

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
david@yeremianlaw.com
Alvin B. Lindsay (SBN 220236)
alvin@yeremianlaw.com
2540 Foothill Blvd., Suite 201
La Crescenta, CA 91214
Telephone: (818) 230-8380
Facsimile: (818) 230-0308

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Kern County Superior Court
By Vanesa Jackson, Deputy

Attorneys for Plaintiff Rene Garcia Cruz on
behalf of himself and all others similarly situated

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

RENE GARCIA CRUZ, an individual, on
behalf of himself and others similarly
situated,

Plaintiff,

vs.

ALLIED POTATO, INC., a California
Corporation; ARRIOLA FARM LABOR
INC., a California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: BCV-22-100238

CLASS ACTION

Assigned for All Purposes To:
Hon. Thomas S. Clark
Dept.: 17

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for all Hours Worked;
2. Failure to Pay Wages and Overtime under Labor Code § 510;
3. Meal Period Liability under Labor Code § 226.7;
4. Rest-Break Liability under Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Reimburse Necessary Business Expenses under Labor Code § 2802;
10. Violation of Business & Professions Code § 17200 *et seq.*; and
11. Penalties under PAGA, Labor Code § 2698

DEMAND FOR JURY TRIAL

Complaint Filed: January 27, 2022
Trial Date: None set.

1 Plaintiff RENE GARCIA CRUZ (hereinafter “Plaintiff”), on behalf of himself and all
2 other similarly situated non-exempt, hourly non-exempt employees employed by Defendants in
3 California as field and processing workers and in related positions (collectively, “Employees”;
4 individually, “Employee”) complains of Defendants, and each of them, as follows:

5 **INTRODUCTION**

6 1. Plaintiff bring this action on behalf of himself and all other similarly situated
7 current and former Employees within the State of California who, at any time from four (4) years
8 prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees,
9 including as agricultural employees and field workers and in similar and related positions in
10 California by Defendants ALLIED POTATO, INC., a California corporation; ARRIOLA FARM
11 LABOR INC., a California corporation; and DOES 1 through 50, inclusive (all defendants being
12 collectively referred to as “Defendants”). Plaintiff alleges that Defendants, and each of them,
13 violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare
14 Commission (“IWC”), and the California Business & Professions Code, and seeks redress for
15 these violations.

16 2. Plaintiff is a California resident and was employed by Defendants during the
17 relevant time period. Plaintiff and the other similarly situated Employees of Defendants worked on
18 assigned fields and based out of Defendants’ facilities and offices in California at Defendants’
19 behest without being paid all wages due and without being provided all their required meal periods
20 and rest breaks. Upon information and belief, Plaintiff was employed by Defendants and (1)
21 shared similar job duties and responsibilities; (2) was subjected to the same policies and practices;
22 and (3) endured similar violations at the hands of Defendants as the other Employee Class
23 members who served in similar and related filed worker positions. Defendants required Plaintiff
24 and the Employees in the Class to work off the clock and failed to record accurate time worked by
25 these Employees, failed to pay them at the appropriate rates for all hours worked and willfully
26 neglected to pay overtime, failed to pay all wages due and owing at termination or resignation, and
27 provided Plaintiff and the Class members with inaccurate wage statements that prevented them
28 from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the

1 Class with lawful meal and rest periods, as Employees were required to remain under Defendants’
2 control and were not provided with the opportunity to take full uninterrupted and duty-free rest
3 periods and meal breaks, as required by the Labor Code and the applicable paragraphs of the IWC
4 Wage Orders.

5 3. Plaintiff and the other similarly situated Employees of Defendants worked on
6 assigned fields and based out of Defendants’ facilities and offices in California at Defendants’
7 behest without being paid all wages due and without being provided all their required meal periods
8 and rest breaks. Upon information and belief, Plaintiff was employed by Defendants and (1)
9 shared similar job duties and responsibilities; (2) was subjected to the same policies and practices;
10 and (3) endured similar violations at the hands of Defendants as the other Employee Class
11 members who served in similar and related positions. Defendants required Plaintiff and the
12 Employees in the Class to work off the clock and failed to record accurate time worked by these
13 Employees, failed to pay them at the appropriate rates for all hours worked and willfully neglected
14 to pay overtime, failed to pay all wages due and owing at termination or resignation, and provided
15 Plaintiff and the Class members with inaccurate wage statements that prevented them from
16 learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Class
17 with lawful meal and rest periods, as Employees were required to remain under Defendants’
18 control and were not provided with the opportunity to take full uninterrupted and duty-free rest
19 periods and meal breaks, as required by the Labor Code and the applicable paragraphs of the IWC
20 Wage Orders.

21 4. Defendant ALLIED POTATO, INC. grows, harvests, packages, and ships potatoes
22 and other produce and operates and employs Class members to work in field locations and other
23 facilities in Kern County and throughout California and the northwestern states. Its web-site
24 explains that: “Allied Potato corporate office is located in Bakersfield, California with farming and
25 packing facilities supporting the overall full year potato supply for all other farming locations.” It
26 describes its type of business as “Ag Exporting and Marketing” and maintains principal executive
27 offices in Bakersfield, California and in Kern County. Plaintiff and the Class members were
28 employed by Defendant ALLIED POTATO, INC. either directly or through staffing agencies,

1 such as named Defendant ARRIOLA FARM LABOR INC., which upon information and belief
2 employs and placed and places certain Employees in the Class, such as Plaintiff, with Defendant
3 ALLIED POTATO, INC. at its California facilities and field locations.

