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

SABINO MARQUEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

DANELL CUSTOM HARVESTING, LLC, a
California limited liability company; and
DOES 1 through 100,

Defendants.

Case No.: 21C-0284

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

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

- (1) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**
- (2) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (3) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);**
- (4) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (5) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); AND**
- (7) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Sabino Marquez (“Plaintiff”), as an individual and on behalf of all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Danell Custom Harvesting, LLC; and, DOES 1 to 100, inclusive
4 (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 First Amended Class and Representative Action Complaint for recovery of unpaid wages and
8 penalties under California Business & Professions Code § 17200 *et. seq.*, Labor Code §§ 201-
9 204, 226 *et seq.*, 226.7, 512, 516, 2802, and 2698 *et. seq.*; and Industrial Welfare Commission
10 Wage Orders (“Wage Orders”), 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 Kings. One or more of the Defendants own, maintain offices, transact business, have
18 agent(s) within the County of Kings, and/or otherwise are found within the County of Kings, and
19 Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-204, 226 *et seq.*, 226.7, 512, 516, 2802, and 2698 *et. seq.*; California Business &
28 Professions Code § 17200 *et seq.* (“Unfair Competition Law”); and the Wage Orders, which sets

1 employment standards for occupations.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
3 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
4 continue to do) business by employing individuals to develop, manufacture, sell, and transport
5 specialized harvesting machinery and agricultural products in the United States, and employed
6 Plaintiff, and other similarly-situated non-exempt employees, within Kings County and the state
7 of California and, therefore, were (and are) doing business in Kings County and the State of
8 California.

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

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

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

26 8. At all times mentioned herein, Defendants, and each of them, were members of
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
28 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Defendants are in the agricultural business and employee individuals to develop,
5 manufacture, sell, and transport harvesting machinery and agricultural products. Plaintiff
6 commenced employment with Defendants as a non-exempt employee in the position of truck
7 driver from approximately 2018 until approximately September 20, 2020. Plaintiff's job duties
8 included driving the company trucks containing wheat and flour to Defendants' various third-
9 party clients.

10 10. During Plaintiff's employment with Defendants, Plaintiff was paid on an hourly
11 basis at a rate of \$14.25 per hour. Defendants utilized written timesheets keep track of the hours
12 worked by Plaintiff and the other aggrieved employees. Plaintiff and the other aggrieved
13 employees worked generally at least 12 hours per day, at least six days per week.

14 **Rest Periods**

15 11. Plaintiff and other aggrieved employees were not authorized to take all legally
16 required rest periods. For example, Plaintiff and other aggrieved employees were generally not
17 permitted to exercise the use of their third rest period in a timely manner, if at all, despite regularly
18 working in excess of 12 hours per shift. Rather, the vast majority of the time, Plaintiff and the
19 other aggrieved employees were not permitted to exercise the use of their third rest period, instead
20 being instructed to continue working through the ends of their shifts so as to ensure that all
21 deadlines imposed on them by Defendants were met. This was a regular occurrence, as Plaintiff
22 worked at least 12 hours per day but does not recall ever receiving a third rest period throughout
23 his tenure working for Defendants. Despite Defendants' failure to authorize and permit Plaintiff
24 and other aggrieved employees to take all lawful paid rest periods, due to their uniform and
25 unlawful practices, Defendants did not always provide Plaintiff and other aggrieved employees
26 with an hour of pay at their regular rate for each rest period violation as required by Labor Code
27 § 226.7. Upon information and belief, during at least a portion of the class period, Defendants
28 maintained no payroll code or another mechanism for the payment of rest period premiums in the

1 event Plaintiff and other aggrieved employees were not authorized to take lawful rest periods.

2 **Meal Periods**

3 12. Defendants also failed to provide Plaintiff and other aggrieved employees with a
4 full thirty-minute meal periods when they worked shifts in excess of 10.0 hours, despite working
5 in excess of 10 hours almost every shift. Plaintiff and other aggrieved employees frequently were
6 not able exercise the use of second meal periods, instead working through them off-the-clock so
7 as to ensure that they are able to meet the tight delivery schedules imposed on them by
8 Defendants, resulting in systemic second meal period violations. Plaintiff estimates that he did
9 not receive a second meal period at least three times per week even though he worked in excess
10 of 10 hours on a daily basis. Despite Defendants' failure to provide Plaintiff and other aggrieved
11 employees with all lawful meal periods due to their uniform and unlawful practices, Defendants
12 did not always provide Plaintiff and other aggrieved employees with an hour of pay at their regular
13 rate for each meal period violation as required by Labor Code § 226.7. Upon information and
14 belief, during at least a portion of the class period, Defendants maintained no payroll code or
15 another mechanism for the payment of meal period premiums in the event Plaintiff and other
16 aggrieved employees were not authorized to take lawful meal periods.

