

BOKHOUR LAW GROUP, P.C.
Mehrddad Bokhour, Esq., CA Bar No. 285256
mehrdad@bokhourlaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

Electronically Filed
January 4, 2022
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SUTTER
CLERK OF THE COURT
By: Brenda Johnson, Deputy

FALAKASSA LAW, P.C.
Joshua S. Falakassa, CA Bar No. 295045
josh@falakassalaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

Attorneys for Plaintiff and the Putative Classes

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

JOHN SANFORD, on behalf of himself and all
others similarly situated,

Plaintiff,
v.

ORCHARD MACHINERY CORPORATION, a
California Corporation; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: CVCS21-0001614

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

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) MEAL PERIOD VIOLATIONS;
- (4) REST PERIOD VIOLATIONS;
- (5) WAGE STATEMENT VIOLATIONS;
- (6) WAITING TIME PENALTIES; and
- (7) UNFAIR COMPETITION
- (8) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff John Sanford (“Plaintiff”) on behalf of himself, and all other similarly situated non-
2 exempt employees, alleges and complains of defendants Orchard Machinery Corporation and DOES
3 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant Orchard Machinery Corporation is a manufacturing company headquartered
6 in Yuba City with locations in Chico, Ceres, Tulare, and Firebaugh. Orchard specializes in
7 manufacturing heavy agriculture harvesting equipment. Plaintiff brings this class and PAGA
8 representative action against Defendants pursuant to California Code of Civil Procedure § 382 for
9 alleged violations of the California Labor Code and Business and Professions Code.

10 2. As set forth below, Plaintiff alleges that Defendants have had a uniform payroll
11 practice/policy that unlawfully and unevenly rounds Plaintiff and other non-exempt employees’ time
12 entries to the nearest 15-minute increment. Defendants also failed to account for time Plaintiff and
13 other non-exempt employees spent lining up for and going through COVID-19 screening prior to
14 clocking in for shifts. As a result, Plaintiff and other non-exempt employees were not paid for all
15 hours worked. Plaintiff further alleges that Defendants’ meal and rest period policies and practices
16 failed to provide him and all other similarly situated employees with compliant/timely meal and rest
17 periods, or premium wages in lieu thereof. As a result, Defendants failed to provide non-exempt
18 employees with accurate written itemized wage statements and failed to timely pay all final due and
19 owed wages upon separation of employment. Based on these alleged Labor Code violations, Plaintiff
20 now brings this class action to recover unpaid wages, restitution, penalties, and other related relief on
21 behalf of himself and all others similarly situated.

22 **JURISDICTION AND VENUE**

23 3. Plaintiff, on behalf of himself and all other similarly situated non-exempt employees
24 hereby brings this class action for recovery of unpaid wages and penalties under California Labor
25 Code §§ 201-203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 516, 1194, 1197.1, 1199,
26 2698, *et seq.* and all applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in
27 addition to seeking declaratory relief and restitution pursuant to California Business and Professions
28 Code § 17200, *et. seq.*

5. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the City of Yuba, County of Sutter. Defendants own, maintain offices, transact business, have an agent or agents within the County of Sutter, and/or otherwise are found within the County of Sutter, and Defendants are within the jurisdiction of this Court for purposes of service of process.

6. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a California resident residing in the State of California. Defendants employed Plaintiff as a non-exempt employee in Yuba City, California in the County of Sutter.

7. Plaintiff is informed and believes and thereon alleges that defendant Orchard Machinery Corporation is a California corporation authorized to and doing business in Yuba City, California, and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 1194, 1197.1, 1199, 2698 *et seq.* and California Business and Professions Code § 17200 *et seq.*, and all applicable Wage Orders.

8. 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 in the State of California, County of Sutter. Defendants operate a manufacturing facility at 2700 Colusa Hwy, Yuba City, California.

9. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, 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 thereon alleges, that each of said fictitious defendants, whether individual, partners, or

1 corporate, were responsible in some manner for the acts and omissions alleged herein, and
2 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
3 alleged herein.

