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RYAN CHANLEY, OLIVIER LARA, VERONICA MEDINA, and CELIA OROZCO on behalf
of themselves and all similarly situated employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONTEREY

RYAN CHANLEY on behalf of himself and
all similarly situated employees

Plaintiff,

vs.

GROWERS TRANSPLANTING, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 22CV002837

CLASS AND REPRESENTATIVE ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES, PENALTIES AND FOR
INJUNCTIVE RELIEF**

DEMAND OVER \$25,000.00

1 Plaintiffs Ryan Chanley, Olivier Lara, Veronica Medina, and Celia Orozco (“Plaintiffs”)
2 hereby submit this Class and Representative Action Complaint (“Complaint”) against Defendant
3 Growers Transplanting, Inc., a California corporation (“GTI”) and Nor-West, Inc. (“Nor-West”),
4 and Does 1 through 50 (collectively, “Defendants”), individually, and on behalf of themselves
5 and all aggrieved employees of Defendant, for penalties for violations of the California Labor
6 Code as follows:

7 **INTRODUCTION**

8 1. This action is within the Court’s jurisdiction under California Labor Code §§ 201,
9 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512,
10 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699, 2800, 2802, 2698, *et seq.*, and the applicable
11 Wage Orders of the Industrial Welfare Commission (“IWC”).

12 2. This Complaint challenges systemic illegal employment practices resulting in
13 violations of the California Labor Code against individuals who worked for Defendant.

14 3. Plaintiffs are informed and believe, and based thereon allege, that Defendants,
15 jointly and severally, have acted intentionally and with deliberate indifference and conscious
16 disregard to the rights of all employees by failing to pay minimum and overtime wages, failing to
17 provide off-duty meal and rest periods, failing to provide complaint wage statements, and failing
18 to reimburse for business expenses. Defendants also misclassified employees as exempt
19 employees resulting in multiple labor code violations.

20 **JURISDICTION AND VENUE**

21 4. The Court has jurisdiction over the violations of the California Labor Code §§
22 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510,
23 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699, 2800, 2802, 2698, *et seq.*, and the
24 applicable IWC Wage Orders.

25 5. Venue is proper in Monterey County because Plaintiffs worked for Defendants at
26 its location in Monterey County.

27 **ADMINISTRATIVE PROCEEDINGS**

28 6. Pursuant to California Labor Code § 2699.3, Plaintiff Ryan Chanley gave written

notice on November 10, 2021 and March 17, 2023, by electronic filing with the Labor and Workforce Development Agency, and by certified mail to Defendant Growers Transplanting, Inc., of factual and legal basis for the labor law violations alleged in this Complaint.

7. Pursuant to California Labor Code § 2699.3, Plaintiff Ryan Chanley seeks all applicable penalties for violations which the Labor and Workforce Development Agency has failed or elected not to investigate and/or failed or elected not to issue a citation. Plaintiff has exhausted all administrative remedies required by the Labor and Workforce Development Agency as a prerequisite to filing this action.

PARTIES

8. Plaintiff Ryan Chanley ("Plaintiff Chanley") was employed by Defendants from about August 2020 until the date of his constructive termination by Defendant, on or before January 1, 2022. During the initial period of his employment Plaintiff was misclassified as an exempt employee. His job responsibilities included, but were not limited to, data entry, creating and printing bin labels for customer orders, coordinating with the logistics department that addressed monitoring loads to and from the fields, and processing labor requests from Growers. When Plaintiff's hours were reduced to two (2) hours a day and he was paid an hourly wage, his job responsibilities primarily consisted of monitoring/processing labor requests from Growers.

9. Plaintiff Olivier Lara ("Plaintiff Lara") was formerly employed by Defendants, working as a general laborer at GTI's Encinal Road facility from approximately 2011 through approximately March 31, 2020.

10. Plaintiff Veronica Medina ("Plaintiff Medina") was formerly employed by Defendants, working as a general laborer at GTI's Encinal Road #2 facility from approximately 2012 through approximately July 2022.

11. Plaintiff Celia Orozco ("Plaintiff Orozco") was formerly employed by Defendants, working as a farm labor contractor employee of Nor-West at GTI's Encinal Road #1 and #2 facilities from approximately July 16, 2021, through approximately August 8, 2021.

12. Plaintiffs were and are the victims of the policies, practices, and customs of Defendant complained of in this action in ways that have deprived them of the rights guaranteed

1 by California Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6,
2 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699, 2800, 2802,
3 2698, *et seq.*, and the applicable IWC Wage Orders.

4 13. Plaintiffs are informed and believe, and based thereon allege, that Growers
5 Transplanting, Inc. is a player in the greenhouse, transplanting and operations technology
6 industry. It is one of the largest nursery and field operation organizations in the United States.
7 Defendant was and is a business entity under the laws of the State of California and doing
8 business in the County of Monterey.

9 14. Plaintiffs are informed and believe, and based thereon allege, that at all times
10 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
11 and partnerships, licensed to do business and actually doing business in the State of California.
12 As such, and based upon all the facts and circumstances incident to Defendants' business,
13 Defendants are subject to the California Labor Code and the applicable IWC Wage Orders.

14 15. Plaintiffs do not know the true names or capacities, whether individual, partner or
15 corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said
16 defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this
17 complaint when the true names and capacities are known. Plaintiffs are informed and believe and
18 based thereon allege that each of said fictitious defendants was responsible in some way for the
19 matters alleged herein and proximately caused Plaintiffs and members of the general public and
20 aggrieved employees to be subject to the illegal employment practices, wrongs and injuries
21 complained of herein.

