

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: PRECISION ALMOND HARVESTING LLC, a
(AVISO AL DEMANDADO): California limited liability
company, and DOES 1 through 10, inclusive

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
1/18/2022

Kern County Superior Court
By Vickie Fogerson, Deputy

YOU ARE BEING SUED BY PLAINTIFF: BRANDON VELAZQUEZ, on
(LO ESTÁ DEMANDANDO EL DEMANDANTE): behalf of himself and
on behalf of all similarly situated individuals

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of Kern
1415 Truxtun Ave 1215 Truxtun Ave

Bakersfield, California 93301

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Alex P. Katofsky, Esq.

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Gaines & Gaines, APLC

27200 Agoura Road, Suite 101, Calabasas, CA 91301

DATE: 1/18/2022
(Fecha)

TAMARAH HARBER-PICKENS

Clerk, by

(Secretario)

CASE NUMBER:
(Número del Caso):

BCV-22-100125

818-703-8985

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Alex P. Katofsky, Esq. SBN: 202754
 Gaines & Gaines, APLC
 27200 Agoura Road, Suite 101, Calabasas, CA 91301
 TELEPHONE NO.: 818-703-8985 FAX NO. (Optional): 818-703-8984
 E-MAIL ADDRESS: alex@gaineslawfirm.com
 ATTORNEY FOR (Name): Plaintiff Brandon Velasquez

FOR COURT USE ONLY

ELECTRONICALLY FILED
1/14/2022 1:44 PM
Kern County Superior Court
By Vickie Fogerson, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN

STREET ADDRESS: ~~1415 Truxtun Ave~~ ^{VMF} 1215 Truxtun Ave
 MAILING ADDRESS: ~~1415 Truxtun Ave~~
 CITY AND ZIP CODE: Bakersfield, 93301
 BRANCH NAME: Metro Division

CASE NAME: Velasquez v. Precision Almond Harvesting LLC, et al.

CIVIL CASE COVER SHEET

☒ **Unlimited** ☐ **Limited**
 (Amount (Amount
 demanded demanded is
 exceeds \$25,000) \$25,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder
 Filed with first appearance by defendant
 (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **BCV-22-100125**JUDGE:
DEPT.:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:**Auto Tort**

☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☒ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment☐ Enforcement of judgment (20)**Miscellaneous Civil Complaint**

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
 b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): Seven (7)

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 1/14/22

Alex P. Katofsky, Esq.

(TYPE OR PRINT NAME)



Alex P. Katofsky

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court Case Matter
Writ–Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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ELECTRONICALLY FILED
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Kern County Superior Court
By Vickie Fogerson, Deputy

Attorneys for Plaintiff Brandon Velazquez, on behalf of himself and on behalf of all similarly situated individuals

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

BRANDON VELAZQUEZ, on behalf of
himself and on behalf of all similarly situated
individuals,

Plaintiff,

v.

PRECISION ALMOND HARVESTING LLC,
a California limited liability company, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: BCV-22-100125

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES DUE (LABOR CODE §§ 510, 1194 AND 1194.2)**
- 2. FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE § 226.7; IWC WAGE ORDER 4-2001)**
- 3. FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE §§ 226.7, 510, 512, AND 1194; IWC WAGE ORDER 4-2001)**
- 4. FAILURE TO REIMBURSE EXPENSES (LABOR CODE § 2802)**
- 5. FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226)**
- 6. FAILURE TO TIMELY PAY WAGES DUE AT SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)**
- 7. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**

DEMAND FOR JURY TRIAL

1 Plaintiff BRANDON VELAZQUEZ (“Plaintiff”), on behalf of himself, all similarly situated
2 individuals, and on behalf of the general public, complains of Defendants (as defined below), and
3 each of them, as follows:

4
5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of Plaintiff
8 and each Class of individuals described in detail below against Defendant PRECISION ALMOND
9 HARVESTING LLC, a California limited liability company, and/or any subsidiaries or affiliated
10 companies (hereinafter collectively referred to as “Defendants”) within the State of California.

11 2. For at least four (4) years prior to the filing of this action and continuing to the present
12 (the “liability period”), Defendants have had a consistent policy of failing to pay all minimum and
13 overtime wages due; failing to provide legally compliant meal and rest periods, or compensation in
14 lieu thereof; failing to pay all expense reimbursement due; failing to issue accurately itemized wage
15 statements, and failing to timely pay all wages due upon separation of employment.

