compliant rest period

Off-The-Clock Work

14. Plaintiff and the putative class regularly performed work off-the-clock for the benefit of Defendants outside of the instances described above. Plaintiff and the other aggrieved employees would be required to perform pre and post shift work off-the-clock and wholly uncompensated on a daily basis. For example, Plaintiff and the other aggrieved employees were required to arrive at the worksite at least 15 minutes prior to the commencement of their shifts so as to ensure that the machines that they were operating would begin harvesting for the benefit of Defendants exactly when their shifts started at 6:00 a.m. (or 4:00 a.m., depending on the time period in question). This sort of occurrence was a requirement throughout the entirety of Plaintiff and the other aggrieved employees' employment with Defendants. If an employee failed to arrive at their worksite early, the rest of the crew would start without them, they would be met with reprimand, and would have to spend the rest of the shift catching up with their duties. Defendants maintained a strict schedule as to what hours the farm would be in operation and made it a point to ensure that Plaintiff and other aggrieved employees come in early so that they were ready to work exactly when production began. Defendants either knew or should have known that Plaintiff and the other aggrieved employees were performing numerous hours of work off-the-clock on a daily basis but at no point discouraged the practice or provided any sort of compensation for this time.

15. Furthermore, Plaintiff and the other aggrieved employees were required to perform post-shift duties at the conclusion of every shift after clocking out for the day. For example, although Plaintiff and the other aggrieved employees would generally finish their harvesting work at their scheduled times, they would have to wait for the machines they were working on to power off and clean them for use the next day. Additionally, they would have to drive the machines back from the fields to their cars after the conclusion of their shifts. As Plaintiff and the other aggrieved employees would often work deep in the fields, this time spent returning to their personal vehicles after the conclusion of work could take anywhere from 15-30 minutes each day. This time would add up to multiple hours per month and at no point were Plaintiff and the other aggrieved employees ever provided any sort of compensation for this time spent while off-the-

1 clock.

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

3 16. Defendants failed to adequately reimburse Plaintiff for all reasonable and
4 necessary work expenditures, including failing to reimburse for mileage despite requiring
5 Plaintiff and the other aggrieved employees to drive their personal vehicles between fields in the
6 middle of their shifts. Despite requiring Plaintiff and the other aggrieved employees to incur gas
7 and mileage expenses, at no point were they ever provided reimbursement from Defendants for
8 said expenses, in violation of Labor Code § 2802.

9 **Inaccurate Wage Statements**

10 17. As a result of Defendants' failure to pay all minimum wages, overtime wages,
11 meal and rest period premium wages, Defendants maintained inaccurate payroll records, and
12 issued inaccurate and facially deficient wage statements. Furthermore, Defendants issued
13 Plaintiff and the other aggrieved employees with facially inaccurate wage statements that failed
14 to include the proper legal address that is the employer entity in violation of Labor Code §
15 226(a)(8). For example, on the wage statement issued by Defendants numbered 255678
16 representing the time period between June 1, 2020 until June 7, 2020, Defendants list their address
17 as "3900 Sultana Dr., Atwater, CA 95301 P.O. Box 533". However, Defendants registered
18 address with the California Secretary of State is "3978 Sultana Dr., Atwater, CA 93656."

19 **Failure to Timely Pay All Final Wages**

20 18. As a further result of Defendants' failure to pay all minimum wages, overtime
21 wages, and meal and rest period premium wages, Defendants failed to pay all wages owed to
22 Plaintiff upon his separation of employment from Defendants. Moreover, Plaintiff was not
23 provided his last pay check until more than 30 days after his employment was terminated.

24 **CLASS ACTION ALLEGATIONS**

25 19. **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 Minimum Wage Class consists of all Defendants' current and former non-
28 exempt employees in California who were subject to Defendants' timekeeping

systems and/or practices, during the four years immediately preceding the filing of the Complaint through the present.

- b. The Overtime Class consists of all Defendants' current and former non-exempt employees in California who worked overtime hours (based on criteria set forth in Wage Order 14) and were subject to Defendants' timekeeping systems and/or practices, during the four years immediately preceding the filing of the Complaint through the present.
 - c. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who: worked at least one shift: (i) in excess of 5.0 hours; and/or (ii) in excess of 10.0 hours, during the four years immediately preceding the filing of the Complaint through the present;
 - d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, during the four years immediately preceding the filing of the Complaint through the present;
 - e. The Employee Expense Class consists of all Defendants' current and former non-exempt employees in California who: (i) were not reimbursed for gas and/or mileage expenses during the four years immediately preceding the filing of the Complaint through the present;
 - f. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and Rest Period Class, who received a wage statement during the one year immediately preceding the filing of the Complaint through the present; and
 - g. The Waiting Time Class consists of all Defendants' formerly employed members of the Minimum Wage Class, the Overtime Class, Meal Period Class, and Rest Period Class, who separated from employment during the three years immediately preceding the filing of the Complaint through the present.
20. **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.