22 16. At all times herein mentioned, each defendant participated in the doing of the acts
23 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants,
24 and each of them, were the agents, servants and employees of each of the other defendants, as
25 well as the agents of all Defendants, and at all times herein mentioned, were acting within the
26 course and scope of said agency and employment.

27 17. Plaintiffs are informed and believe, and based thereon allege, that at all times
28 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or

1 joint venturer of, or working in concert with each of the other co-Defendants and was acting
2 within the course and scope of such agency, employment, joint venture, or concerted activity. To
3 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
4 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
5 Defendants.

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

9 19. At all times herein mentioned, the acts and omissions of various Defendants, and
10 each of them, concurred and contributed to the various acts and omissions of each and all of the
11 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
12 herein mentioned, Defendants, and each of them, ratified each and every act or omission
13 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
14 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
15 damages as herein alleged.

16 **CLASS ACTION ALLEGATIONS**

17 20. California Labor Code § 2810.3(b) states that “[a] client employer shall share
18 with a labor contractor all civil legal responsibility and civil liability for all workers supplied by
19 that labor contractor for...the payment of wages.”

20 21. “Client employer” is defined as “a business entity, regardless of its form, that
21 obtains or is provided workers to perform labor within its usual course of business from a labor
22 contractor.”

23 22. “Labor contractor” is defined as “an individual or entity that supplies, either with
24 or without a contract, a client employer with workers to perform labor within the client
25 employer's usual course of business.”

26 23. At all times herein alleged, Plaintiffs and the Class Members believe and allege
27 that GTI was a client employer within the definition of Labor Code § 2810.3(a)(1)(A).

28 24. At all times herein alleged, Plaintiffs and the Class Members believe and allege

1 that Nor-West was a labor contractor within the definition of Labor Code § 2810.3(a)(3).

2 25. At all times herein alleged, Nor-West supplied GTI with workers to perform
3 agricultural labor services within the usual course of GTI's business. Such services were
4 performed at properties owned by GTI.

5 26. In accordance with Labor Code § 2810.3(d), Plaintiff Orozco provided notice to
6 GTI of the Labor Code violations alleged against it in its capacity as a client employer of
7 employees provided by Nor-West.

8 27. In the event this Court determines that GTI was not a Client Employer as defined
9 by Labor Code § 2810.3(a)(1)(A), Plaintiffs maintain that GTI and Nor-West are jointly and
10 severally liable for the acts and omissions alleged herein.

11 28. Plaintiffs bring this action on behalf of themselves, the general public, and all
12 other similarly situated persons as a class action pursuant to Code of Civil Procedure § 382. All
13 claims alleged herein arise under California law for which Plaintiffs seek relief authorized by
14 California law. Plaintiffs seek to represent a class and subclasses composed of and defined as
15 follows:

16 All current and former non-exempt employees of
17 Defendants who worked for Defendants in California at
18 any time within four (4) years before the
19 commencement of this action through the date of the
order granting class certification. (the "Class")

20 All current and former non-exempt employees of
21 Defendants who worked a shift of greater than five (5)
22 hours for Defendants in California at any time within
23 four (4) years before the commencement of this action
through the date of the order granting class certification
(the "Meal Break Sub-Class")

24 All current and former non-exempt employees of
25 Defendants who worked a shift of greater than three and
26 a half (3.5) hours for Defendants in California at any
27 time within four (4) years before the commencement of
this action through the date of the order granting class
certification (the "Rest Break Sub-Class")

1 29. Plaintiffs reserve the right under Code of Civil Procedure § 382 to amend or
2 modify the class description with greater specificity, further division into subclasses or with
3 limitations to particular issues.

4 30. This action has been brought and may be properly maintained as a class action
5 under the provisions of Code of Civil Procedure § 382 because the questions of law and fact at
6 issue herein are common and of general interest to Plaintiffs and the Class Members, the parties
7 are numerous, and it would be impracticable to bring the claims alleged herein before the court
8 as individual claims or through some other than a class action.

9 **A. Numerosity**

10 31. The Class Members are so numerous that joinder of all the members of the class
11 is not feasible and not practical. While the precise number the Class Members has not been
12 determined at this time, Plaintiffs are informed and believe that Defendants currently employ,
13 and during the Class Period regularly employed, more than 50 employees in California in hourly
14 wage or otherwise non-exempt positions. The identities of the Class Members are readily
15 ascertainable by inspection of Defendants' employment records. Moreover, joinder of all
16 members of the proposed class is not practicable, and individual damages for each member is not
17 anticipated to be sufficiently high to allow for practical resolution through individualized
18 litigation.

19 **B. Commonality and Predominance**

20 32. There are questions of law and fact common to each Class Member that
21 predominate over any questions affecting only individual Class Members. These common
22 questions of law and fact include, without limitation:

23 a. Whether Defendants violated California Labor Code §§ 226.7 and 512 and
24 the Wage Order by failing to provide a 30 minute duty-free meal period within the first five
25 hours of each workday to Plaintiffs and the Class Members on days they worked in excess of
26 five hours, and failing to compensate Plaintiffs and the Class Members one hour of wages at
27 their regular rate of pay for each such missed meal period that was not provided;
28

1 b. Whether Defendants violated Labor Code § 226.7 and the Wage Order by
2 failing to provide a paid 10 minute duty-free rest period to Plaintiffs and the Class Members for
3 every four-hour work period or major fraction thereof, by either not paying wages to Plaintiffs
4 and the Class Members or reducing their wages for time spent during any rest period that was
5 provided, and by failing to compensate Plaintiffs and the Class Members one hour of wages for
6 such missed and/or unpaid/underpaid rest periods;