16 4. Plaintiff, on behalf of himself and members of each Class, brings this action pursuant
17 to Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 1194, 1194.2, and 2802 seeking compensation
18 for all unpaid wages, unpaid meal and rest period premium wages, unpaid expense reimbursement,
19 statutory penalties, liquidated damages, injunctive and other equitable relief, and reasonable
20 attorneys’ fees and costs.

21 5. Plaintiff, on behalf of himself and Class I Members, pursuant to Business &
22 Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all
23 benefits Defendants enjoyed from their failure to pay all wages due.

24 6. Plaintiff is in the process of complying with the Labor Code Private Attorneys General
25 Act of 2004 and will seek to amend this Complaint on or about March 16, 2022.

26 7. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395
27 because Defendants employed Plaintiff and members of each Class in Kern County, California.

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1 II.

2 **PARTIES**

3 **A. Plaintiff**

4 8. Plaintiff BRANDON VELAZQUEZ was employed by Defendants from July 2020 to
5 October 2020 and from July 2021 to August 2021 as a non-exempt employee and performed work
6 for Defendants in Kern County, California.

7 9. During his work with Defendants, Plaintiff was:

- 8 a. Willfully denied all wages due, including minimum and overtime wages;
9 b. Willfully denied all meal and rest periods or compensation in lieu thereof;
10 c. Willfully denied the payment of all expense reimbursement due;
11 d. Willfully denied accurately itemized wage statements; and
12 e. Denied the timely payment of all wages upon separation of his employment.

13 **B. Defendants**

14 10. Defendant PRECISION ALMOND HARVESTING LLC, is a California limited
15 liability company that employed Plaintiff and Class Members in Kern County, California.

16 11. The true names and capacities, whether individual, corporate, associate, or otherwise,
17 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
18 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
19 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
20 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
21 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
22 designated hereinafter as DOES when such identities become known.

23 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
24 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
25 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
26 attributable to the other Defendants.

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13. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

III.

CLASS ACTION ALLEGATIONS

14. Plaintiff brings this action on behalf of himself, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following classes composed of and defined as follows:

CLASS I

All persons employed as a non-exempt employee by Defendants in California at any time since the date four years preceding the filing of this Action.

CLASS II

All persons employed by Defendants in California at any time since the date one year preceding the filing of this Action.

15. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify this class description with greater specificity or further division into subclasses or limitation to particular issues.

16. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and each proposed Class is easily ascertainable.

A. Numerosity

17. The potential members of each Class as defined are so numerous that joinder of all class members is impracticable. While the precise number of members of each Class has not been ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants currently employ, and during the relevant time periods employed, over 50 persons in the State of California who fall within each Class definition.

1 18. Accounting for employee turnover during the relevant period necessarily increases this
2 number. Plaintiff alleges Defendants' employment records would provide information as to the
3 number and location of members of each Class. Joinder of members of each Class is not practicable.

4 **B. Commonality**

5 19. There are questions of law and fact common to each Class that predominate over any
6 questions affecting only individual class members. These common questions of law and fact include,
7 without limitation:

- 8 a. Whether Defendants failed to pay all minimum and overtime wages due to
9 Plaintiff and Class I Members, in violation of Labor Code §§ 510, 1194, and
10 1194.2;
- 11 b. Whether Defendants failed to properly provide rest periods, or compensation
12 in lieu thereof to Plaintiff and Class I Members, in violation of Labor Code §
13 226.7 and IWC Wage Order 4-2001;
- 14 c. Whether Defendants failed to properly provide meal periods, or compensation
15 in lieu thereof to Plaintiff and Class I Members, in violation of Labor Code §§
16 226.7, 510, 512, and 1194, and IWC Wage Order 4-2001;
- 17 d. Whether Defendants failed to reimburse Plaintiff and Class I Members for
18 necessary business expenses incurred in direct consequence of the discharge
19 of their duties, in violation of Labor Code § 2802;
- 20 e. Whether Defendants knowingly and intentionally failed to provide Plaintiff
21 and Class I and II Members with accurately itemized wage statements, in
22 accordance with Labor Code § 226(a), (e);
- 23 f. Whether Defendants failed to timely Plaintiff and pay members of Class I all
24 wages due and owing at the separation of their employment, in violation of
25 Labor Code §§ 201-203; and
- 26 g. Whether Plaintiff and members of Class I are entitled to equitable relief
27 pursuant to Business & Professions Code § 17200 *et seq.*

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C. Typicality

20. The claims of the named Plaintiff are typical of the claims of members of each Class. Plaintiff and members of each Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. Adequacy of Representation

21. Plaintiff will fairly and adequately represent and protect the interests of members of each Class. Counsel who represents Plaintiff are competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

22. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed members of each Class is not practicable, and questions of law and fact common to the proposed Classes predominate over any questions affecting only individual members of the proposed Classes. Each member of the proposed Classes has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

23. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

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1 IV.