4 5. Defendant ARRIOLA FARM LABOR INC. is a California corporation and
5 provides staffing services to employers throughout California and Kern County. Upon information
6 and belief, it also conducts business under the name Arriola Staffing Services. ARRIOLA FARM
7 LABOR INC. describes its type of business as “Farm Labor Contractor,” and maintains principal
8 executive offices in Fresno, California and in Fresno County. Defendant ARRIOLA FARM
9 LABOR was listed as the employer on the wage statements Defendants issued to Plaintiff during
10 the time he was employed by Defendants, and upon information and belief Plaintiff’s wage
11 statements were uniform in appearance and content to those of the other members of the Class.

12 6. Upon information and belief, Defendant ALLIED POTATO, INC. hires Employees
13 either directly or through staffing agencies such as ARRIOLA FAR LABOR INC. Upon
14 information and belief, ALLIED POTATO, INC. also maintains control over key aspects of the
15 employment of Plaintiff and the Class members, including controlling their scheduled hours and
16 working conditions, when they receive breaks, and their pay rates, and sets the policies and
17 practices which govern their employment. Although Plaintiff was paid by and received wage
18 statements from ARRIOLA FARM LABOR, it was an employer of Plaintiff with ALLIED
19 POTATO, INC., who jointly controlled the hours worked by Plaintiff and the Class members,
20 including by setting their wage rates and amount of wages paid, and their daily working conditions
21 and the policies and practices that governed their daily employment, just as ALLIED POTATO,
22 INC. did for any Class members it hired directly to work in its field locations and facilities and for
23 Class members hired through other staffing agencies.

24 7. Additionally, under California Labor Code § 2810.3, ALLIED POTATO, INC.
25 (“Allied”) shares with ARRIOLA FARM LABOR INC. (“Arriola”), and any other staffing agency
26 it uses, in civil legal responsibility for all workers supplied to Allied for their collective failure to
27 pay all earned wages. California Labor Code § 2810.3 requires that “A client employer shall share
28 with a labor contractor all civil legal responsibility and civil liability for all workers supplied by

1 that labor contractor for...the payment of wages.” A “labor contractor” (here, e.g., Arriola) is
2 defined as “an individual or entity that supplies, either with or without a contract, a client
3 employer with workers to perform labor within the client employer’s usual course of business.”
4 “Client employer” (here Allied) is defined as “a business entity, regardless of its form, that obtains
5 or is provided workers to perform labor within its usual course of business from a labor
6 contractor.” Upon information and belief, Defendant Allied is and has been a client employer
7 within the definition of Labor Code § 2810.3 and shares with Arriola, the labor contractors, all
8 civil legal responsibility and civil liability for failure to pay all wages earned by Plaintiff and the
9 Class Members.

10 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
11 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
12 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
13 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
14 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
15 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Kern County, as
16 Plaintiff was assigned to work in Kern County along with other Class members and Defendant
17 ALLIED POTATO, INC. is headquartered in Kern County.

18 9. The true names and capacities, whether individual, corporate, associate, or
19 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
20 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
21 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
22 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
23 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
24 this Complaint to reflect the true names and capacities of the Defendants designated herein as
25 Does 1 through 50 when their identities become known.

26 10. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
27 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
28 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of

1 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
2 all respects as the employers or joint employers of Employees. Defendants, and each of them,
3 exercised control over the wages, hours or working conditions of Employees, created and
4 implemented the policies and practices that governed the employment of Plaintiff and the Class
5 members and dictated their job duties and responsibilities, or otherwise suffered or permitted
6 Plaintiff and the other Employee Class members to work, or engaged, thereby creating a common
7 law employment relationship, with the Employee Class members. Therefore, Defendants, and each
8 of them, employed or jointly employed the Employee Class members.

9 **FACTUAL BACKGROUND**

10 11. The Employees who comprise the Class, including Plaintiff, are non-exempt
11 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare
12 Commission (“IWC”). During the period of four years prior to the filing of this action through its
13 resolution, Plaintiff and the Class members were either not paid by Defendants for all hours
14 worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also
15 contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing,
16 including by requiring off the clock work and through unlawful rounding and failing to pay
17 overtime and double time, failed to provide meal and rest breaks, and failed to furnish accurate
18 wage statements and timely pay all wages owed or reimburse necessary business expenses, all in
19 violation of various provisions of the California Labor Code and applicable paragraphs of the
20 IWC Wage Orders.

21 12. Plaintiff and the Class members were not paid all wages they were owed,
22 including for all work performed (resulting in “off the clock” work) and for all their overtime
23 hours worked. This has resulted in systematic and ongoing violations of the California Labor
24 Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ and have
25 employed other non-exempt, hourly field workers and employees in related positions in Kern
26 County and in California.

27 13. Plaintiff generally worked six day work weeks from Monday through Saturday
28 and would also work Sundays approximately once per month. His typical shifts lasted many

1 hours, generally over ten and even up to twelve or more hours. Schedules were not posted, and
2 Plaintiff would be contacted by his managers to find out when he was working his next shift. He
3 was scheduled to work at least ten hour days, and his managers would also text him when he was
4 working more than ten hours.