7 c. Whether Defendants violated Labor Code §§ 1194 and 1198 and the Wage
8 Order by failing to pay Plaintiffs and the Class Members the appropriate premium overtime
9 wages for all overtime hours worked;

10 d. Whether Defendants violated California Labor Code § 226 by failing to
11 provide accurate itemized wage statements to Plaintiffs and the Class Members containing all of
12 the information required by Labor Code § 226;

13 e. Whether Defendants violated California Labor Code §§ 201, 202, 204,
14 216, 218, 221, 1194 and 1198 by failing and refusing to pay Plaintiffs and the Class Members
15 agreed wages for all work performed by them, including minimum wage and/or overtime as
16 compensation for any and all hours worked;

17 f. Whether Defendants violated Labor Code §§ 201, 202, 203 and 204 by
18 failing to timely pay Plaintiffs and the Class Members all wages for work performed by them
19 during their employment and failing to timely pay Plaintiffs and the Class Members at the end of
20 their employment all wages for work performed by them during their employment;

21 g. Whether Defendants violated Labor Code §§ 201, 202, and 204 by failing
22 to timely pay Plaintiffs and the Class Members for all wages and hours worked during their
23 employment;

24 h. Whether Defendants violated Labor Code § 2802 by failing to reimburse
25 employees for all business expenses, including phone-related expenses;

26 i. Whether Defendants' failure to pay wages, and premiums in accordance
27 with the California Labor Code and the Wage Order was willful;
28

1 j. Whether Defendants violated Labor Code § 1198 and the Wage Order for
2 failing to keep accurate records with respect to each employee;

3 k. Whether Defendants' conduct as alleged throughout this complaint was
4 willful or reckless;

5 l. The appropriate amount of damages, restitution and/or monetary penalties
6 resulting from Defendants' violations of California law;

7 m. Whether Plaintiffs and the Class members are entitled to equitable relief,
8 including but not limited to, injunctive and declaratory relief, pursuant to Business and
9 Professions Code §§ 17200 et seq.; and

10 n. Whether Defendants violated Business and Professions Code §§ 17200 et
11 seq., by failing to provide meal and rest periods mandated by Labor Codes § 226.7, 512 and the
12 Wage Order; by failing to compensate Plaintiffs and the Class Members one (1) hour of pay for
13 meal periods and rest periods that were not provided; by failing to pay regular and overtime
14 wages for all hours worked; failing to provide complete and accurate wage statements to
15 Plaintiffs and the Class Members in accordance with Labor Code § 226; by failing to pay agreed
16 wages; by failing to pay Plaintiffs and the Class Members all wages due upon termination; and
17 by failing to timely provide all wages due to Plaintiffs and the Class Members.

18
19 **C. Typicality**

20 33. The claims of Plaintiffs are typical of the claims of the Class Members. Plaintiffs
21 and the Class Members sustained injuries and damages arising out of and caused by the
22 Defendants' common course of conduct in violation of statutes, common law, wage orders
23 and/or regulations that have the force and effect of law, as alleged herein. Plaintiffs have a well-
24 defined community of interest with the Class Members and are qualified to, and will, fairly and
25 adequately protect the interests of each Class Member.

26 **D. Adequacy of Representation**

27 34. Plaintiffs will fairly and adequately represent and protect the interests of the Class
28 Members. Plaintiffs acknowledge their obligation to make known to the Court any relationship,

1 conflict or difference with any Class Member. Plaintiffs have incurred and throughout this
2 action will continue to incur, costs and attorney's fees necessarily expended for the prosecution
3 of this action for the substantial benefit of each Class Members. Counsel who represent Plaintiffs
4 are competent and experienced in litigating class actions, versed in the rules governing class
5 action discovery certification, settlement and trial, and will vigorously and competently pursue
6 the claims of Plaintiffs and the Class Members.

7 **E. Superiority**

8 35. The nature of this action makes the use of class action adjudication superior to
9 other methods. The class action will achieve economies of time, effort and expense as compared
10 with separate individual lawsuits on behalf of each Class Member and will avoid inconsistent
11 outcomes because the same issues will be adjudicated in the same manner and at the same time
12 for the entire class.

13 **F. Public Policy Consideration**

14 36. Employers in the State of California violate employment and labor laws on a daily
15 basis. Employees are often intimidated and afraid to assert their rights out of fear that they will
16 be subjected direct or indirect retaliation by their employers. Former employees (those who are
17 no longer employed by a particular employer who had subjected them to employment and labor
18 law violations) are fearful of brining actions against their former employers because they believe
19 their former employers might damage their future endeavors through negative references and/or
20 other means. Class actions provide Class Members who are not named in the complaint with
21 vindication of their rights while also protecting their privacy and shielding them from retaliation.
22

23 **FIRST CAUSE OF ACTION**

24 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

25 **(Labor Code §§ 226.7 and 1198; and the Wage Order)**

26 **(Plaintiffs, the Meal Break Sub-Class, and the Class Members against Defendants)**

27 37. Plaintiffs and the Class Members allege and incorporate by reference all of the
28 allegations contained in the preceding paragraphs as though fully set forth herein.

38 38. California Labor Code § 226.7 provides that no employer shall require an
employee to work during any meal period mandated by an applicable order of the Industrial

1 Welfare Commission. Labor Code § 226.7 further provides that if an employer fails to provide
2 an employee a meal period or rest period in accordance with an applicable order of the Industrial
3 Welfare Commission, the employer shall pay the employee one additional hour of pay at the
4 employee's regular rate of compensation for each workday that the meal or rest period is not
5 provided.

