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MADERA SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MADERA

BRUNO ROSAS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

PACIFIC FARM MANAGEMENT, INC., a
California corporation; DCB FARMING,
LLC, a California limited liability company;
LASGOITY IC-DISC, INC., a California
corporation; ROSEMARY LASGOITY dba
J.M. LASGOITY RANCHES, an individual;
BRANDI HONEY & FARMING, LLC, a
California limited liability company; HARRIS
FARMS L.P.. a California limited partnership;
and DOES 1 through 100,

Defendants.

Case No.: MCV086213 BY FAX

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, 551, 552, 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**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

COPY

1 Plaintiff Bruno Rosas ("Plaintiff"), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint ("FAC") against
3 Pacific Farm Management, Inc., a California corporation; DCB Farming, LLC, a California
4 limited liability company; Rosemary Lasgoity dba J.M. Lasgoity Ranches, an individual; Brandi
5 Honey & Farming, LLC, a California limited liability company; Harris Farms, L.P., a California
6 limited partnership; and DOES 1 to 100, inclusive (collectively "Defendants"), and on
7 information and belief alleges as follows:

8 **JURISDICTION**

9 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
10 Complaint for recovery of unpaid wages and penalties under California Business & Professions
11 Code § 17200 *et. seq.*, Labor Code §§ 201-205, 226 *et seq.*, 226.7, 510, 512, 516, 551-552, 558,
12 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*; and Industrial Welfare Commission Wage
13 Order 14 ("Wage Order 14"), in addition to seeking declaratory relief and restitution. This
14 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
15 jurisdiction over Defendants' violations of the California Labor Code because the amount in
16 controversy exceeds this Court's jurisdictional minimum.

17 **VENUE**

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

24 **PARTIES**

25 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
26 Plaintiff was and currently is, a California resident. During the four years immediately preceding
27 the filing of the Complaint in this action and within the statute of limitations periods applicable
28 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt

1 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
2 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
3 §§ 201-205, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, and
4 2698 *et seq.*; California Business & Professions Code § 17200 *et seq.* ("Unfair Competition
5 Law"); and Wage Order 14, which sets employment standards for Agricultural Occupations.

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

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

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

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

1 8. At all times mentioned herein, Defendants, and each of them, were members of
2 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
3 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
4 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
5 members of the Classes.

6 9. Defendants DCB Farming, LLC, Rosemary Lasgoity dba J.M. Lasgoity Ranches,
7 Brandi Honey & Farming, LLC, and Harris Farms, L.P., are also jointly liable with Defendant
8 Pacific Farm Management, Inc. for all civil legal responsibility and civil liability for the payment
9 of wages, including all sums payable to an employee or the state of California based upon any
10 failure to pay wages, pursuant to Labor Code §2810.3

11 **GENERAL FACTUAL ALLEGATIONS**

12 10. Defendants are in the agricultural business and employee seasonal farm labor
13 employees to harvest agricultural goods. Plaintiff commenced employment with Defendants as a
14 non-exempt farm labor employee on a seasonal basis from approximately 2016 until
15 approximately December 2020 as a general agricultural laborer. Plaintiff's job duties included
16 pruning vineyards, stacking brush, and maintaining almond trees, amongst other general farm
17 labor tasks.

18 11. During Plaintiff's employment with Defendants, Plaintiff was compensated on
19 both an hourly and on a piece-rate basis, depending on the nature of the work he was performing
20 on a given shift. When he was paid piece-rate, Plaintiff was paid a set rate per vine pruned. For
21 all other tasks, Plaintiff was compensated at a rate of \$13.00 per hour. Defendants' forepersons
22 allegedly recorded the hours Plaintiff worked; however, Plaintiff was only paid an hourly
23 minimum wage if his earned piece-rate compensation did not exceed his minimum wages earned
24 in a pay period. Furthermore, Defendants' forepersons were in sole possession of the timesheets
25 prepared for Plaintiff and other non-exempt employees and at no time were Plaintiff and other
26 non-exempt employees made to confirm or sign off on the number of hours they worked in a
27 given shift.

28 12. Plaintiff and other non-exempt employees were not authorized to take all legally

1 required rest periods regardless of whether they were working on a piece-rate or hourly basis.
2 Despite Defendants' failure to authorize and permit Plaintiff and other non-exempt employees to
3 take all lawful paid rest periods, due to their uniform and unlawful practices, Defendants never
4 provided Plaintiff and other non-exempt employees with an hour of pay at their regular rate for
5 each rest period violation as required by Labor Code § 226.7. Upon information and belief, during
6 at least a portion of the class period, Defendants maintained no payroll code or another mechanism
7 for the payment of rest period premiums in the event Plaintiff and other non-exempt employees
8 were not authorized to take lawful rest periods.