5 14. Upon information and belief, Defendants maintained no realistic systems or
6 methodologies for accurately recording the actual hours that Plaintiff and the Class members
7 worked. There were no time clocks or computers or scanners to record real time punch entries,
8 and Defendants also did not record timekeeping entries on handwritten or computerized log
9 sheets. There were no recorded start and finish times for work shifts based on any entries by
10 Plaintiff and the Class members, and Plaintiff did not input any shift start and end times for work
11 shifts, or any start and end times for meal periods, into any timekeeping systems. Instead,
12 Defendants' managers would just write down the hours Plaintiff was working, including any
13 scheduled overtime. In practice, Defendants failed to maintain any actual timekeeping records
14 reflecting the actual start and end time of work shifts and the start and end times for any meal
15 periods for the Class members, and simply presumed they were working and paid them in
16 accordance with scheduled rather than actual hours worked. Plaintiff and the Class were also
17 required to endure systematic off the clock work at Defendants' hands, including before and after
18 the scheduled times for work shifts and during any breaks. More specifically, Plaintiff was
19 expected to arrive at work 15 minutes at least before his scheduled shift start time so that he could
20 receive work day instructions and get prepared to perform his assigned job duties.

21 15. Plaintiff was required to report to work at 5:45am in the morning or before 6:00
22 p.m. in the evening to start work at his scheduled time, and it was well-known that workers were
23 required to arrive at work early to ensure they were present at their scheduled shift start time and
24 ready to being working. For example, when Plaintiff arrived after or at 6:00 a.m., then a manager
25 would yell at him and instruct him he could not be late and that he better make sure he arrives
26 before start time to be ready to work. Plaintiff was unaware of whether his actual hours worked
27 were being recorded and was not given the opportunity to input his punch times or to check those
28 recorded by Defendants' managers. There were many times when Plaintiff wrote down his actual

1 hours during a shift, and when he checked them against his check and wage statements, he felt
2 they were always short. When Plaintiff would tell his managers, he was given assurances the
3 money would be added in the next check, but it usually was not.

4 16. Upon arrival at Defendants' facilities, and generally before the scheduled start
5 time, Plaintiff would report to the shop for any instruction and then would prepare his vehicle and
6 equipment and would travel to his assigned field location as directed by Defendants' managers by
7 motorcycle or by driving his own vehicle. Plaintiff worked in his assigned field locations, and he
8 would receive visits from managers and ownership doing inspections. He would otherwise travel
9 from field to field completing his job duties until relieved of them by Defendants' managers and
10 supervisors. Plaintiff would receive a call telling him he could leave and he would, again without
11 recording any actual hours worked. This process thus resulted in frequent instances when Plaintiff
12 was required to work off the clock after his scheduled shift end time.

13 17. Upon his hiring and placement at Defendant Allied Potato's facilities, Plaintiff
14 was not provided any training on Defendants' policies and practices or any other job related
15 training, and was expected to instead take instruction from his managers and to learn on the job.
16 He would frequently receive work instructions from his supervisors who hired him to work for
17 Arriola and placed him at Defendant Allied's facilities and fields as his dedicated work
18 assignment. Plaintiff thus also took instructions from managers for Allied during the work day
19 and otherwise from managers for Arriola, who jointly employed him.

20 18. Plaintiff's job duties included watering his area and cleaning and spraying
21 chemicals onto carrots and potatoes to facilitate further machine processing in accordance with
22 Defendants' scheduling. He would also travel from and to and between three or four different
23 fields during his work shift at an assigned ranch. Plaintiff would use his car or an assigned
24 motorcycle to travel between fields and to carry the various chemicals and equipment he needed
25 to perform his job duties. Upon information and belief, Plaintiff and his co-workers were subject
26 to similar policies and practices and were employed by Defendants in similar and positions
27 related to spraying, washing and processing potatoes, carrots, and other produce, including
28 tractor and other machinery operation, pipe and other maintenance positions, and cleaning and

1 watering positions. In addition to these harvesting and processing related operations, Defendants
2 also operated packaging and shipping facilities subject to similar policies and practices.

3 19. Defendants' managers and supervisors also contacted Plaintiff on his personal
4 cellular phone on a daily basis to request information on the status of completion of his various
5 job duties and to address scheduling and the hours he worked, and such calls came when he was
6 both on and off duty. Upon information and belief, Defendants followed the same policies and
7 practices in connection with the other similarly situated Employees in the Class. This resulted in
8 further off the clock work where Plaintiff and the Class members were under Defendants' control
9 and performing work duties without compensation. This time was not compensated as hours
10 worked by Defendants, and Defendants failed to reimburse Plaintiff and the Class members for
11 the substantial use of their personal cellular phones and data plans for work-related purposes.