6 39. At all times relevant to this action, the Wage Order and California Labor Code §
7 1198 provided that an employer may not require, cause or permit an employee to work for a
8 period of more than five (5) hours per day without providing the employee with an uninterrupted
9 meal period of not less than thirty (30) minutes, except that if the total work period per day of the
10 employee is not more than six (6) hours, the meal period may be waived by mutual consent of
11 both the employer and the employee.

12 40. Throughout the Class Period, Defendants and/or their authorized supervisors
13 repeatedly failed to comply with the meal period requirements of the Labor Code and the Wage
14 Order by failing to provide Plaintiffs and the Class Members with a thirty (30) minute
15 uninterrupted duty-free meal period within five (5) hours of the beginning of their shift, in
16 violation of Labor Code §§ 512, 226.7, and the Wage Order. Defendants also failed to
17 compensate Plaintiffs and the Class Members one (1) hour of wages for any of the missed meal
18 periods not provided by Defendants, as alleged above, which failure also violated Labor Code
19 §§512 and 226.7 and the Wage Order.

20 41. Pursuant to the Wage Order and California Labor Code § 226.7(b), Plaintiffs and
21 the Class Members are entitled to recover from Defendants one (1) additional hour of pay at their
22 regular hourly rate of compensation for each meal period violation as alleged herein.

23 42. Defendants were at all times aware of the Labor Code and Wage Order
24 requirements that they provide Plaintiffs and the Class Members with such meal periods and was
25 aware that Plaintiffs and the Class Members regularly worked more than five (5) hours in a shift
26 without receiving mandated meal periods. Thus, Defendants willfully violated the provisions of
27 Labor Code §§ 226.7 and 512 and the Wage Order.
28

1 43. As a result of the unlawful conduct of Defendants, Plaintiffs and the Class
2 Members have been deprived of wages and other compensation in amounts to be determined at
3 trial and are entitled to recovery of such amounts.

4 44. WHEREFORE, Plaintiffs and the Class Members request relief as herein prayed
5 for.

6 **SECOND CAUSE OF ACTION**

7 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
8 **(Labor Code §§ 226.7 and 1198; and The Wage Order)**
9 **(Plaintiffs, the Rest Break Sub-Class and the Class Members against Defendants)**

10 45. Plaintiffs and the Class Members allege and incorporate by reference all of the
11 allegations contained in the preceding paragraphs as though fully set forth herein.

12 46. California Labor Code § 226.7 provides that no employer shall require an
13 employee to work during any rest period mandated by an applicable order of the California
14 Industrial Welfare Commission. Labor Code Section 226.7 further provides that if an employer
15 fails to provide an employee a meal period or rest period in accordance with an applicable order
16 of the Industrial Welfare Commission, the employer shall pay the employee one additional hour
17 of pay at the employee's regular rate of compensation for each workday that the meal or rest
18 period is not provided.

19 47. The Wage Order and California Labor Code § 226.7 provides that every employer
20 shall provide and shall authorize and permit all employees to take rest periods, which insofar as
21 practicable shall be in the middle of each work period, and that the rest period time shall be
22 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
23 hours or major fraction thereof, unless the total daily work time is less than three and one-half
24 hours.

25 48. Throughout the Class period, on days in which Plaintiffs and the Class Members
26 worked at least three and one half hours, Defendants regularly and repeatedly required Plaintiffs
27 and the Class Members to work four (4) hours and/or a major fraction thereof without providing,
28 authorizing or permitting at least one ten (10) minute rest period during which Plaintiffs' and the
Class Members were relieved of all duties (hereafter "rest period") per each four (4) hour period,

1 or a major fraction thereof, worked.

2 49. Throughout the Class Period, Defendants failed to pay Plaintiffs and the Class
3 Members a premium of one hour pay at their regular rate of pay for each rest period not
4 provided, authorized, and permitted as alleged herein, pursuant to Labor Code § 226.7.

5 50. Defendants were at all times aware of the Labor Code and Wage Order
6 requirements that they provide Plaintiffs and the Class Members with the rest periods described
7 above and were aware that Plaintiffs and the Class Members regularly worked more than four (4)
8 hours or major fraction thereof without receiving mandated rest periods. Defendants therefore at
9 all times willfully violated the provisions of Labor Code § 226.7 and the Wage Order.

10 51. Pursuant to the Wage Order and California Labor Code § 226.7(b), Plaintiffs and
11 the Class Members are entitled to recover from Defendants one (1) additional hour of pay at their
12 regular hourly rate of compensation for each workday that a rest period was not provided. As a
13 result of the unlawful conduct of Defendant, Plaintiffs have been deprived of wages and
14 compensation in amounts to be determined at trial, and is entitled to recovery of such amounts.

15 52. WHEREFORE, Plaintiffs and the Class Members request relief as herein prayed
16 for.

17
18 **THIRD CAUSE OF ACTION**

19 **Failure to Pay Hourly and Overtime Wages**
20 **(California Labor Code §§ 1194 and 1198; and The Wage Order)**
21 **(Plaintiffs and the Class Members against Defendants)**

22 53. Plaintiffs and the Class Members incorporate by reference all of the allegations
23 contained in the preceding paragraphs as though fully set forth herein.

24 54. Plaintiffs and the Class Members base this cause of action upon Defendants'
25 willful and intentional violations of the California Labor Code and Industrial Welfare
26 Commission requirements that Defendants pay Plaintiffs and the Class Members for all hours
27 worked, including the requirement to pay premium overtime wages to Plaintiffs and the Class
28 Members for overtime hours worked in a workday and/or in a workweek, and/or on the seventh
consecutive day in a workweek.