4 10. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
5 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
6 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
7 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
8 them, were the agents, servants, and employees of each and every one of the other Defendants, as
9 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
10 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
11 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

12 11. At all times mentioned herein, Defendants, and each of them, were members of and
13 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
14 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
15 alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the
16 Classes.

17 **COMMON FACTUAL ALLEGATIONS**

18 12. Defendants are a manufacturing company, specializing in heavy agriculture harvesting
19 equipment, headquartered in Yuba City with locations in Chico, Ceres, Tulare and Firebaugh.
20 Defendants employed Plaintiff as a non-exempt employee with the title of “Welder” from
21 approximately October 19, 2020, until August 3, 2021. Plaintiff and other non-exempt employees,
22 including, but not limited to, product associates, administrative staff, welders, fabricator, field
23 technicians, and other non-exempt positions, were responsible for all aspects of Defendants’ services
24 throughout California.

25 13. At all relevant times, Plaintiff and other non-exempt employees regularly worked
26 various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek.
27 Plaintiff alleges that he and other non-exempt employees were also subjected to the same policies,
28 procedures, and practices, working conditions, and corresponding wage and hour violations to which

1 Plaintiff was subjected during his employment at the Yuba City facility

2 14. At all relevant times, Defendants have had a consistent policy of rounding Plaintiff and
3 other non-exempt employees' time entries to the nearest quarter hour. As a result of this practice,
4 Plaintiff and other non-exempt employees are not compensated for all the hours that they work and
5 all the overtime hours they work, in violation of Cal. Labor Code §§ 204, 510, 1194, 1197.1, 1199,
6 and applicable Wage Orders.

7 15. The Court in *See's Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907,
8 held that rounding time policies can be lawful, "if the rounding policy is fair and neutral on its face
9 and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate
10 the employees properly for all the time they have actually worked,' (29 C.F.R. § 785.48; see DLSE
11 Manual, supra, §§ 47.1, 47.2.)."

12 16. Here, Defendants' rounding time policy is not neutral on its face as Plaintiff and other
13 non-exempt employees are subject to discipline, including termination for being tardy in reporting to
14 work, or returning from a meal or rest period. Moreover, because Defendants are capable of tracking
15 the time worked by non-exempt employees to the minute, the policy itself exists not for the
16 convenience or benefit of the employees who are trying to report their time on timecards or otherwise,
17 but for Defendants' benefit. As a result, the policy is not neutral on its face, and over a period of time,
18 Plaintiff and other non-exempt employees were not properly paid for all hours worked in violation of
19 Cal. Labor Code §§ 204, 510, 1194, 1197.1, 1199, and applicable Wage Orders. Further, as a result
20 of the unlawful rounding policy, Plaintiff and other non-exempt employees were not properly paid
21 for all hours worked at the overtime rate for hours worked in excess of eight hours per shift.

22 17. Additionally, at all relevant times, Defendants have had a uniform practice of requiring
23 Plaintiff and other non-exempt employees to undergo mandatory temperature screening in light of
24 the COVID-19 pandemic. Thus, Plaintiff and other non-exempt employees were required to spend
25 several minutes waiting in line to undergo a temperature screening before clocking in. After
26 undergoing a temperature screening, Plaintiff and other non-exempt employees were also required to
27 walk to go clock-in using Defendants' time recording iPads. As a result, Plaintiff and other non-
28 exempt employees were required to spend several minutes off-the-clock before each shift to wait and

1 then undergo a temperature screening and then wait to clock in to begin work.

2 18. As a result of Defendants' uniform temperature screening and clock-in
3 procedures/practices, Plaintiff and other non-exempt employees were not fully compensated for all
4 hours they were waiting to undergo or undergoing a temperature screening and thus, subject to the
5 control of Defendants. As such, Defendants systematically failed to pay Plaintiff and other non-
6 exempt employees for all hours worked and minimum and overtime wages due. Defendants have no
7 valid defense to this claim given the California Supreme Court's recent unanimous decision in *Frlekin*
8 *v. Apple, Inc.* (2020) 8 Cal.5th 1038, which held that employees "must be paid" during security checks
9 since "it is clear that [employees] are subject to [the employer's] control while awaiting, and during,
10 [the] exit searches."