12 20. Defendants did not post work schedules for Plaintiff and the Class members, and
13 Defendants' uniformly applied policies and practices thus resulted in Plaintiff and the Class
14 members incurring some off the clock work before scheduled shift times, but also incurring
15 substantial unpaid hours, including overtime hours, worked off the clock after their scheduled
16 shift end times. Defendants therefore also maintained a uniformly applied policy of not paying
17 Plaintiff and the Class Members at overtime or double time rates for any of their hours worked.
18 Defendants did so without regard to the actual number of hours worked or the requirements of the
19 Labor Code and Assembly Bill No. 1066 ("AB 1066") and Wage Order No. 14-2001 (IWC No.
20 14-2001) ("Wage Order No. 14") regulating the wages, hours, and working conditions of
21 employees in agricultural occupations, effective January 1, 2019. Defendants would pay Plaintiff
22 for less hours than he worked, including overtime hours, due to the above described rounding and
23 other off the clock work, and when he worked twelve hours on a shift or otherwise as specified in
24 Wage Order No. 14, he never received double time payments. Upon information and belief,
25 Defendants' same unlawful policy of systematically failing to pay overtime and double times
26 hours worked applied to all Class members and resulted in an ongoing failure to pay all wages for
27 all hours worked and to pay them at the appropriate regular, overtime, and double time rates,
28 including as required under AB 1066 and Wage Order No. 14.

1 21. To whatever extent Defendants' managers were instructed to understand that
2 agricultural workers are not paid overtime under the same schedules as employees in other
3 occupations, Defendants nevertheless also failed to pay overtime wages to Plaintiff and the Class
4 members as required under Assembly Bill No. 1066 ("AB 1066") and Wage Order No. 14-2001
5 (IWC No. 14-2001) ("Wage Order No. 14") regulating the wages, hours, and working conditions
6 of employees in agricultural occupations, effective January 1, 2019. The applicable Wage Order
7 No. 14 provisions for agricultural occupations specify the following: (1) all employers shall not
8 work over ten hours in a workday or more than six days in a week unless paid at a rate of 1.5
9 times the regular rate for all hours over ten in a workday and for the first eight hours on the
10 seventh day of work; and (2) the same employees must be paid at double the employees' regular
11 rate of pay for all hours worked over eight on the seventh day of work in a workweek. (*See*, Wage
12 Order No. 14, paragraph 3(A)). Defendants regularly required Plaintiff and the Class members to
13 work shifts of over ten hours, and did so without paying overtime and double time as required
14 under Wage Order No. 14. As addressed in further detail below, Wage Order No. 14 and
15 paragraphs 3(A), 3(B), and 3(C) make it clear that Plaintiff and the Class members, including
16 those whose duties comprised watering and cleaning duties, worked shift and workweek
17 schedules which entitled them to overtime and double time payments which Defendants'
18 systematically failed to pay.

19 22. Upon information and belief, the other Class members also endured similar
20 systematic underpayment of regular, overtime, and double time wages given Defendants'
21 uniformly applied and unlawful policies and practices of requiring substantial off the clock work,
22 rounding timekeeping entries to Employees' detriment, automatically deducting for unprovided
23 or otherwise unlawful meal periods, systematically failing to pay overtime and double time for
24 hours worked in a shift, and failing to maintain accurate records of shift and meal start and end
25 times. Whether managers accurately recorded the reported times and actual hours worked in such
26 instances for Plaintiff and the Class members is unknown to them, as upon information and belief
27 Defendants also did not provide Plaintiff and the Class members with the opportunity to
28 meaningfully review their timekeeping entries for all shifts worked during a work week or a bi-

1 weekly or weekly pay period before submitting them to payroll for processing.

2 23. Defendants thus used their own failure to comply with their record keeping
3 requirements as alleged justification for not paying Employees for all hours worked. Plaintiff and
4 the Class members were only sporadically compensated in these later pay periods for work
5 performed in earlier ones, and on the occasions when they were, Defendants systematically
6 violated Labor Code §§ 204 and 226 by failing to timely and accurately report and pay for all
7 hours worked. Defendants' managers also would not record actual beginning and ending times
8 when meal periods were taken, if at all, by Plaintiff and the Class members, and would instead
9 automatically deduct time for complete meal periods from hours worked without regard to
10 whether a compliant meal period was actually provided. Defendants similarly denied Plaintiff and
11 the Class members the opportunity to review any alleged meal period start and completion times,
12 to the extent Defendants actually and accurately recorded any of these times.

13 24. Given the above described off the clock work and unlawful rounding and
14 deductions from hours worked perpetrated by Defendants' management, Plaintiff would often
15 notice on his wage statements that he was being paid for substantially fewer hours than he
16 actually worked, and that he was not paid at the correct overtime or double time rates for all hours
17 he worked. Upon information and belief, in doing so and in addition to all the wage violations
18 arising from failure to pay for all hours worked, Defendants also failed to pay overtime wages to
19 Plaintiff and the Class members as required under AB 1066 and Wage Order No. 14.

20 25. Plaintiff was therefore not paid for all his hours worked and was not provided the
21 opportunity to see that any changes that had been made to timekeeping records and payroll data
22 before pay checks were issued, despite being repeatedly underpaid for all his hours worked.
23 Defendants' conduct therefore also violates the requirement to timely pay all wages, including
24 under Labor Code § 204. Upon information and belief, the same occurred in connection with the
25 other Class members.