9 13. Defendants have failed to accurately record and compensate Plaintiff and other
10 non-exempt employees who are compensated on a piece-rate basis for non-productive time. *See*
11 *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-rate
12 compensation structure that does not separately compensate employees for non-productive time
13 violates California minimum wage laws). Plaintiff and other non-exempt employees were
14 required to perform work duties and activities that were not directly compensated on a piece-rate
15 basis, such as changing to different fields/rows/blocks, sharpening pruning shears, waiting for
16 weather conditions to permit work to commence, bathroom and water breaks, waiting in lines,
17 walking from the fields to attend meetings, and/or other mandatory duties that were not directly
18 compensated on a piece-rate basis. The moving between rows and blocks alone was an at least
19 daily occurrence, and would take anywhere from 15-45 minutes each day, all of which should
20 have been compensated as non-productive time. While some of Plaintiff's wage statements do
21 contain a "Rest and Recovery" item, the amount of time recorded under break is only enough to
22 compensate Plaintiff for rest periods. Therefore, the "Rest and Recovery" item does not
23 compensate Plaintiff for other non-productive time. Furthermore, Plaintiff alleges that the "Rest
24 and Recovery" item did not accurately compensate he and other non-exempt employees for all
25 required paid rest and recovery hours. Accordingly, Plaintiff alleges that Defendants have not
26 accurately tracked and compensated employees' non-productive time and rest and recovery time
27 in compliance with Labor Code § 226.2.

28 14. Defendants have also failed to record employees' total hours worked each

1 workday accurately. For example, Defendants' office manager would maintain timecards for all
2 non-exempt employees, but on information and belief, such timecards did not accurately reflect
3 the times that employees began and ended each workday. For example, although Plaintiff would
4 typically work from 7:00 a.m. to 4:30 p.m. every workday (9.5 hours), his time cards would reflect
5 that he only worked either 6.66 or 7.66 hours. This practice of underreporting the amount of
6 hours worked was most prevalent on those occasions when Plaintiff and other non-exempt
7 employees performed piece-rate work, but also applied to when they worked on an hourly basis.
8 This discrepancy in hours was presumably because Plaintiff's wage statements were based on
9 time records that were prepared by Defendants' forepersons, which inaccurately listed he only
10 worked either 6.66 hour or 7.66 hours per workday. As a result, Defendants failed to ensure that
11 Plaintiff and other non-exempt employees were being paid at least the minimum wage for all
12 hours actually worked, and failed to ensure that Plaintiff and other non-exempt employees
13 received proper overtime wages for all overtime hours worked, in compliance with Wage Order
14 14. Furthermore, Plaintiff and other non-exempt employees, as explained above, routinely
15 worked in excess of 9 hours a day and/or 50 hours a week thus entitling them to overtime pay.
16 However they rarely, if ever, received the requisite overtime compensation that they were owed
17 for these hours. Finally, Defendants required Plaintiff and other non-exempt employees to travel
18 to the "La Estrella Mercado" after work on paydays to receive their checks, a market owned by
19 one of Pacific Farm Management, Inc.'s agents, and were at no point ever compensated for this
20 off-the-clock time.

21 15. Defendants also failed to provide Plaintiff and other non-exempt employees with
22 a duty-free first meal period when they worked shifts in excess of 6.0 hours. Instead, Plaintiff and
23 other non-exempt employees would be required to eat while continuing to work, usually while
24 traveling between fields and blocks, so as to commence work at a new site at the conclusion of
25 the meal period. Furthermore, upon information and belief, Defendants' forepersons did not
26 accurately record the beginning and ending of each meal period on the timecards. Despite
27 Defendants' failure to provide Plaintiff and other non-exempt employees with all lawful meal
28 periods due to their uniform and unlawful practices, Defendants never provided Plaintiff and other

1 non-exempt employees with an hour of pay at their regular rate for each meal period violation as
2 required by Labor Code § 226.7.

3 16. Defendants failed to adequately reimburse Plaintiff for all reasonable and
4 necessary work expenditures, including but not limited to, requiring Plaintiff incur expenses
5 related to gas and mileage when driving his own personal vehicle on the fields without
6 reimbursement. Additionally, as a necessary precondition of his job, Plaintiff was required to
7 purchase his own pruning shears, pruning shear sharpeners, and gloves all without
8 reimbursement.