55. Pursuant to Labor Code § 204, as well as other applicable laws and regulations,

1 and public policy, an employer must timely pay its employees for all hours worked.

2 56. Labor Code § 1198 provides that “The maximum hours of work and the standard
3 conditions of labor fixed by the commission shall be the maximum hours of work and the
4 standard conditions of labor for employees. The employment of any employee for longer hours
5 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

6 57. Labor Code § 1194 provides that “any employee receiving less than the legal
7 minimum wage or the legal overtime compensation applicable to the employee is entitled to
8 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
9 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.”

10 58. Throughout the Class Period, Defendants knew or had reason to know that
11 Plaintiffs and the Class Members were regularly and consistently worked overtime without being
12 paid the appropriate premium overtime wage required by Labor Code §§ 1194 and 1198, and the
13 Wage Order.

14 59. Throughout the Class Period, Defendants' conduct as alleged herein amounted to
15 a uniform pattern of unlawful wage and hour practices which resulted from the implementation
16 of uniform policies and practices by which Defendants failed to accurately record all hours
17 worked by Plaintiffs and the Class Members thereby denying payment of overtime premium
18 wages to Plaintiffs and the Class Members for overtime hours worked.

19 60. In committing the violations of the California Labor Code as alleged herein,
20 Defendants engaged in an illegal attempt to avoid the payment of all earned wages and other
21 benefits in violation of the California Labor Code, the Industrial Welfare Commission
22 requirements and other applicable laws and regulations.

23 61. As a direct result of Defendants' unlawful wage practices as alleged herein,
24 Plaintiffs and the Class Members have been denied full compensation for all hours worked by
25 them, including but not limited to premium overtime wages for overtime hours.

26 62. The Labor Code and the Wage order set forth various exemptions by which
27 certain categories of employees are exempt from the protections of the overtime laws contained
28

1 in the Labor Code. At no time during Plaintiffs' employment did any of these exemptions apply
2 to Plaintiffs and the Class Members. Moreover, at no time were Plaintiffs and the Class Members
3 subject to a valid collective bargaining agreement that would preclude the causes of action set
4 forth in this complaint. Rather, Plaintiffs and the Class Members bring this action because of
5 Defendants' violations of non-waiveable rights guaranteed to them by the State of California.

6 63. As a direct consequence of Defendants' unlawful failure to pay Plaintiffs and the
7 Class Members the full and accurate amount of all earned wages at the appropriate rate for the
8 true number of hours they worked, Plaintiffs and the Class Members have suffered and will
9 continue to suffer economic injuries in an amount which is presently unknown to them and
10 which will be ascertained according to proof at trial.

11 64. In performing the acts and practices in violation of California labor laws as herein
12 alleged, Defendants have acted and continue to act intentionally, oppressively and maliciously
13 towards Plaintiffs and the Class Members, with a conscious disregard for their legal rights and
14 the consequences to them, and with the intent of depriving them of their property and legal rights
15 and otherwise causing them injury, in order to increase Defendants' profits at the expense of
16 Plaintiffs and the Class Members.

17 65. Plaintiffs and the Class Members request recovery of all unpaid wages, including
18 overtime premium wages, in an amount according to proof, interest on such amounts, statutory
19 costs, and the assessment of any and all statutory penalties against Defendants, all in the sums as
20 provided by the California Labor Code and/or other applicable statutes. In addition, to the extent
21 that overtime compensation is owed Plaintiffs and the Class Members whose employment has
22 been terminated, Defendants' conduct violates Labor Code §§ 201 and/or 202, entitling Plaintiffs
23 and the Class Members to waiting time penalties under Labor Code § 203, which penalties are
24 sought herein on behalf of Plaintiffs and the Class Members.

25 66. WHEREFORE, Plaintiffs and the Class Members request relief as herein prayed
26 for.
27
28

1 **FOURTH CAUSE OF ACTION**

2 **Failure to Comply with Itemized Employee Wage Statement Requirements**
3 **(California Labor Code §§ 226, 1174 and 1175; and The Wage Order)**
4 **(Plaintiffs and the Class Members against Defendants)**

5 67. Plaintiffs and the Class Members allege and incorporate by reference all of the
6 allegations contained in the preceding paragraphs, as though fully set forth herein.

7 68. Labor Code § 226(a) and the Wage Order require Defendants to itemize in wage
8 statements all deductions from payment of wages, to accurately report total hours worked, to
9 report the rate of pay for hours worked, and keep the records on file at the place of employment
10 or at a central location within the State of California. Defendants have knowingly and
11 intentionally failed to comply with Labor Code § 226(a) and the Wage Order with respect to
12 wage statements they have provided to Plaintiffs and the Class Members.

13 69. Labor Code § 1174 and the Wage Order requires Defendants to maintain and
14 preserve, at the place of employment or at a central location within the State of California,
15 among other items, accurate records showing the names and addresses of all employees
16 employed, payroll records accurately showing the hours worked daily and the wages paid to its
17 employees. Defendants have knowingly and intentionally failed to comply with these
18 requirements in violation of Labor Code §§ 1174 and 1175 and the Wage Order.

19 70. Labor Code § 226(a) and the Wage Order provide that every employer shall,
20 semimonthly or at the time of each payment of wages, furnish each of its employees an accurate
21 itemized statement in writing showing gross wages earned, total hours worked by the employee,
22 the number of piece rate units and the applicable rate, all deductions, net wages earned, the
23 inclusive dates of the period for which the employee is paid, the name of the employee and the
24 last four digits of the employee's social security number (or an employee identification number),
25 the name and address of the legal entity that is the employer and all applicable hourly rates in
26 effect during the pay period and the corresponding numbers of hours worked at each hourly rate
27 by the employee. Labor Code § 226(a) mandates that deductions made from payments of wages
28 shall be recorded in ink, properly dated and a copy of the statement or a record of deductions be
kept on file by the employer for at least three years. Moreover, the Wage Order requires

1 Defendants to maintain time records for each employee showing, including but not limited to, an
2 accurate report of the total hours worked by each employee, when the employee begins and ends
3 each work period, meal periods, and total daily hours worked in itemized wage statements, and
4 all deductions from payment of wages.