26 26. Plaintiff was therefore not paid for all his hours worked at the required minimum,
27 overtime and double time wage rates due to Defendants' policy of unlawful rounding and practice
28 of requiring him to work off the clock and without pay, and failed to pay at the required overtime

1 and double time rates for all hours over ten or twelve in a shift, or over the hours in a work week
2 set forth in Wage Order No. 14. With work shifts often being scheduled for or otherwise lasting
3 for ten to twelve hours or more, this unpaid off the clock work resulted in Plaintiff and the Class
4 members working past the point in time on a work shift when overtime would begin to accrue,
5 which required that they be paid at the correct overtime rate of 1.5 times their regular rate and
6 double time rate of twice the regular rate. Defendants' management would shave hours worked
7 off of Plaintiff's daily and weekly totals, or otherwise round them down or fail to record them. To
8 the extent Defendants paid Class members any shift differentials or bonuses or other forms of
9 remuneration, Defendants failed to include them in the regular rate used to calculate and pay
10 overtime and double time hours.

11 27. Defendants thus systematically underpaid Plaintiff and the Class members by
12 failing to pay them at the required overtime and double time rates for all hours worked as
13 required under the Labor Code, AB 1066, and Wage Order No. 14. Upon information and belief,
14 the Class members were bound by similar scheduling and work policies which Defendants
15 required them to follow, and endured similar violations for unpaid wages at Defendants' hands as
16 Plaintiff. Defendants have either failed to maintain timekeeping records for Plaintiff that would
17 permit Plaintiff to discover the nature and extent of the off the clock work Defendants' required
18 and the actual hours Plaintiff worked, or have otherwise declined to produce them to Plaintiff in
19 response to a timely and lawful request. By failing to pay for all hours worked, and by deducting
20 time for meal periods that were not lawfully provided, and by recording incorrect timekeeping
21 entries for meal period times and shift hours worked, Defendants have committed knowing and
22 intentional ongoing violations of the record keeping requirements under the Labor Code,
23 including section 1174.

24 28. The failure to pay for all hours worked and underpayment of wages to Plaintiff
25 and the Class members is and has been a direct consequence of Defendants' unlawful
26 compensation policies and practices, which applied uniformly to the Class members working
27 based out of Defendants' facilities in California. As a result of the above described unlawful
28 requirements to work off the clock, the failure to accurately record all hours worked and pay

1 wages at the correct rates, and the other wage violations they endured at Defendants' hands, and
2 Defendants' work scheduling and workweek policies, Plaintiff and the Class members were not
3 properly paid all wages earned and all wages owed to them by Defendants, including when
4 working qualifying overtime and double time hours in any given week. As a result of Defendants'
5 unlawful policies and practices, Plaintiff and Class members incurred overtime hours worked for
6 which they were not adequately and completely compensated, in addition to the hours they were
7 required to work off the clock at their regular rates.

8 29. Therefore, from at least four years prior to the filing of this lawsuit and continuing
9 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
10 hours worked, and failing to pay minimum wages for all time worked, as required by California
11 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
12 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
13 at premium overtime and double time rates for all qualifying hours in a workweek, in violation of
14 Labor Code § 510, AB 1066, and Wage Order No. 14. In the event Defendants required Plaintiff
15 and the Class members to work on seven consecutive workdays, Defendants also failed to provide
16 one day of rest out of seven consecutive work days, resulting in violations of Labor Code §§ 551
17 and 552 and entitling Plaintiff and the Class members to damages and civil penalties under Labor
18 Code § 558.

19 30. Defendants also failed to provide Plaintiff and the Class members with their
20 required first and second meal periods, and their first, second, and third required rest breaks. The
21 above described off the clock work contributed to Defendants' common policy of failing to
22 provide lawful meal periods to Plaintiff and the Class members, as required under the Labor Code
23 and Paragraph 11 of the IWC Wage Order(s), including Wage Order No. 14. Defendants similarly
24 systematically failed to authorize and permit Plaintiff and the Class members to take all required
25 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the Wage Order
26 No. 14.

1 31. Defendants failed to provide lawful meal periods to Plaintiff and the Class
2 members, and willfully failed to schedule them despite automatically deducting 30 minutes from
3 any hours worked for a work shift. In practice, Plaintiff and the Class members were unable to
4 take lawful meal periods given the production requirements and work demands Defendants'
5 managers and supervisors placed upon them. For example, as much of the watering and chemical
6 spraying Plaintiff was required to do was for a specific field and scheduled for a certain time, it
7 became increasingly difficult to ever take a full, thirty-minute, uninterrupted and timely meal
8 period during his work shifts, especially when Defendants did not build in any meal periods into
9 production scheduling. Similar issues arose with rest periods, and despite requiring Plaintiff and
10 the Class members to consistently work shifts of over ten hours, Defendants failed to provide
11 them with at least three timely and duty-free net ten minute rest periods per work shift.
12 Defendants generally made no efforts to schedule rest breaks, and Plaintiff and the class members
13 were consistently required to work through any rest breaks they attempted to take. As with the
14 above wage violations, Defendants should not be permitted to justify their failure to provide meal
15 periods by their own failure to keep accurate records of any meal periods provided.

16 32. Defendants also imposed strict production and task completion requirements on
17 Plaintiff and the Class members, who were expected to prioritize complying with these demands
18 by working through breaks or skipping them all together. When Plaintiff and the Class members
19 were actually permitted to take a meal period, it was generally well after five hours into their
20 shifts, or was interrupted by work demands or shortened. In fact, on many occasions, Plaintiff
21 could not stop to take a meal break and would have to combine a meal period with a brief rest
22 break. Plaintiff and the Class members were not permitted to leave their work sites for any meal
23 periods, and were therefore further subjected to Defendants' control during any break time they
24 did take. As the majority of Plaintiff's work shifts were over ten hours in duration, Defendants
25 also failed to provide Plaintiff and the Class members with a second duty-free meal period of at
26 least 30 minutes in duration.