11 19. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
12 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
13 wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed,
14 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
15 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
16 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
17 underpaid regardless of whether the initial violation is intentionally committed.

18 20. As set forth above, Defendants failed to compensate Plaintiff and other non-exempt
19 employees for all hours worked as a result of its unlawful rounding policy and Covid-19 screening
20 procedures. To the extent permitted by law, Plaintiff and other non-exempt employees are entitled to
21 recover unpaid wages and liquidated damages for violations of Labor Code § 1197.1 and penalties
22 under Labor Code § 1199.

23 21. Moreover, at all relevant times, Plaintiff and other non-exempt employees were denied
24 compliant and timely 30-minute off-duty meal periods as mandated by California law. First, as a
25 result of Defendants' uniform meal period policies/practices, Plaintiff and other non-exempt
26 employees were often unable to take uninterrupted first meal periods before the end of the fifth hour
27 of work. Further, when Plaintiff and other non-exempt employees worked in excess of 10.0 hours in
28 a shift, which was a regular occurrence, they were not allowed and permitted to take a mandated and

1 timely second meal period before the end of the tenth hour of work in violation of the Labor Code
2 and applicable Wage Orders. Further, Plaintiff and other non-exempt employees were not provided
3 meal period premiums for missed or non-compliant meal periods in lieu thereof.

4 22. Additionally, on or about November 2020, Defendants implemented a buzzer/bell
5 system that rang at the start, and a few minutes prior to the conclusion, of meal periods. The bell
6 system was designed to ensure that non-exempt employees would be at their workstation at the exact
7 end of the meal period. In practice, the bell system interrupted non-exempt employees' meal period
8 time, and in effect cut short meal periods. As such, Plaintiff and other non-exempt employees were
9 regularly required to report back from lunch to the work before taking the full meal period in order
10 to be clocked in so as to avoid discipline by Defendants. The practical effect of Defendants' meal
11 period and clock-in practices/procedures often resulted in Plaintiff and other non-exempt employees
12 staying on the premises and otherwise not exercising their right to leave the facility, as doing so would
13 further shorten the length of their meal periods. As such, Plaintiff and other non-exempt employees
14 were regularly not provided with full 30-minute meal periods as required by California law.

15 23. Accordingly, due to Defendants' uniform meal period policies/practices, Plaintiff and
16 other non-exempt employees were also regularly denied legally compliant meal periods in violation
17 of Labor Code §§ 226.7, 510, 516, and applicable Wage Orders.

18 24. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were also
19 not provided with 10 minutes of net rest period time for every 4 hours worked, or major fraction
20 thereof as mandated by California law. At all relevant times, Defendants have had a policy that
21 prevented Plaintiff and other non-exempt employees from leaving the work premises during rest
22 breaks thereby exercising control over non-exempt employees during their rest periods in violation
23 of the Labor Code. Indeed, on information and belief, a non-exempt employee was terminated for
24 leaving the premises and going to a nearby store during a rest period.

25 25. By not relieving all non-exempt employees of all duties during rest periods, Defendants
26 failed to provide legally compliant rest periods. *See Augustus v. ABM Security Services, Inc.* (2016)
27 2 Cal.5th 257, 269 [concluding that "during rest periods employers must relieve employees of all
28 duties and relinquish control over how employees spend their time."]. In *Augustus*, the California

1 Supreme Court expressly rejected the employers’ assertion that it could provide an on-duty rest period
2 to employees who worked as security guards and further explained “that employers [must] relinquish
3 any control over how employees spend their break time and relieve their employees of all duties.” *Id.*
4 at 273.

5 26. Additionally, Plaintiff and other non-exempt employees were often unable to take
6 legally complaint rest periods, or had their rest periods cut short, due to interruption by the bell
7 system, which was implemented on or about November 2020. As a result, Plaintiff and other non-
8 exempt employees were and are routinely unable to take (10) minute duty free rest periods for every
9 major fraction of four hours worked. This includes a second rest period for shifts in excess of six
10 hours, and a third rest period for shifts in excess of 10 hours in a workday.