9 17. As a result of Defendants' failure to accurately compensate Plaintiff and other non-
10 exempt employees for non-productive time, failure to pay all minimum and overtime wages, and
11 failure to provide all required meal periods and authorize all rest periods or pay premium pay in
12 lieu thereof, Defendants have maintained inaccurate payroll records, failed to timely pay all wages
13 owed to separating employees at the time of their separation, and issued inaccurate wage
14 statements. Furthermore, for at least a portion of the time period in question, Defendants issued
15 facially inaccurate wage statements by failing to include the legal address of the employer entity
16 in violation of Labor Code 226(a)(8). For example, Plaintiff's check numbered 438143 lists the
17 address of Defendant Pacific Farm Management, Inc. as both "1200 Maple St., #108, Madera,
18 CA 93637" & "1625 Howard Road, Ste. 113, Madera, CA 93637", while their legal address
19 registered with the California Secretary of State (absent from the wage statement) is "13 Pointe
20 West, Madera, CA 93637."

21 CLASS ACTION ALLEGATIONS

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

- 24 a. The Rest Period Class consists of all current and former non-exempt employees of
25 Defendant Pacific Farm Management, Inc. in California who worked at least one
26 shift in excess of 3.5 hours while performing work for i) DCB Farming, LLC;
27 and/or ii) Lasgoity IC-DISC, Inc.; and/or iii) Rosemary Lasgoity dba J.M.
28 Lasgoity Ranches; and/or iv) Brandi Honey & Farming, LLC; and/or v) Harris

1 Farms, L.P., during the four years immediately preceding the filing of this lawsuit
2 through the present.

3 b. The Minimum Wage Class consists of all current and former non-exempt
4 employees of Defendant Pacific Farm Management, Inc. in California who
5 performed work for i) DCB Farming, LLC; and/or ii) Lasgoity IC-DISC, Inc.;
6 and/or iii) Rosemary Lasgoity dba J.M. Lasgoity Ranches; and/or iv) Brandi
7 Honey & Farming, LLC; and/or v) Harris Farms, L.P., that was compensated on a
8 piece-rate or hourly basis during the four years immediately preceding the filing
9 of this lawsuit through the present.

10 c. The Overtime Wage Class consists of all current and former non-exempt
11 employees of Defendant Pacific Farm Management, Inc. in California who worked
12 overtime hours (based on criteria set forth in Wage Order 14) while performing
13 work for i) DCB Farming, LLC; and/or ii) Lasgoity IC-DISC, Inc.; and/or iii)
14 Rosemary Lasgoity dba J.M. Lasgoity Ranches; and/or iv) Brandi Honey &
15 Farming, LLC; and/or v) Harris Farms, L.P., during the four years immediately
16 preceding the filing of this lawsuit through the present.

17 d. The Meal Period Class consists of all current and former non-exempt employees
18 of Defendant Pacific Farm Management, Inc. in California who worked at least
19 one shift in excess of 5.0 hours while performing work for i) DCB Farming, LLC;
20 and/or ii) Lasgoity IC-DISC, Inc.; and/or iii) Rosemary Lasgoity dba J.M.
21 Lasgoity Ranches; and/or iv) Brandi Honey & Farming, LLC; and/or v) Harris
22 Farms, L.P., without a meal period of at least 30 minutes in duration commencing
23 prior to the conclusion of the fifth hour of work, and who do not have a
24 corresponding meal period premium payment made for such shifts during the four
25 years preceding the filing of this lawsuit through the present.

26 e. The Employee Expense Class consists of all members of the Rest Period Class,
27 Minimum Wage Class, Overtime Class, and/or Meal Period Class who were not
28 reimbursed for the purchase and maintenance of tools necessary for the

performance of their job duties during the four years immediately preceding the filing of this lawsuit to the present.

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

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

19. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than two hundred (200) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

- i. Whether Defendants correctly compensated employees for rest periods and/or non-productive time pursuant to Labor Code § 226.2;
- ii. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;
- iii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and Wage Order 14 by requiring members of the Overtime Wage Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;

- 1 iv. Whether Defendants' timekeeping policies/practices resulted in the failure to
2 properly compensate members of the Minimum Wage Class;
- 3 v. Whether Defendants authorized and permitted legally compliant rest periods to
4 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 5 vi. Whether Defendants provided all legally compliant meal periods to members of
6 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 7 vii. Whether Defendants failed to reimburse members of the Employee Expense Class
8 for business expenditures necessarily incurred in the performance of their duties;
- 9 viii. Whether Defendants provided accurate, itemized wage statements to members of
10 the Classes; and
- 11 ix. Whether Defendants' policies and/or practices for the timing and amount of
12 payment of final wages to members of the Waiting Time Class at the time of
13 separation from employment were lawful.