1 33. Plaintiff and the Class members generally worked shifts that entitled them to
2 receive at least one meal period and two to three rest breaks. However, Defendants failed to
3 provide all required meal periods and rest breaks to Plaintiff and the Class members. Defendants
4 followed uniformly applied policies of not providing all required meal periods and rest breaks to
5 their Employees in accordance with the Labor Code and IWC Wage Orders. Meal periods were
6 often not provided during a work shift, as work and production demands and management
7 pressure required Employees to work through breaks, or to combine them with later taken rest
8 breaks. When Defendants did provide breaks, they were frequently provided well after five hours
9 into a work shift, and often for less than 30 minutes, and Plaintiff and the Class members were
10 required to remain under Defendants' control and respond to work demands during breaks.
11 Plaintiff was also required to endure shifts of ten hours or more without receiving a second meal
12 period or all three of his required rest breaks, as were the other Class members. Additionally, as
13 addressed above, Defendants followed a practice of requiring off the clock work, in a manner that
14 would impact when Employees were to receive meal periods and rest breaks, thus leading to
15 further violations.

16 34. As a result, Defendants' failure to provide Plaintiff and the Class members with all
17 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
18 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants have
19 either failed to maintain required records of when meal periods were actually provided or failed to
20 produce them in response to Plaintiff's timely and lawful requests, or else maintained inaccurate
21 and incomplete records. Defendants also failed to pay Employees "premium pay," i.e. one hour of
22 wages at each Employee's effective hourly rate of pay, for each meal period or rest break that
23 Defendants failed to provide or deficiently provided.

24 35. Therefore, for at least four years prior to the filing of this action and through to the
25 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not
26 provided with the opportunity to take required meal breaks due to Defendants' policies and
27 practices. On the occasions when Plaintiff and the Class members were provided with a meal
28 period, it was often provided after five hours into a work shift and was therefore untimely or was

1 interrupted, or was impermissibly shortened, and Employees were not provided with one hour's
2 wages in lieu thereof. To the extent Defendants assert they paid any meal period premiums, they
3 failed to do so for all violations or failed to pay them at the regular rate of compensation by failing
4 to include all forms of remuneration. Meal period violations thus occurred in one or more of the
5 following manners:

- 6 (a) Class members were not provided full thirty-minute duty free meal periods
7 for work days in excess of five hours and were not compensated one hour's
8 wages in lieu thereof, all in violation of, among others, Labor Code §§
9 226.7, 512, and the applicable Industrial Welfare Commission Wage
10 Order(s);
- 11 (b) Class members were not provided second full thirty-minute duty free meal
12 periods for work days in excess of ten hours;
- 13 (c) Class members were required to work through at least part of their daily
14 meal period(s);
- 15 (d) Meal periods were provided after five hours of continuous work during a
16 shift; and
- 17 (e) Class members were restricted in their ability to take a full thirty-minute
18 meal period or were otherwise required to remain under Defendants'
19 control during meal periods.

20 36. Defendants also failed to authorize and permit Plaintiff and the Class members to
21 take duty-free, net ten minute rest breaks for ever four hours of shift work, or major fraction
22 thereof. Defendants gave a similar cursory level of attention to ensuring Plaintiff and the Class
23 members were authorized and permitted to take their required ten minute rest breaks during
24 extended work shifts. Defendants' managers would impose work demands and expectations on
25 Plaintiff and the Class members that they must continue working or were required to prioritize
26 completing work tasks over taking breaks. As to any rest breaks that Plaintiff and the Class
27 members were able to attempt to take, they were often untimely or were interrupted or shortened
28 by work demands, or Plaintiff was compelled to attempt to combine his meal period with a rest

1 break. On shifts of over ten hours, Defendants also systematically failed to provide Plaintiff and
2 the Class members with a third rest break, as Defendants did not even contemplate providing
3 third rest breaks on such occasions.

4 37. Therefore, the job requirements and duties required of Plaintiff and the Class
5 members, and the demands from management and customers, manifested a failure to authorize
6 and permit Class members to take all their required rest breaks. Plaintiff and the other similarly
7 situated Class members were either not authorized permitted the opportunity to take a rest break,
8 or were required to remain under Defendants' control and respond to instructions from
9 management and job and customer demands. Defendants also failed to authorize and permit
10 employees to leave the premises during rest breaks, or else prevented them from doing so, thus
11 further evidencing Defendants' policy and practice of requiring Plaintiff and the Class members
12 to remain under their control during required off-duty rest breaks.

13 38. Defendants' policies and practices thus systematically deny and denied Plaintiff
14 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
15 periods. The California Supreme Court has instructed that the rest period requirement obligates
16 employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest
17 periods employers must relieve employees of all duties and relinquish control over how
18 employees spend their time. Plaintiff and the Class members were and are under Defendants'
19 control when they are working through rest breaks, and Defendants failed to schedule or account
20 for required first, second, and third rest breaks during the shifts Plaintiff and the Class members
21 generally worked.