11 27. Each time Plaintiff and other non-exempt employees were unable to take a complaint
12 rest periods, Defendants failed and continues to fail to adequately pay rest period premium payments
13 at the “regular rate of pay” as required by Labor Code § 226.7.

14 28. Accordingly, due to Defendants’ uniform rest period policies/practices, Plaintiff and
15 other non-exempt employees were also regularly denied legally compliant rest breaks in violation of
16 Labor Code §§ 226.7, 512, and applicable Wage Orders.

17 29. As a result of Defendants’ failure to pay Plaintiff and other non-exempt employees for
18 all hours they were subject to the control of Defendants, including all minimum and overtime wages,
19 and failure to adequately pay for meal and rest period premiums at the “regular rate of pay”,
20 Defendants issued wage statements which failed to accurately identify the gross wages earned, the
21 total hours worked, the net wages earned, and the correct corresponding number of hours worked at
22 each hourly rate, in violation of Labor Code § 226(a)(1), (2), (5), and (9).

23 30. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
24 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
25 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
26 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
27 deduction statement or fails to keep the required in subdivision (a) of Section 226.”
28

Defendants' employment and payroll records.

35. **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 including, without limitation to:

1. Whether Defendants' rounding timekeeping policies/practices resulted in a failure to pay for all hours worked to the members of the Classes;

2. Whether Defendants' COVID-19 screening policies/practices resulted in a failure to pay for all hours worked to the members of the Classes;

3. Whether Defendants provided legally compliant meal and rest periods or proper compensation in lieu thereof to members of the Classes;

4. Whether Defendants furnished legally compliant wage statements to members of the Classes pursuant to Labor Code § 226(a); and

5. Whether the timing and amount of payment of final wages to members of the Waiting Time Subclass at the time of separation from employment were unlawful.

36. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' policy/practice of failing to pay for time spent pre-shift undergoing COVID-19 screening procedures under the control of Defendants, Defendants' policy and/or practice of rounding time entries to the nearest 15-minute interval, Defendants' uniform policy of failing to provide complaint meal and rest periods or adequate compensation in lieu thereof, and Defendants' resulting failure to provide accurate itemized wage statements, and to pay for all wages due upon separation of employment. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

37. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)

1 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
2 Plaintiff, like the members of the Classes was deprived of minimum and overtime wages, was
3 subjected to Defendants' uniform rounding policy and Covid-19 screening procedures, was deprived
4 of meal and rest period premium wages at the "regular rate of pay," was subject to Defendants'
5 uniform meal and rest period policies/practices, was not provided accurate itemized wage statements,
6 and was not paid all wages owed at the time of his separation of employment.

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

13 39. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
14 important public interest in establishing minimum working conditions and standards in California.
15 These laws and labor standards protect the average working employee from exploitation by
16 employers who have the responsibility to follow the laws and who may seek to take advantage of
17 superior economic and bargaining power in setting onerous terms and conditions of employment. The
18 nature of this action and the format of laws available to Plaintiff and members of the Classes make
19 the class action format a particularly efficient and appropriate procedure to redress the violations
20 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
21 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
22 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

23 40. Moreover, requiring each member of the Classes to pursue an individual remedy would
24 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
25 against their former and/or current employer for real and justifiable fear of retaliation and permanent
26 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
27 the individual class members, even if possible, would create a substantial risk of inconsistent or
28 varying verdicts or adjudications with respect to the individual class members against Defendants

1 herein; and which would establish potentially incompatible standards of conduct for Defendants;
2 and/or legal determinations with respect to individual class members which would, as a practical
3 matter, be dispositive of the interest of the other class members not parties to adjudications or which
4 would substantially impair or impede the ability of the class members to protect their interests.
5 Further, the claims of the individual members of the class are not sufficiently large to warrant
6 vigorous individual prosecution considering all of the concomitant costs and expenses attending
7 thereto. As such, the Classes identified in Paragraph 33 are maintainable as Classes under § 382 of
8 the Code of Civil Procedure.