14 21. **Predominance of Common Questions:** Common questions of law and fact
15 predominate over questions that affect only individual members of the Classes. The common
16 questions of law set forth above are numerous and substantial and stem from Defendants' policies
17 and/or practices applicable to each individual class member, such as Defendants' uniform hourly
18 & piece-rate pay structure, meal and rest period policies and practices, timekeeping policies and
19 practices, non-reimbursement, wage statement, and payment of final wages policies and practices.
20 As such, the common questions predominate over individual questions concerning each
21 individual class member's showing as to his or her eligibility for recovery or as to the amount of
22 his or her damages.

23 22. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
24 Plaintiff was employed by Defendants as a non-exempt employee in California during the
25 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
26 herein, Plaintiff, like the members of the Classes, was paid on a piece-rate and hourly basis, was
27 subject to Defendants' meal and rest period and timekeeping policies and practices, was subjected
28 to Defendants' unlawful failure to reimburse business expenses, was furnished with inaccurate

1 and incomplete wage statements, and was not paid all wages earned at the time of his separation
2 of employment.

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

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

1 substantially impair or impede the ability of the class members to protect their interests. Further,
2 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
3 individual prosecution considering all of the concomitant costs and expenses attending thereto.
4 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
5 Civil Procedure.

6 **FIRST CAUSE OF ACTION**
7 **MINIMUM WAGE VIOLATIONS**
8 **(AGAINST ALL DEFENDANTS)**

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

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

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

25 28. As a direct and proximate result of Defendants' unlawful conduct as alleged
26 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
27 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
28 entitled to recover economic and statutory damages and penalties and other appropriate relief as

1 a result of Defendants' violations of the California Labor Code and Wage Order 14.

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

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY ALL OVERTIME WAGE**

10 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

24 34. The foregoing policies and practices are unlawful and create entitlement to
25 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
26 premiums owing, including interest thereon, statutory and civil penalties, and attorneys' fees and
27 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
28 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.

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 legally compliant 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.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **(AGAINST ALL DEFENDANTS)**

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

5 43. 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 44. Due to Defendants’ unlawful policy and practice of requiring employees to
10 purchase and maintain tools necessary for the performance of their job duties and to incur gas &
11 mileage expenses, Defendants have violated Labor Code § 2802.

12 45. 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 46. 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 **SIXTH CAUSE OF ACTION**

19 **WAGE STATEMENT VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

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

22 48. 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, the legal address of the employer entity, accurate total gross wages earned,
26 meal and rest period premiums, and total net wages earned in violation of Labor Code §226 *et*
27 *seq.*

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

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

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

9 **SEVENTH CAUSE OF ACTION**

10 **WAITING TIME PENALTIES**

11 **(AGAINST ALL DEFENDANTS)**

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

13 52. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
14 an employer to pay all wages immediately at the time of termination of employment in the event
15 the employer discharges the employee or the employee provides at least 72 hours of notice of
16 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
17 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
18 employee's last date of employment.

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

27 54. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
28 Time Class their earned wages upon separation from employment results in a continued payment

1 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
2 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
3 plus reasonable attorneys' fees and costs of suit.

4 **EIGHTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION**

6 **(AGAINST ALL DEFENDANTS)**

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

8 56. Defendants have engaged and continue to engage in unfair and/or unlawful
9 business practices in California in violation of California Business and Professions Code § 17200
10 *et seq.*, by failing to pay Plaintiff and the Classes all overtime and minimum wages, provide all
11 required meal periods and failing to authorize and permit all required rest periods, failing to pay
12 meal and rest period premium wage payments, failing to reimburse for necessary business
13 expenditures, and failing to furnish accurate, itemized wage statements, and willfully failing to
14 timely pay Plaintiff and members of the Waiting Time Class all final wages upon separation of
15 employment.

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

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

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

27 60. Plaintiff was compelled to retain the services of counsel to file this court action to
28 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf

1 of Defendants' current non-exempt employees, and to enforce important rights affecting the
2 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
3 which he is entitled to recover under Code of Civil Procedure § 1021.5.