17 **Reimbursements**

18 13. Defendants failed to adequately reimburse Plaintiff for all reasonable and
19 necessary work expenditures, including but not limited to, requiring Plaintiff to incur expenses
20 related to purchasing gloves, towels, cleaning solution, and other necessary equipment without
21 reimbursement.

22 **Wage Statement Violations/Waiting Time Penalties**

23 14. As a result of Defendants' failure to provide all required meal periods and
24 authorize all rest periods or pay premium pay in lieu thereof, Defendants have maintained
25 inaccurate payroll records, failed to timely pay all wages owed to separating employees at the
26 time of their separation, and issued inaccurate wage statements. Furthermore, for at least a portion
27 of the class period, Defendants issued facially inaccurate wage statements by unlawfully failing
28 to include the full legal address of the employer entity un violation of Labor Code 226(a)(8). For

1 example, on Plaintiff's wage statement numbered 80365 representing the time period between
2 September 7, 2020 and September 25, 2020, Defendants list their address as "Danell Custom
3 Harvesting, LLC, Hanford, CA 93230" while their full legal address is 8265 Hanford-Armona
4 Rd., Hanford, CA 93230".

5 Overtime

6 15. While Title 13, Subchapter 6.5, Section 1200 of the California Code of
7 Regulations may serve to exempt Plaintiff from the general overtime requirements of the Wage
8 Orders due to his status as a truck driver, upon information and belief, Defendants as a matter of
9 policy and practice failed to compensate all eligible non-exempt employees for hours worked in
10 excess of the thresholds as defined in the Wage Orders to be entitled to overtime compensation.
11 The existence of said policy/practice is readily ascertainable through inspection of Defendants'
12 records. Pursuant to *Huff v. Securitas Security Services*, (2018) 23 Cal.App.5th 745, 751, an
13 employee who brings a representative action and was affected by at least one of the violations
14 alleged in the complaint has standing to pursue penalties on behalf of the State not only for that
15 violation, but for violations affecting other employees as well. Accordingly, Plaintiff has
16 standing to pursue penalties on behalf of the State for violations affecting all of the aggrieved
17 employees of Defendants, regardless of their classification, job title, locations, or whether they
18 were hired directly or through a labor contractor/staffing agency.

19 CLASS ACTION ALLEGATIONS

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

- 22 a. The Rest Period Class consists of all of Defendants' current and former non-
23 exempt employees in California who worked at least one shift of 3.5 hours or more,
24 during the four years immediately preceding the filing of the Complaint through
25 the present.
- 26 b. The Meal Period Class consists of all of Defendants' current and former non-
27 exempt employees in California who: (i) worked at least one shift in excess of 5.0
28 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 and/or (ii) worked at least one shift in excess of 10.0 hours without a second meal period of at least 30 minutes in duration commencing prior to the conclusion of the tenth 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.

c. The Employee Expense Class consists of all of Defendants' current and former non-exempt employees in California who were not reimbursed for expenses related to the purchase of necessary tools, uniforms, and equipment necessary for the performance of their job duties during the four years immediately preceding the filing of this lawsuit to the present.

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

e. The Waiting Time Class consists of all Defendants' formerly employed members of the Off-The-Clock, Rest Period Class and Meal Period Class who separated from employment during the three years immediately preceding the filing of this lawsuit through the present.

17. **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 one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

18. **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 authorized and permitted legally compliant rest periods to

members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

iii. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;

iv. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and

v. 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.

19. **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' uniform meal and rest period policies and practices, timekeeping policies and practices, non-reimbursement, wage statement, and payment of final wages policies and practices. 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.

20. **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) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes was subject to Defendants' meal and rest period policies and practices, was subjected to Defendants' unlawful failure to reimburse business expenses, was furnished with inaccurate and incomplete wage statements, and was not paid all wages earned at the time of his separation of employment.