2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS**

5 **FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES DUE**

6 **(LABOR CODE §§ 510, 1194, AND 1194.2)**

7 24. Plaintiff incorporates paragraphs 1 through 23 of this Complaint as though fully set
8 forth herein.

9 25. During the liability period, Defendants failed to pay Plaintiff and Class I Members all
10 minimum and overtime wages due, in violation of Labor Code §§ 510, 1194 and 1194.2. Plaintiff and
11 Class I Members worked off the clock: they were not paid for time spent attending orientation
12 training, during which they were under the control of Defendants and entitled to compensation.
13 Plaintiff and Class I Members would also be required to clock out from their shifts at 5:30 p.m. but
14 would routinely continue to work an additional 30 to 40 minutes without any compensation. These
15 instances violate Labor Code §§ 510, 1194, and 1194.2 by depriving all minimum and overtime wages
16 due.

17 26. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due,
18 Plaintiff and Class I Members have been deprived of wages in amounts to be determined at trial, and
19 are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, costs
20 pursuant to Labor Code § 1194, and liquidated damages pursuant to Labor Code § 1194.2.

21 Wherefore, Plaintiff and each Class he seeks to represent request relief as described below.

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23 \\\

24 \\\

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28 \\\

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE COMPLIANT REST PERIODS OR COMPENSATION IN LIEU

THEREOF

(LABOR CODE §§ 226.7 AND IWC WAGE ORDER 4-2001)

27. Plaintiff incorporates paragraphs 1 through 26 of this Complaint as though fully set forth herein.

28. Plaintiff and Class I Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and IWC Wage Order 4-2001.

29. Plaintiff and Class I Members were routinely not authorized and unable to take an off-duty, 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. When rest periods were provided (which happened rarely, if ever), they were often cut short. Plaintiff and Class I Members were also prohibited from leaving Defendants' premises while on their rest periods, thereby improperly subjecting them to Defendants' control during their rest periods. This violates Labor Code § 226.7 and IWC Wage Order 4-2001.

30. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiff seeks the payment of all rest period compensation which he and Class I Members are owed, according to proof.

Wherefore, Plaintiff and each Class he seeks to represent request relief as described below.

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1 VI.

2 THIRD CAUSE OF ACTION

3 PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS

4 FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

5 (LABOR CODE §§ 226.7, 512, AND 1194 AND IWC WAGE ORDER 4-2001)

6 31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully set
7 forth herein.

8 32. Plaintiff and Class I Members are entitled to one hour of pay for each day that
9 Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7
10 and 512 and IWC Wage Order 4-2001.

11 33. Plaintiff and Class I Members were routinely denied, and not authorized to take, an
12 uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, and
13 a second meal period when they worked shifts greater than ten hours, but were not paid premium
14 wages of one hour's pay for each missed meal period. When Plaintiff and Class I Members did
15 receive meal periods, they would typically be late (commencing after the fifth hour of work), short
16 (less than 30 minutes in duration), or employees were prohibited from leaving, and affirmatively
17 required to remain at Defendants' premises, thereby subjecting them to Defendants' control during
18 their meal periods and entitling them to premium meal period wages, which they were not paid. This
19 violates Labor Code §§ 226.7, 510, 512, and 1194 and IWC Wage Order 4-2001.

20 34. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001, Plaintiff
21 seeks the payment of all unpaid meal period compensation that Class I Members are owed for four
22 years preceding the filing of this Action, according to proof.

23 Wherefore, Plaintiff and each class he seeks to represent request relief as described below.

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VII.
FOURTH CAUSE OF ACTION
PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS
FAILURE TO REIMBURSE EXPENSES
(LABOR CODE § 2802)

35. Plaintiff incorporates paragraphs 1 through 34 of this Complaint as though fully set forth herein.

36. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse Plaintiff and Class I Members for all out-of-pocket expenses incurred by them in the performance of their job duties.

37. Plaintiff and Class I Members to were required to use their personal cellular phones as part of their work tasks for Defendants and purchase and provide their own gloves and safety glasses needed to carry out their work duties, but were not fully reimbursed by Defendants for these expenses.