4 **NINTH CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT**

6 **(AGAINST ALL DEFENDANTS)**

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

9 62. Defendants have committed several Labor Code violations against Plaintiff,
10 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
11 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
12 employees, brings this representative action against Defendants to recover the civil penalties due
13 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
14 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
15 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
16 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
17 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
18 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
19 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
20 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
21 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
22 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
23 subsequent violation per employee per pay period for those violations of the Labor Code for
24 which no civil penalty is specifically provided, based on the following Labor Code violations:

25 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
26 Wage Class, and other similarly aggrieved employees in violation of Labor
27 Code §§ 1182.12, 1194, 1194.2, and 1197;

28 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all

1 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
2 1194, and 1198;

- 3 c. Failing to provide all legally required meal periods, and failing to pay meal
4 period premium pay, to Plaintiff, the Meal Period Class, and other similarly
5 aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
6 d. Failing to timely pay all final wages and compensation earned by Plaintiff, the
7 Waiting Time Penalty Class, and other aggrieved employees at the time of
8 separation in violation of Labor Code §§ 201, 202, and 203;
9 e. Failing to authorize and permit all legally required rest periods, and failing to
10 pay rest period premiums, to Plaintiff, the Rest Period Class, and other similarly
11 aggrieved employees in violation of Labor Code §§ 226.7, 512, and 558;
12 f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
13 employees with complete, accurate, itemized wage statements in violation of
14 Labor Code § 226;
15 g. Failing to reimburse Plaintiff and members of the Employee Expense Class for
16 all worked related expenses incurred;
17 h. Failing to pay non-exempt employees all earned wages at least twice during
18 each calendar month in violation of Labor Code § 204; and
19 i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
20 employees in violation of Labor Code §§ 558 and 1174.

21 63. On November 11, 2021, Plaintiff notified Defendants via certified mail, and
22 notified the California Labor and Workforce Development Agency (“LWDA”) via its website,
23 of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim
24 for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the
25 California Labor Code identified in Paragraph 62 (a)-(i). The LWDA has not provided notice
26 that it intends to investigate the violations, and therefore Plaintiff has exhausted her
27 administrative requirements for bringing a claim under the Private Attorneys General Act with
28 respect to these violations.

 64. Plaintiff was compelled to retain the services of counsel to file this court action to

1 protect his interests and the interests of other aggrieved employees, and to assess and collect the
2 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs,
3 which he is entitled to receive under California Labor Code § 2699(g).

4 **PRAYER**

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

- 7 1. For an order certifying the proposed Classes;
- 8 2. For an order appointing Plaintiff as representative of the Classes;
- 9 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 10 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
11 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
12 1197;
- 13 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
14 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 15 6. Upon the Third Cause of Action, for compensatory, consequential, general and
16 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 17 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
18 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 19 8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and
20 special damages according to proof pursuant to Labor Code § 2802;
- 21 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
22 226, *et seq.*;
- 23 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
24 to Labor Code § 201-203;
- 25 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
26 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
27 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
28 *seq.*;

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

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

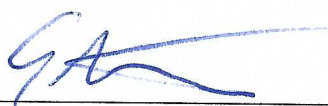
16 14. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
17 Procedure § 1021.5 and all other applicable statutes; and

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

19
20 Dated: January 27, 2022

Respectfully submitted,
STANBURY BROWN LAW

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22 By:



Daniel J. Brown
Attorneys for Plaintiff

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2 **DEMAND FOR JURY TRIAL**

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

4 Dated: January 27, 2022

5 Respectfully submitted,
6 STANBURY BROWN LAW

7 By: 

8 Daniel J. Brown
9 Attorneys for Plaintiff
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2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA)
4) ss.
5 COUNTY OF LOS ANGELES)

6 I am employed in the County of Los Angeles, State of California. I am over the age of
7 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney
8 Blvd., Venice, CA 90291

9 On January 27, 2022, I served the document listed below on the parties in this action as
10 follows:

11 - **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION
12 COMPLAINT**

- 13 X (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for
14 deposit in the U.S. Postal Service at my place of business at Venice, California,
15 following the ordinary business practices of my place of business. I am readily familiar
16 with the business practice at my place of business for collection and processing of
17 correspondence for mail with the U.S. Postal Service. Under that practice, such
18 correspondence is deposited with the U.S. Postal Service the same day it is collected
19 and processed in the ordinary course of business.
20 ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by
21 ☐ _____ to receive documents to be delivered on the same date.
22 ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and
23 processing of correspondence for overnight delivery and know that the document(s)
24 described herein will be deposited in a box or other facility regularly maintained by
25 Federal Express for overnight delivery.
26 X (BY EMAIL) In accordance with California Code of Civil Procedure Section 1010.6 in
27 compliance with the Judicial Council's Appendix I, Emergency Rules related to Covid-
28 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 January 27, 2022 at Redondo Beach, California.

24
25 
26 _____
27 Ethan Surls
28

SERVICE LIST

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