5 71. Throughout the Class Period, Defendants have regularly and consistently,
6 intentionally and willfully, failed to provide Plaintiffs and the Class Members with complete and
7 accurate wage statements.

8 72. The Wage Order provides that an employer must keep accurate information with
9 regard to each employee, which shall include time records showing when the employee begins
10 and ends each work period, total daily hours worked and total hours worked in the pay period
11 and the applicable rates of pay.

12 73. Throughout the Class Period, Defendants continually failed to keep accurate
13 records and information with regard to Plaintiffs and the Class Members as required by the Wage
14 Order. Defendants repeatedly provided Plaintiffs and the Class Members with wage statements
15 that, among other inaccuracies, failed to include complete and accurate information on the
16 following: (1) gross wages earned; (2) total hours worked; (3) all deductions from wages; (4) net
17 wages earned; (5) all applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate; and (6) reimbursement for work-
19 related expenses.

20 74. As a result of Defendants' violation of Labor Code §§ 226(a), 1174 and 1175, as
21 well as the Wage Order, Plaintiffs and the Class Members have suffered injury and damage to
22 their statutorily-protected rights. These injuries and damages include, but are not limited to, the
23 denial of their legal right to receive and their protected interest in receiving accurate, itemized
24 wage statements under Labor Code § 226(a). Moreover, the inaccurate and incomplete wage
25 statements provided by Defendants deceived Plaintiffs and the Class Members about the wages
26 and other compensation to which they were entitled and deprived them of such wages and
27 compensation. As a further result of Defendants' failure to provide Plaintiffs and the Class
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1 Members with accurate wage statements in accordance with Labor Code § 226 and to keep
2 accurate time records as required by the Wage Order, Plaintiffs and the Class Members have
3 suffered injuries and are entitled to penalties under Labor Code § 226 and Labor Code § 226.3
4 which states that any employer who violates § 226 shall be subject to a civil penalty in the
5 amount of \$250.00 per employee per violation in an initial citation. The civil penalty provided
6 for in this section is in addition to any other penalty provided by law, in an amount to be proven
7 at trial. The injuries suffered by Plaintiffs and the Class Members include, but are not limited
8 to, having been, and continuing to be, forced to conduct investigations and perform mathematical
9 computations in an attempt to reconstruct their time records; the inability to reconstruct their
10 time records; the inability to discern the amount of wages they were paid and/or the applicable
11 wage rate; the inability to determine the number of hours, including but not limited to, overtime
12 hours they worked; the inability to determine the number of rest periods and meal periods they
13 were forced to forego; the inability to determine whether they were compensated for all meal and
14 rest periods of which they had been deprived; the inability to determine whether they were paid
15 all wages due for work they performed; the inability to determine the amount of wages owing
16 and unpaid; having been, and continuing to be, forced to hire attorneys and initiate a lawsuit in
17 order to ascertain the aforementioned information.
18

19 75. Plaintiffs and the Class Members are further entitled to recover from Defendants
20 the greater of their actual damages caused by Defendants' failure to comply with Labor Code §
21 226(a), or an aggregate penalty not exceeding \$4,000.00.

22 76. Plaintiffs and the Class Members are also entitled to injunctive relief to ensure
23 compliance with this section, pursuant to Labor Code § 226(g).

24 77. Pursuant to Labor Code § 226(e), each employee suffering injury as a result of a
25 knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled
26 to recover the greater of all actual damages or \$50.00 for the initial pay period in which a
27 violation occurs and \$100.00 per employee for each violation in a subsequent pay period, not
28 exceeding an aggregate penalty of \$4,000.00, and is entitled to an award of costs and reasonable

attorneys' fees.

78. Moreover, an employee is entitled under the Labor Code § 226(g) to injunctive relief to ensure compliance with Labor Code § 226 and is entitled to an award of costs and reasonable attorneys' fees.

79. WHEREFORE, Plaintiffs and the Class Members request relief as herein prayed for.

FIFTH CAUSE OF ACTION

Failure to Pay All Wages Upon Termination (California Labor Code §§ 201, 202 and 203; and The Wage Order) (Plaintiffs and the Class Members against Defendants)

80. Plaintiffs and the Class Members incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

81. Labor Code § 203 provides that if an employer willfully fails to pay wages owed in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days.

82. Labor Code § 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

83. Labor Code § 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

84. Defendants willfully failed to pay Plaintiffs and the Class Members all their wages due, as alleged hereinabove and hereinafter, upon the termination of their employment within the times prescribed by Labor Code §§201 and 202 and are therefore subject to a waiting time penalty. Plaintiffs and the Class Members are entitled to recover from Defendants the statutory penalty for each day they were not paid at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code § 203.

85. WHEREFORE, Plaintiffs and the Class Members request relief as herein prayed

1 for.

2 **SIXTH CAUSE OF ACTION**
3 **Violation of Labor Code § 2802**

4 **(Plaintiffs and the Class Members against Defendants)**

5 86. Plaintiffs and the Class Members incorporate by reference all of the allegations
6 contained in the preceding paragraphs as though fully set forth herein.