38. As a proximate result of the aforementioned violations, Plaintiff and Class I Members have been damaged in an amount according to proof at the time of trial.

39. Pursuant to Labor Code § 2802, Plaintiff and Class I Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

Wherefore, Plaintiff and each Class he seeks to represent request relief as described below.

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VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND CLASSES I AND II AGAINST ALL DEFENDANTS

FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT

PROVISIONS

(LABOR CODE § 226(a))

40. Plaintiff incorporates paragraphs 1 through 39 of this Complaint as though fully set forth herein.

41. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have failed to comply with Labor Code § 226(a).

42. Defendants failed to issue Plaintiff and Class I and II Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class I Members were not paid all wages due, including minimum and overtime wages and all premium wages for missed and denied meal and rest periods, as stated above. As such, the wage statements provided by Defendants to Plaintiff and Class I Members failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9).

43. Furthermore, and independent of the above allegations, the wage statements issued to Plaintiff and Class II Members failed to set forth the inclusive dates of the period for which the employee is paid, in violation of Labor Code § 226(a)(6).

44. As a consequence of Defendants' willful conduct in failing to provide Class I and II Members with accurate itemized wage statements, Plaintiff and Class I and II Members have been injured because they have not been paid all wages due and were issued wage statements which do not reflect, and fail to state, all information required by Labor Code § 226(a). The missing information cannot be discerned at all from the face of the wage statements themselves. Plaintiff and Class I and II Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

Wherefore, Plaintiff and each Class he seeks to represent request relief as described below.

IX.

SIXTH CAUSE OF ACTION

PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203)

45. Plaintiff incorporates paragraphs 1 through 44 of this Complaint as though fully set forth herein.

46. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

47. Defendants paid Plaintiff and Class I Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class I Members were not paid all wages due and owing throughout the course of their employment, including all minimum and overtime wages due and premium wages for missed and denied meal and rest periods, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment.

48. Separately, when Plaintiff was terminated, he was not provided his final wages at the time of his termination. Instead, Defendants issued Plaintiff's final paycheck days later, in violation of Labor Code § 201. Plaintiff alleges that Defendants untimely compensates all of their former employees at the separation of their employment.

49. More than 30 days have passed since Plaintiff and Class I Members have left Defendants' employ.

50. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiff and Class I Members are entitled to up to 30 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of employment.

Wherefore, Plaintiff and each Class he seeks to represent request relief as described below.

X.

SEVENTH CAUSE OF ACTION

PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

51. Plaintiff incorporates paragraphs 1 through 50 of this Complaint as though fully set forth herein.

52. This is a Class Action for Unfair Business Practices. Plaintiff, on his own behalf and on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,

1 and members of each Class. Plaintiff seeks to enforce important rights affecting the public interest
2 within the meaning of Code of Civil Procedure § 1021.5.

3 53. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
4 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
5 appropriate equitable relief.

6 54. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
7 practices.

8 55. Wage and hour laws express fundamental public policies. Properly providing
9 employees with all wages and expense reimbursement due are a fundamental public policies of this
10 State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to
11 enforce vigorously minimum labor standards, to ensure that employees are not required or permitted
12 to work under substandard and unlawful conditions, and to protect law-abiding employers and its
13 employees from competitors who lower their costs by failing to comply with minimum labor
14 standards.

15 56. Defendants have violated statutes and public policies. Through the conduct alleged
16 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
17 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
18 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
19 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
20 guaranteed to all employees under law.

21 57. Defendants’ conduct, as alleged herein, constitutes unfair competition in violation of
22 §17200 *et seq.* of the Business & Professions Code.

23 58. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
24 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
25 17200 *et seq.* of the Business & Professions Code.

26 59. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
27 similarly situated have been damaged in a sum as may be proven.
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58. Unless restrained by this Court, Defendants will continue to engage in the unlawful conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited to, disgorgement of profits which may be necessary to restore Plaintiff and members of Class I to the money Defendants have unlawfully failed to pay.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code § 1194 in the amount of all unpaid wages due to Plaintiff and Class I Members;
2. For liquidated damages pursuant to Labor Code § 1194.2 in the amount of all unpaid minimum wages due to Plaintiff and Class I Members;
3. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class I Members, pursuant to Labor Code § 226.7 and 512;
4. For reimbursement of all expenses incurred by Plaintiff and Class I Members pursuant to Labor Code § 2802;
5. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class I and II Members;
6. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class I Members;
7. An award providing for payment of costs of suit pursuant to Labor Code § 226(h) and other applicable law;
8. An award of attorneys' fees pursuant to Labor Code § 226(h) and other applicable law;
9. An award of prejudgment and post-judgment interest; and
10. Such other and further relief as this Court may deem just and proper.