22 39. Plaintiff and the Defendants' Employees in the Class were therefore not authorized
23 and permitted to take lawful rest periods, were systematically required by Defendants to work
24 through or during breaks, and were not provided with one hour's wages in lieu thereof. They
25 were required to remain on-duty during breaks or portions of their breaks, thus making them
26 either untimely or shortened and on-duty, and they were also prevented from leaving the premises
27 during rest breaks under Defendants' policies and practices. Rest period violations therefore arose
28 in one or more of the following manners:

- 1 (a) Class members were required to work without being provided a minimum
2 ten minute rest period for every four hours or major fraction thereof
3 worked and were not compensated one hour of pay at their regular rate of
4 compensation for each workday that a rest period was not provided;
- 5 (b) Class members were not authorized and permitted to take timely rest
6 periods for every four hours worked, or major fraction thereof; and
- 7 (c) Class members were required to remain on-duty and under Defendants'
8 control during rest periods or otherwise had their rest periods interrupted
9 by work demands.

10 40. From at least four years prior to the filing of this lawsuit and continuing to the
11 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
12 deducting the Employees' earned wages, including by the above described off the clock before
13 and after work shifts and automatically deducting 30 minutes of work for unpaid meal periods
14 Defendants failed to provide. Upon information and belief, Defendants took the same unlawful
15 deduction from the other Class members as were reflected on Plaintiff's wage statements. In such
16 instances, Plaintiff and the Class members had their wages unlawfully deducted when Defendants'
17 managers recorded fewer hours worked in the timekeeping records than were in fact worked. By
18 not compensating Employees for all hours worked and failure to pay for hours spent under
19 Defendants' control, and by taking specific unlawful and unauthorized deductions from wages
20 paid, Defendants unlawfully deducted wages earned by and owed to Plaintiff and the Class
21 members, in violation of Labor Code § 221.

22 41. As a result of the above described illegal policies and practices, Defendants
23 engaged in and enforced the following additional unlawful practices and policies against Plaintiff
24 and the Class members he seeks to represent:

- 25 (a) failing to pay all wages owed to Class members who either were
26 discharged, laid off, or resigned in accordance with the requirements of
27 Labor Code §§ 201, 202, 203;
- 28

- (b) failing to pay all wages owed to the Class members twice monthly in accordance with the requirements of Labor Code § 204;
- (c) failing to pay Class members all wages owed, including all meal and rest period premium wages;
- (d) failing to maintain accurate records of Class members' earned wages and meal periods in violation of Labor Code §§ 226 and 1174(d) and section 7 of the applicable IWC Wage Orders; and
- (e) failing to produce timekeeping records in response to Plaintiff's timely and lawful request to receive them under these authorities.

42. Defendants have also consistently failed to provide Employees with timely, accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws, including by the above-described requirement of off the clock work, failure to pay all overtime and double time, and failure to pay premium wages for unprovided or otherwise unlawful meal and rest breaks. Defendants have also made it difficult to account with precision for the unlawfully withheld wages and meal and rest period compensation owed to Plaintiff and the Class, during the liability period, because they did not implement and preserve a record-keeping method as required for non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon information and belief, time clock punches were not maintained or were not accurately maintained for work shifts and meal periods, which were automatically presumed by Defendants to have been lawfully provided when they were not. Defendants also failed to accurately record and pay for all regular and overtime and double time hours worked by Plaintiff and the Class members.

43. Defendants also provided Plaintiff and the Class members with wage statements that failed to accurately report all hours worked and applicable hourly rates for all hours worked. Plaintiff and the Employees in the Class were unable to discern from their wage statements alone the actual hours they worked in total during a pay period, or the correct rates they should have been paid at.

1 44. Defendants have thus also failed to comply with Labor Code § 226(a) by issuing
2 wage statements that inaccurately reported total hours worked and total wages earned by Plaintiff
3 and the Class members, along with the appropriate applicable rates, among others requirements.
4 Plaintiff and Class members are therefore entitled to penalties not to exceed \$4,000.00 for each
5 employee pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph
6 7 of the applicable California IWC Wage Orders by failing to maintain time records showing
7 when the employee begins and ends each work period, meal periods, wages earned pursuant to
8 Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions
9 from payment of wages and accurately reporting total hours worked by the Class members. .
10 Defendant Arriola Farm Labor issued wage statements that were in violation of Labor Code §
11 226(a), including by their failure to list applicable wage rates and the corresponding hours worked
12 at those rates, failure to list the actual employer, and failure to list the assigned location where
13 temporary staffing agency employees were employed for each temporary services assignment.
14 Upon information and belief, Defendant Arriola also failed to provide Employees such as Plaintiff
15 with written notice complying with all the requirements of Labor Code § 2810.5.

16 45. Defendants also required Plaintiff and the Class members to work hours off the
17 clock for which they were not compensated, including during interrupted or otherwise on-duty
18 meal and rest periods. Defendants also failed to pay all overtime and double time premium wages
19 owed for work conducted on a work shift and a workday, as addressed above. Therefore, when
20 they received wage statements and pay checks, they did not compensate all hours worked on a
21 timely basis, resulting in Defendants' systematic failure to pay all wages owed to Plaintiff and the
22 Class members twice monthly in accordance with the requirements of Labor Code § 204, and
23 when applicable to pay them weekly under Labor Code § 201.3. Additionally, upon information
24 and belief, Defendant Allied Potato, Inc. is and has been a client employer within the definition of
25 Labor Code § 2810.3. Therefore, Arriola Farm Labor, the labor contractors, must share all civil
26 legal responsibility and civil liability for the payment of all wages earned by Plaintiff and the
27 Class Members with Allied.