9 **FIRST CAUSE OF ACTION**

10 **MINIMUM WAGE VIOLATIONS**

11 **(AGAINST ALL DEFENDANTS)**

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

13 42. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
14 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts
15 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
16 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
17 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to
18 the unpaid wages and interest accrued thereon.

19 43. At all relevant times herein, Defendants failed to conform their pay practices to the
20 requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform
21 and unlawful practice of rounding non-exempt employees' time entries to the nearest 15-minute
22 interval, and failing to pay for all off-the clock COVID-19 screening, both of which resulted in a
23 failure to pay for all hours worked. Accordingly, Plaintiff and members of the Classes were not
24 compensated for all hours worked including, but not limited to, all hours they were subject to the
25 control of Defendants and/or suffered or permitted to work under the California Labor Code and
26 applicable Wage Orders.

27 44. Labor Code § 1198 makes unlawful the employment of an employee under conditions
28 that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer

1 who has failed to pay its employees the legal minimum wage is liable to pay those employees the
2 unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
3 due and interest thereon.

4 45. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
5 Plaintiff and the Classes have sustained economic damages, including but not limited to unpaid wages
6 and lost interest, in an amount to be established at trial, and they are entitled to recover economic and
7 statutory damages and penalties and other appropriate relief as a result of Defendants' violations of
8 the California Labor Code and applicable Wage Orders.

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

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY ALL OVERTIME WAGES**

16 **(AGAINST ALL DEFENDANTS)**

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

18 46. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and
19 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
20 worked and provide a private right of action for the failure to pay all overtime compensation for
21 overtime work performed.

22 47. At all times relevant herein, Defendants were required to properly pay Plaintiff and
23 members of the Classes for all overtime hours worked pursuant to California Labor Code § 1194 and
24 the applicable Wage Orders.

25 48. Section 3 of the applicable Wage Order requires an employer to pay an employee "one
26 and one-half (1 1/2) times the employee's regular rate of pay" for work in excess of 8 hours per
27 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
28 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve

1 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
2 the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate
3 Plaintiff or members of the Classes at one and one-half times their regular rate of pay for such hours.

4 49. Defendants failed to conform their pay practices to the requirements of the law. This
5 unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of
6 (1) failing to pay for all off the clock pre-shift time spent on Covid-19 screening, and (2) rounding
7 time entries to the nearest 15-minute interval which resulted in Plaintiff and the Classes not being
8 paid all overtime wages owed.

9 50. The foregoing policies and practices are unlawful and create entitlement to recovery by
10 Plaintiff and the members of the Classes in a civil action for the unpaid amount of overtime wages,
11 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
12 Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure §
13 1021.5.

14 **THIRD CAUSE OF ACTION**
15 **MEAL PERIOD VIOLATIONS**
16 **(AGAINST ALL DEFENDANTS)**

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

18 52. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
19 their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff
20 and members of the Classes, with all required meal periods in accordance with the mandates of the
21 California Labor Code and applicable Wage Orders, for the reasons set forth in the Common
22 Allegations section of this Complaint.

23 53. As a result, Defendants are responsible for paying premium compensation for meal
24 period violations at the "regular rate of pay," including interest thereon, statutory penalties, and costs
25 of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b)
26 and 3289.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

55. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

56. Due to their unlawful rest period policy and practices, Defendants did not authorize and permit Plaintiff and members of the Classes to take all rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the "regular rate of pay" to Plaintiff and members of the Classes for each violation, in accordance with California Labor Code § 226.7.

57. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Classes in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS)

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

59. Labor Code 226(a) states in pertinent part the following:

"(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his

1 or her social security number or an employee identification number other than a
2 social security number, (8) the name and address of the legal entity that is the
3 employer, and (9) all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee. . .”

5 60. As set forth above, during the Class Period, Defendants issued and continues to issue
6 wage statements to its employees including Plaintiff and members of the Classes, which are
7 inadequate under Labor Code Section 226(a).

8 61. As a result of Defendants failure to pay Plaintiff and the Classes for all regular and
9 overtime wages at the appropriate legal rate, and missed meal and rest period premiums at the “regular
10 rate of pay,” Defendants failed to include required information on Plaintiff and the Classes’ wage
11 statements, including, but not limited to, the gross wages earned, the net wages earned in violation of
12 Labor Code section 226a.