7 87. Pursuant to Labor Code § 2802 an employer shall indemnify his or her employee
8 for all necessary expenditures or losses incurred by the employee in direct consequence of the
9 employee's discharge of his or her duties.

10 88. At all times herein alleged, Defendants regularly and consistently violated Labor
11 Code § 2802 by failing to reimburse Plaintiffs and the Class Members for expenses incurred in
12 the performance of their duties, including expenses associated with the use of Plaintiffs' and the
13 Class Members' personal phones for mandatory work-related phone calls.

14 89. As a matter of policy and practice, Defendants routinely scheduled Plaintiffs and
15 other Class Members to respond to off-the-clock work-related calls without compensation and/or
16 reimbursement for using their personal cell phone for work purposes.

17 90. Plaintiffs and the Class Members were required to retain attorneys to bring this
18 action and are entitled to an award of reasonable attorneys' fees pursuant to Labor Code §
19 2802(c).

20 **SEVENTH CAUSE OF ACTION**
21 **Violation of Labor Code § 2698, *ET SEQ.***

22 **(Plaintiff Chanley and Aggrieved Employees Against All Defendants)**

23 92. Plaintiff Chanley re-alleges and incorporates by reference the preceding
24 paragraphs as though fully set forth herein.

25 93. Plaintiff Chanley brings this cause of action as a proxy for the State of California
26 and in this capacity, seeks penalties on behalf of all Aggrieved Employees from November 10,
27 2020, through the present, for Defendant's violations of Labor Code §§ 201, 201.3, 202, 203,
28 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194,
1197, 1197.1, 1198, 1199, 2699, 2800, 2802, 2698, *et seq.*, as identified above, for failing to pay
minimum and overtime wages, failing to provide off-duty meal and rest periods, failing to

1 provide complaint wage statements, and failing to reimburse for business expenses.

2 94. Such a pattern, practice and uniform administration of corporate policy as
3 described herein is unlawful and creates an entitlement to recovery by the Plaintiff on behalf of
4 the State of California, in a civil action, for penalties pursuant to the PAGA, Labor Code §§
5 226.3 and 2699(a), including interest thereon, attorneys' fees, and costs of suit according to the
6 mandate of PAGA for Defendant's violations of Labor Code §§ 201, 201.3, 202, 203, 204, 207,
7 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197,
8 1197.1, 1198, 1199, 2699, 2800, 2802, as well as attorneys' fees and costs.

9 **EIGHTH CAUSE OF ACTION**

10 **Unfair Business Practices**

11 **(California Business and Professions Code §§ 17200 et seq. and Common Law)**
12 **(Plaintiffs and the Class Members against Defendants)**

13 95. Plaintiffs and the Class Members hereby incorporate each of the preceding
14 paragraphs of this Complaint as if fully alleged herein.

15 96. Plaintiffs and the Class Members suffered direct injury as a result of the
16 Defendants' conduct, as alleged in the preceding paragraphs, and bring this action under Code of
17 Civil Procedure § 382. The deprivation by Defendants of Plaintiff and the Class Members of
18 wages due and lawful meal and rest periods, and Defendants' provision of inaccurate wage
19 statements, are unlawful business practices within the meaning of Business and Professionals
20 Code § 17200, et seq. including, but not limited to, a violation of the Wage Order, regulations,
21 and statutes, and further, whether or not in violation of the aforementioned Wage Order,
22 regulation and statutes, amount to practices which are otherwise unfair.

23 97. Under Business and Professions Code § 17200, et seq., including, but not limited
24 to §§ 17201, 17203, and 17208, Plaintiffs assert standing on behalf of themselves and on the
25 behalf of each of the members of the class alleged herein. Plaintiffs and the Class Members
26 seek, among others, restitution of compensation due during the Class Period.

27 98. Throughout the Class Period, Defendants have committed violations of law, as
28 described herein, including, but not limited to, violation of Labor Code §§ 201, 201.3, 202, 203,

204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2698, 2699, 2800, 2802, and the Wage Order.

99. These unlawful and unfair business practices defeat the public interest purposes of the State's labor laws, as set forth in the sections of the California Labor Code, the California Code of Regulation and the Wage Order referenced elsewhere in this complaint, all of which promote compliance with labor laws and employment regulations by participants in Defendants' industry.

100. Defendants' unfair and unlawful business practices thus have violated the sections of the Labor Code, California Code of Regulation and the Wage Order referenced in this complaint and have imposed harm on their employees and their competitors and will continue to do so until abated. As a result of these unfair and unlawful business practices, Defendants have retained monies belonging to Plaintiff and the Class Members and they have been unjustly enriched at Plaintiffs' and the Class Members' expense. Plaintiffs and the Class Members are entitled to restitution of the wages and monies withheld and retained by Defendants during the Class Period and a preliminary and permanent injunction requiring Defendants to pay all wages and sums due to Plaintiffs and the Class Members, to provide mandatory rest and meal periods, and to provide accurate and complete wage statements.

101. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Class Members have suffered injury and loss of money.

102. This action will result in the enforcement of an important right affecting the public interest. The conduct of Defendants as alleged herein has been and continues to be unfair, unlawful and harmful to Plaintiffs and the Class Members, and the general public. Accordingly, under Code of Civil Procedure § 1021.5, Plaintiffs and the Class Members are entitled to an award of reasonable attorneys' fees according to proof.

103. WHEREFORE, Plaintiffs and the Class Members request relief as hereinafter prayed for.

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WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the Class Members
prays as follows:

CLASS CERTIFICATION

1. That this action be certified as a class action and that the class identified herein be certified;
2. That Plaintiffs be appointed as the representatives of all the Class Members;
3. That counsel for Plaintiffs be appointed as class counsel.