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1 Dated: January 14, 2022

Respectfully submitted,

2 GAINES & GAINES
3 A Professional Law Corporation

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5 By: Evan S. Gaines
6 DANIEL F. GAINES
7 EVAN S. GAINES
8 Attorney for Plaintiff

DEMAND FOR JURY TRIAL

9 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

10 Dated: January 14, 2022

Respectfully submitted,

11 GAINES & GAINES
12 A Professional Law Corporation

13 By: Alex P. Katofsky
14 DANIEL F. GAINES
15 EVAN S. GAINES
16 Attorney for Plaintiff
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN
BAKERSFIELD COURT
1215 TRUXTUN AVENUE
BAKERSFIELD CA 93301

FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN
JANUARY 18, 2022
By Vickie Fogerson DEPUTY

PLAINTIFF/PETITIONER:

**BRANDON VELAZQUEZ, ON BEHALF OF HIMSELF AND ON
BEHALF OF ALL SIMILARLY SITUATED INDIVIDUALS**

DEFENDANT/RESPONDENT:

**PRECISION ALMOND HARVESTING LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY**

**NOTICE OF ASSIGNMENT TO JUDGE FOR ALL PURPOSES AND
NOTICE OF ORDER TO SHOW CAUSE RE CRC RULE 3.110 AND
NOTICE OF CASE MANAGEMENT CONFERENCE**

CASE NUMBER:

BCV-22-100125

By order of the presiding judge, the above entitled case is assigned to the Honorable Thomas S. Clark for all purposes. It will be managed on the direct calendar program in Bakersfield Department 17 until its conclusion. Peremptory challenges, if any, must be made within the times set out in CCP §170.6. Please include the initials **TSC** after the case number on all future pleadings filed in this case.

Bakersfield Hearing Locations:

Departments 1 through 18 are located at 1415 Truxtun Avenue, Bakersfield, CA 93301

Divisions A through L are located at 1215 Truxtun Avenue, Bakersfield, CA 93301

TO PLAINTIFF AND PLAINTIFF'S COUNSEL:

You are ordered to appear on **May 03, 2022** in **Bakersfield Department 17** at **8:30 AM** to give any legal reason why sanctions shall not be imposed for failure to serve the complaint on all named defendants and file proof(s) of service with the court within sixty (60) days after the filing of the complaint pursuant to California Rules of Court, Rule 3.110. All appearances are mandatory, unless the court receives the required proof(s) of service five (5) court days prior to the hearing date, and then no appearance is necessary.

TO EACH PARTY AND THEIR RESPECTIVE ATTORNEY(S) OF RECORD:

This case is set for Case Management Conference, by the Honorable Thomas S. Clark on **July 18, 2022** at **8:15 AM** in **Bakersfield Department 17**. Case management statements are to be filed at least fifteen (15) days prior to the conference in accordance with California Rules of Court, Rules 3.720 – 3.730. All parties shall comply with California Rules of Court, Rules 3.720 – 3.730.

NOTICE TO PLAINTIFF'S COUNSEL

IMPORTANT: You are required to serve this Notice of Assignment and Notice of Order to Show Cause Date and Notice of Case Management Conference Date with the Summons, Complaint [Local Rule 3.7(a)], Alternative Dispute Resolution (ADR) Information Packet, and ADR Stipulation and Order Form (California Rules of Court, Rule 3.221).

NOTICE TO CROSS COMPLAINANT'S COUNSEL

IMPORTANT: If you are bringing a cross complaint against new parties, you are, likewise, required to serve this Notice of Assignment pursuant to California Rules of Court, Rule 3.110 and Notice of Order to Show Cause date and Notice of Case Management Conference date on the new cross defendants.

TAMARAH HARBER-PICKENS
CLERK OF THE SUPERIOR COURT

Date: January 18, 2022

Signed: 1/18/2022 4:06:13 PM

By:


Vickie Fogerson, Deputy Clerk

BRANDON VELAZQUEZ, ON BEHALF OF HIMSELF AND ON BEHALF OF ALL SIMILARLY SITUATED
INDIVIDUALS VS PRECISION ALMOND HARVESTING LLC

BCV-22-100125

The Clerk of the Superior Court's office has received a civil complaint from you for filing. Pursuant to the Trial Court Delay Reduction Act, your case has been assigned to the Honorable Thomas S. Clark as monitoring judge.