13 62. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing and
14 intentional.

15 63. As a result of Defendants’ issuance of inaccurate itemized wage statements to Plaintiff
16 and members of the Classes in violation of section 226(a) of the California Labor Code, Plaintiff and
17 members of the Classes are each entitled to recover an initial penalty of \$50, and subsequent penalties
18 of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every
19 member of the Classes from Defendants pursuant to section 226(e) of the Labor Code, costs and
20 reasonable attorneys’ fees.

21 **SIXTH CAUSE OF ACTION**

22 **WAITING TIME PENALTIES**

23 **(AGAINST ALL DEFENDANTS)**

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

25 65. The actionable period for this cause of action is three years prior to the filing of this
26 Complaint through the present, and on-going until the violation is corrected or the class is certified.

27 66. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing
28 to Plaintiff and the Waiting Time Subclass during the actionable period for this cause of action at or
around the time that their employment is or was terminated or ended.

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.

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

75. 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 hourly 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

(Labor Code § 2698 *et seq.*)

(*Against All Defendants*)

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

77. Defendants have committed several Labor Code violations against Plaintiff and other non-exempt employees. Plaintiff John Sanford ("Plaintiff"), an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other non-exempt employees, bring this representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly non-exempt employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided based on the following Labor Code violations:

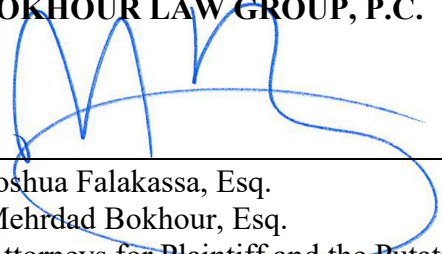
a. Failing to pay Plaintiff and other non-exempt employees for all hours worked, including all minimum and overtime wages in violation of Labor Code §§ 204, 210, 510, 1194, 1197, 1198, and 1182.12;

b. Failing to provide Plaintiff and other non-exempt employees with all of their statutorily mandated meal periods or compensation in lieu thereof in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

- 1 6. Upon the Third Cause of Action, for compensatory, consequential, general and special
- 2 damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 3 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
- 4 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 5 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
- 6 reasonable costs and attorneys’ fees;
- 7 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor
- 8 Code §§ 201-203.
- 9 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
- 10 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
- 11 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
- 12 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other non-exempt
- 13 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699,
- 14 including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent
- 15 violation per employee per pay period for those violations of the Labor Code for which no civil
- 16 penalty is specifically provided;
- 17 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
- 18 § 218.6 and Civil Code §§ 3287 and 3289;
- 19 13. On all causes of action, for attorneys’ fees and costs as provided by Labor Code §§
- 20 218.5, 226, and Code of Civil Procedure § 1021.5; and
- 21 14. For such other relief that the Court may deem just and proper.

22 Dated: December 29, 2021

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

23
24
25 By: 
26 Joshua Falakassa, Esq.
27 Mehrdad Bokhour, Esq.
28 Attorneys for Plaintiff and the Putative Classes

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On January 4, 2022, I served the following document(s) described as **FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

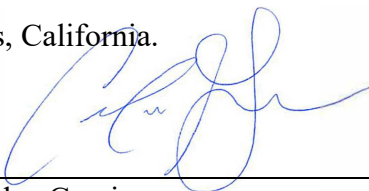
Alexander M. Medina, Esq.
alex@medinamckelvey.com
Kyle W. Owen, Esq.
kyle@medinamckelvey.com
MEDINA McKELVEY, LLP
925 Highland Pointe Drive, Suite 300
Roseville, California 95678

**Counsel for defendant Orchard
Machinery Corporation**

BY ELECTRONIC SERVICE: I transmitted the above-referenced document(s) via electronic service provider First Legal to the person(s) identified above at the email address(es) indicated and did not, within a reasonable time after transmission, receive any message or communication indicating that delivery failed or that any other error had occurred which would delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 4, 2022, at Los Angeles, California.



Carlos Garcia