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

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

22. **Predominance of Common Questions:** Common questions of law and fact

1 predominate over questions that affect only individual members of the Classes. The common
2 questions of law set forth above are numerous and substantial and stem from Defendants' policies
3 and/or practices applicable to each individual class member, such as Defendants' uniform
4 timekeeping, meal and rest period, non-reimbursement, wage statement, and payment of final
5 wages policies/practices. As such, the common questions predominate over individual questions
6 concerning each individual class member's showing as to their eligibility for recovery or as to the
7 amount of their damages.

8 23. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
9 Plaintiff was employed by Defendants as a non-exempt employee in California during the
10 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
11 herein, Plaintiff, like the members of the Classes, was not paid for all hours worked, provided all
12 required meal periods, was not authorized and permitted to take all required rest periods, did not
13 receive meal and rest period premium wages when he was not provided compliant meal and rest
14 periods, was subject to Defendants' unlawful failure to reimburse, did not receive accurate and
15 itemized wage statements, and was not paid all wages owed at time of separation of employment
16 from Defendants.

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

23 25. **Superiority:** The California Labor Code is broadly remedial in nature and serves
24 an important public interest in establishing minimum working conditions and standards in
25 California. These laws and labor standards protect the average working employee from
26 exploitation by employers who have the responsibility to follow the laws and who may seek to
27 take advantage of superior economic and bargaining power in setting onerous terms and
28 conditions of employment. The nature of this action and the format of laws available to Plaintiff

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

20 **FIRST CAUSE OF ACTION**

21 **MINIMUM WAGE VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

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

24 27. Wage Order 14, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
25 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
26 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
27 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
28 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid

1 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
2 their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum
3 Wage Class for all hours actually worked including, but not limited to, all hours they were subject
4 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
5 and Wage Order 14.

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

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

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

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PAY ALL OVERTIME WAGES**

24 **(AGAINST AL DEFENDANTS)**

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

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

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

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

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

36. 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 and members of the Meal Period Class, 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 and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7, and 512.

37. 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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FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

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

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

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

FIFTH CAUSE OF ACTION
FAILURE TO REIMBURSE BUSINESS EXPENSES
(AGAINST ALL DEFENDANTS)

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

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

44. Due to Defendants’ unlawful policy and practice of requiring employees to use their personal vehicles in the performance of their job duties without reimbursement, Defendants have violated Labor Code § 2802.

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

46. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,

1 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue
2 from the date on which they incurred the initial necessary expenditure.

3 **SIXTH CAUSE OF ACTION**

4 **WAGE STATEMENT VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

22 **SEVENTH CAUSE OF ACTION**

23 **WAITING TIME PENALTIES**

24 **(AGAINST ALL DEFENDANTS)**

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

26 52. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
27 an employer to pay all wages immediately at the time of termination of employment in the event
28 the employer discharges the employee or the employee provides at least 72 hours of notice of

1 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
2 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
3 employee's last date of employment.

4 53. Defendants failed to timely pay Plaintiff all of his final wages at the time of
5 termination, which include, among other things, underpaid minimum and overtime wages, meal
6 and rest period premium wages, and reimbursement for necessary business expenses. Further,
7 Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy
8 and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned
9 wages at the end of employment in a timely manner pursuant to the requirements of Labor Code
10 §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor
11 Code § 203.

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

17 **EIGHTH CAUSE OF ACTION**

18 **UNFAIR COMPETITION**

19 **(AGAINST ALL DEFENDANTS)**

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

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

57. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are 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.

58. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, 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.

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

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

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

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

62. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each

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

- a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. 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;
- f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- g. Failing to timely pay all final wages and compensation earned by Plaintiff, the

Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;

- h. Failing to pay Plaintiff and other 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 § 1174.

63. On July 14, 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). Now that sixty-five days have passed from Plaintiff's notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, 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 similarly 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;
- 5. Upon the Second Cause of Action, for compensatory, consequential, general, and

special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

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

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

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

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

10. Upon the Seventh Cause of Action, for statutory penalties pursuant to Labor Code § 203.;

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

12. 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.

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

14. On all causes of action, for attorneys' fees and costs as provided by Code of Civil

1 Procedure § 1021.5 and all other applicable statutes; and

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

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4 Dated: September 20, 2021

Respectfully submitted,
STANBURY BROWN LAW

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6 By:


Daniel J. Brown
Ethan C. Surls
Attorneys for Plaintiff

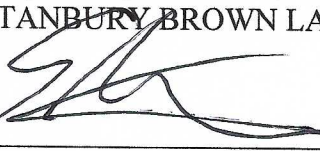
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11 **DEMAND FOR JURY TRIAL**

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

14
15 Dated: September 20, 2021

Respectfully submitted,
STANBURY BROWN LAW

16
17 By:


Daniel J. Brown
Ethan C. Surls
Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

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 September 20, 2021, I served the document listed below on the parties in this action as follows:

- FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

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

Executed on September 20, 2021, at Redondo Beach, California.



Ethan C. Surls

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SERVICE LIST

Vieira Agricultural Enterprises, LLC
c/o Walter J. Schmidt
1501 F. Street
Modesto, CA 95354

Agent for Service of Process for Defendant Vieira Agricultural Enterprises, LLC