Judge Thomas S. Clark has instituted a direct calendaring system for all cases assigned to him/her as the monitoring judge.

All law and motion, case management and trial setting conferences, ex parte matters and trials will be scheduled before him/her in Bakersfield Department 17. This will involve all cases in which the clerk has assigned the initials TSC to the complaint at the time of filing. Counsel is expected to make the initials of the monitoring judge a part of the case number on all pleadings and papers.

Law & Motion and Ex-Parte hearing dates must be pre-cleared by contacting the Direct Calendaring Clerk at 661-868-7204. Tentative rulings can be located by visiting "<http://www.kern.courts.ca.gov/>", after 4:00 pm. Click on the Non-Criminal Case Information link to enter the case number. Please note, not all departments provide tentative rulings.

At the time of filing the complaint, plaintiff's counsel will be given a Notice of Case Management Conference which sets a conference approximately one hundred eighty (180) days after filing of the complaint. This notice must be served with the summons and complaint on all defendants. Defendants must serve the notice on all cross-defendants named. The notice must also be served on interveners and lien claimants.

Telephonic appearances for case management conferences and law and motion hearings are available through Court Call. The toll free telephone number for Court Call is (888) 88-COURT. Proper procedures must be complied with under California Rules of Court, Rule 3.670. Arrangements to make appearances through Court Call must be made at least five (5) court days prior to the hearing date.

Another judge will hear settlement conferences in cases assigned to Judge Thomas S. Clark. However, those cases that do not settle will be set for trial before him/her.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN
SPECIAL RULES RELATING TO CASE MANAGEMENT CONFERENCES**

At least fifteen (15) days prior to the case management conference, each party shall prepare, file and serve on each other party a case management conference statement providing the Court with the following information:

1. The “at-issue” status of the case including any new parties that may be contemplated;
2. A brief statement of the type of case and the general facts or contentions;
3. A description of the discovery done to date and that contemplated to be done;
4. Estimated time for trial and whether a jury is demanded;
5. Whether or not the case is entitled to priority in trial setting and if so, the legal authority thereof;
6. An evaluation of the case for alternative dispute resolution, including arbitration (judicial or binding), mediation or private judge handling;
7. If a person injury action, a description of the injuries sustained by each plaintiff and the elements of claimed damage;
8. A statement of any settlement negotiations undertaken thus far;
9. The name of the attorney primary responsible for the case on behalf of the party filing the statement.

More than one party may join in the filing of a single statement.

The case management conference shall be attended by the attorney primarily responsible for the case on behalf of each party or a member of his or her firm or counsel formally associated in the case. The attorney attending shall be thoroughly familiar with the case, and be able to engage in meaningful discussions with court and counsel, and to enter into agreements on behalf of his or her client on the following subjects:

1. The “at-issue” status of the case including the dismissal of the unnamed doe defendants or cross-defendants by agreement of all parties;
2. Discovery conducted and remaining to be done;
3. Amenability of the case to alternative dispute resolution including, but no limited to, arbitration (judicial or binding), mediation, and private judge handling.
4. Delineation of issues including stipulation of facts not in substantial controversy;
5. Settlement prospects;
6. Setting the matter for trial, pre-trial conferences, settlement conference or further case management conference;
7. Any other matters relevant to the processing of the case to a final resolution.

Any violation of these rules shall result in the imposition of substantial sanctions which may include monetary, issue, termination, or other appropriate sanctions.

CERTIFICATE OF POSTING

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, and not a party to the within action, that I served the **Notice of Assignment/Notice of Order to Show Cause Re CRC 3.110/Notice of Case Management Conference** attached hereto on all interested parties and any respective counsel of record in the within action by posting true copies thereof, to the Superior Court of California, County of Kern, Non-Criminal Case Information Portal (<https://odyprodportal.kern.courts.ca.gov/portalprod>).

Date of Posting: January 18, 2022

Place of Posting: Bakersfield, CA

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

TAMARAH HARBER-PICKENS
CLERK OF THE SUPERIOR COURT

Date: January 18, 2022

Signed: 1/18/2022 4:06:13 PM

By:


Vickie Fogerson, Deputy Clerk