21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of

1 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
2 and-hour class actions in state and federal courts in the past and are committed to vigorously
3 prosecuting this action on behalf of the members of the Classes.

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

FIRST CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

24. 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 the Wage Orders. 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.

25. 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, the Wage Orders, and Civil Code §§ 3287(b) and 3289.

SECOND CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

27. The Wage Orders 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.

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

29. 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.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

9 32. Due to Defendants’ unlawful policy and practice of requiring employees to
10 purchase and maintain tools, equipment, and uniforms necessary for the performance of their job
11 duties, Defendants have violated Labor Code § 2802.

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

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

18 **FOURTH CAUSE OF ACTION**

19 **WAGE STATEMENT 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 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
24 and the Wage Statement Class with accurate, itemized wage statements that included, among
25 other requirements, meal and rest period premiums, total net wages earned, in addition to
26 unlawfully failing to include the legal address of the employer entity on their wage statements
27 in violation of Labor Code §226 *et seq.*

28 37. Defendants’ failure to furnish Plaintiff and the members of the Wage Statement

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

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

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

40. 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.

41. 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 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.

42. 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.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

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

45. 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.

46. 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.

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

48. 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.

SEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

50. 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 violations:

a. 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;

b. 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;

1 c. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
2 employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;

3 d. Failing to timely pay all final wages and compensation earned by Plaintiff, the
4 Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor
5 Code §§ 201, 202, and 203;

6 e. Failing to reimburse Plaintiff, the Employee Expense Class, and other aggrieved
7 employees for all necessary work expenses incurred in violation of Labor Code §§ 2802 and 2804;

8 f. Failing to pay non-exempt employees all earned wages at least twice during each
9 calendar month in violation of Labor Code § 204;

10 g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
11 employees in violation of Labor Code § 1174.

12 51. On September 9, 2021, Plaintiff notified Defendants via certified mail, and notified
13 the California Labor and Workforce Development Agency (“LWDA”) via its website, of
14 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil
15 penalties under California Labor Code § 2698 et seq. with respect to violations of the California
16 Labor Code identified in Paragraph 49 (a)-(g). Now that sixty-five days have passed from
17 Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not
18 provided notice that it intends to investigate the violations, Plaintiff has exhausted his
19 administrative requirements for bringing a claim under the Private Attorneys General Act with
20 respect to these violations.

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

25 **PRAYER**

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

28 1. For an order certifying the proposed Classes;

- 1 2. For an order appointing Plaintiff as representative of the Classes;
- 2 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 3 4. Upon the First Cause of Action, for compensatory, consequential, general and
- 4 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 5 5. Upon the Second Cause of Action, for compensatory, consequential, general and
- 6 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 7 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
- 8 special damages according to proof pursuant to Labor Code § 2802;
- 9 7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code
- 10 § 226, *et seq.*;
- 11 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
- 12 Labor Code § 201-203;
- 13 9. Upon the Sixth 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 10. Upon the Seventh Cause of Action, (1) \$100.00 for each initial violation for each
- 18 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
- 19 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
- 20 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
- 21 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
- 22 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
- 23 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
- 24 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
- 25 each initial violation and \$200 for each subsequent violation per employee per pay period for the
- 26 violations of the Labor Code Sections cited in Labor Code § 2699.5.;
- 27 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor
- 28 Code § 218.6 and Civil Code §§ 3287 and 3289;

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

3 13. For such other and further relief the Court may deem just and proper.
4

5 Dated: December 14, 2021

Respectfully submitted,
STANBURY BROWN LAW

7 By: _____

8 Daniel J. Brown
Attorneys for Plaintiff

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.
11

12 Dated: December 14, 2021

Respectfully submitted,
STANBURY BROWN LAW

14 By: _____

15 Daniel J. Brown
Attorneys for Plaintiff

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 December 14, 2021, I served the document listed below on the parties in this action as follows:

- 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.
- ☐ (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.
- X (BY EMAIL) I transmitted said document(s) by electronic mail to the e-mail addresses indicated below pursuant to SB 1146 effective 9/18/20, which codifies parts of Emergency Rules 11 and 12, as amended, and CRC 2.251
- 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 December 14, 2021, at Redondo Beach, California.



Ethan C. Surls

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SERVICE LIST

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