AS TO THE FIRST CAUSE OF ACTION

4. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 226.7, 512, 1198 and the Wage Order by willfully failing to provide all meal periods to Plaintiffs and the Class Members;
5. That the Court grant an award to Plaintiffs and the Class Members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;
6. For all actual, consequential and incidental losses and damages, according to proof;
7. For premiums pursuant to California Labor Code § 226.7(b);
8. For prejudgment interest on any unpaid wages for the date such amounts were due;
9. For all civil penalties and reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code §§ 210 and 211; and
10. For such other further relief as the Court may deem equitable and appropriate.

AS TO THE SECOND CAUSE OF ACTION

11. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 226.7, 512, 1198 and the Wage Order by willfully failing to provide all rest periods to Plaintiffs and the Class Members;

1 12. That the Court grant an award to the Plaintiffs and the Class Members of one (1)
2 hour of pay at each employee's regular rate of compensation for each workday that a rest period
3 was not provided;

4 13. For all actual, consequential and incidental losses and damages, according to
5 proof;

6 14. For premiums pursuant to California Labor Code § 226.7(b);

7 15. For prejudgment interest on any unpaid wages for the date such amounts were
8 due;

9 16. For all civil penalties and reasonable attorneys' fees and costs of suit incurred
10 herein pursuant to California Labor Code §§ 210 and 211; and

11 17. For such other further relief as the Court may deem equitable and appropriate.

12 **AS TO THE THIRD CAUSE OF ACTION**

13 18. That the Court declare, adjudge and decree that Defendants violated California
14 Labor Code §§ 510, 1194, and 1198, and the Wage Order by willfully failing to pay wages to
15 Plaintiffs and the Class Members;

16 19. That the Court grant an award to Plaintiffs and the Class Members for Defendants
17 willfully failing to pay wages due to Plaintiffs and the Class Members;

18 20. For all actual, consequential and incidental losses and damages, according to
19 proof;

20 21. For prejudgment interest on any unpaid wages for the date such amounts were
21 due;

22 22. For all civil penalties and reasonable attorneys' fees and costs of suit incurred
23 herein pursuant to California Labor Code §§ 218.5, 218.6, 558, 1194, and 1197; and

24 23. For such other further relief as the Court may deem equitable and appropriate.

25 **AS TO THE FOURTH CAUSE OF ACTION**

26 24. That the Court declare, adjudge and decree that Defendants violated the record
27 keeping provisions of California Labor Code § 226 and the Wage Order as to Plaintiffs and the
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1 Class Members and that Defendants willfully failed to provide accurate itemized wage
2 statements to Plaintiffs and the Class Members;

3 25. For all actual, consequential and incidental losses and damages, according to
4 proof or, alternatively, for statutory penalties pursuant to California Labor Code § 226(e);

5 26. For injunctive relief to ensure compliance with Labor Code § 226(a), pursuant to
6 California Labor Code § 226(g);

7 27. For all civil penalties and reasonable attorneys' fees and costs of suit incurred
8 herein pursuant to California Labor Code § 226.3; and

9 28. For such other further relief as the Court may deem equitable and appropriate.

10 **AS TO THE FIFTH CAUSE OF ACTION**

11 29. That the Court declare, adjudge and decree that Defendants violated California
12 Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
13 Plaintiffs and the Class Members termination of employment;

14 30. For all actual, consequential and incidental losses and damages, according to
15 proof;

16 31. For statutory wage penalties in favor of Plaintiffs and the Class Members that
17 have left Defendants' employment, pursuant to California Labor Code §§ 203 and 210;

18 32. For prejudgment interest on any unpaid wages for the date such amounts were
19 due;

20 33. For all civil penalties and reasonable attorneys' fees and costs of suit incurred
21 herein pursuant to California Labor Code §§ 203, 210, 211, 218.5, 218.6, and 1194; and

22 34. For such other further relief as the Court may deem equitable and appropriate.

23 **AS TO THE SIXTH CAUSE OF ACTION**

24 35. For damages and/or penalties pursuant to statute as set forth in California Labor
25 Code §§ 2800, 2802, and the applicable wage order, and for costs and attorneys' fees.
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37. That the Court grant an award to Plaintiff Chanley and the employees, of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004, including but not limited to, statutory penalties for Plaintiff Chanley and the employees of Defendants against whom one or more violations of the Labor Code was committed;

39. For all civil penalties and reasonable attorneys' fees and costs of suit incurred pursuant to California Labor Code § 2699(g); and

AS TO THE EIGHTH CAUSE OF ACTION

42. For restitution of unpaid wages and penalties to Plaintiffs and the Class Members, and for prejudgment interest from the day such amounts were due and payable;

1 43. For the appointment of a Receiver to receive, manage and distribute any and all
2 funds disgorged from Defendants and determined to have been wrongfully acquired by
3 Defendants as a result of violation of Business and Professions Code § 17200 et seq.;

4 44. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Code
5 of Civil Procedure § 1021.5;

6 45. For injunctive relief to ensure compliance with this section, pursuant to Business
7 and Professions Code § 17200 et seq.; and

8 46. For such other and further relief as the Court may deem equitable and appropriate.
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10 DATED: March 17, 2023

DIVERSITY LAW GROUP, P.C.
FITZPATRICK & SWANSTON

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13 By: /s/ B. James Fitzpatrick
14 Howard L. Magee
15 B. James Fitzpatrick
16 Attorneys for Plaintiffs
17 RYAN CHANLEY, OLIVIER LARA,
18 VERONICA MEDINA, and CELIA OROZCO
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