1 46. Also, from at least three years prior to filing this lawsuit and continuing to the
2 present, Defendants have also followed a uniform and consistent policy of failing to pay all wages
3 owed to Plaintiff and other similarly situated Employees at the time of their termination or within
4 seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.
5 Defendants' failure to pay wages for all hours worked and failure to pay premiums for overtime
6 and double time and unlawful meal and rest periods further evidenced their failure to pay all
7 wages owed to Plaintiff and the Class members at the time they were terminated or otherwise
8 separated from employment.

9 47. Defendants also violated California Labor Code § 246 by not providing all required
10 paid sick days to Plaintiff and the Employees in the Class. Labor Code § 246 provides that an
11 Employee who "works in California for the same employer for 30 or more days within a year from
12 the commencement of employment is entitled to paid sick days as specified in this section."
13 Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their
14 required and earned sick days, in violation of Labor Code § 246. Additionally and upon
15 information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to
16 the Class members during the relevant time period, including by failing to provide two work
17 weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and
18 248.2 and including damages and penalties as these sections are enforced through Labor Code §
19 248.5, which requires that: "If paid sick days were unlawfully withheld, the dollar amount of paid
20 sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250),
21 whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars
22 (\$4,000), shall be included in the administrative penalty." Plaintiff accordingly seeks this relief
23 available for Defendants' failure to provide Employees with all their required and earned sick days
24 and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2,
25 and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1,
26 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and
27 costs pursuant to Labor Code § 2699(g)(1).
28

48. Additionally, from at least four years prior to the filing of this lawsuit and continuing to the present, Defendants have regularly required Plaintiff and the Class members to incur necessary business expenses in the course of performing their required job duties without reimbursement. For example, Defendants' managers and supervisors contacted Plaintiff on his personal cellular phone on a daily basis to request information and to address scheduling and the hours he worked, and such calls came when he was both on and off duty. Plaintiff would often receive calls when off duty from Defendants' managers to ask him to report at an earlier or later time or to address other work related matters.

49. Plaintiff and upon information and belief other Class members were also required to drive their own vehicles during work shifts. Including on the occasions when they were asked to work in multiple fields, they were also required to then drive their personal vehicles to those further field locations. Defendants did not reimburse Plaintiff and the Class members for their mileage or other expenses incurred in transporting themselves to further field assignments during their shifts. Defendants failed to reimburse for any such work-related expenses Plaintiff and the Class members were required to incur, in violation of Labor Code § 2802.

50. In light of the foregoing, Plaintiff and the Employees in the Class bring this action pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, and 2698 *et seq.*, and Wage Order No. 14 and California Code of Regulations, Title 8, section 11000 *et seq.*

51. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff and the Class members seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or fraudulent practices alleged in this Complaint.

CLASS ALLEGATIONS

52. Plaintiff bring this class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as

determined by the Court (“the Class Period”), and who have been employed as non-exempt, hourly agricultural employees and in related positions within the State of California.” Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked at the correct overtime and double time rates.

c. Subclass 3. Meal Period Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee’s regular rate of pay in lieu thereof.

e. Subclass 5. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

f. Subclass 6 . Unauthorized Deductions from Wages Subclass. All Class members who were subject to Defendants’ policy and/or practice of deducting wages earned from their pay, including by requiring off the clock work.

g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class members who were subject to Defendants’ policy and practice of not timely paying all wages earned when they were due and payable at least twice monthly.

h. Subclass 8. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants’ policy and/or practice of failing to timely pay wages upon termination.

i. Subclass 9. Expense Reimbursement Subclass. All Class members who incurred necessary and reasonable expenses in connection with performing their job duties for Defendants and who were subject to a policy and/or practice under which such expenses were not reimbursed.

j. Subclass 10. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

53. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or to provide further division into subclasses or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class against Defendants, the Class Period should be adjusted accordingly.

54. Defendants, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby Defendants failed to correctly calculate and pay compensation for the time worked by Plaintiff and the other members of the Class, even though Defendants enjoyed the benefit of this work, required Employees to perform this work and permitted or suffered to permit this work. Defendants have uniformly denied these Class members wages to which these employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in order to unfairly cheat the competition and unlawfully profit.

55. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in this litigation and the proposed Class is easily ascertainable from the employment records for Plaintiff and the Class members that Defendants are required to maintain under California law.

A. Numerosity

56. The potential members of the Class as defined are so numerous that joinder of all the Class members is impracticable. While the precise number of Class member has not been determined at this time, Plaintiff are informed and believes that Defendants employ or, during the

1 time period relevant to this lawsuit employed, at least 100 Employees who satisfy the Class
2 definition within the State of California. Plaintiff alleges that Defendants' employment records
3 will provide information as to the number and location of all Class members.

4 **B. Commonality**

5 57. There are questions of law and fact common to the Class that predominate over any
6 questions affecting only individual Class members. The common questions are numerous and
7 substantial and flow from Defendants' uniform policies and/or practices of violating the California
8 Labor Code addressed above. As such, these common questions predominate over individual
9 questions concerning each individual Class Member's showing as to his or her eligibility for
10 recovery or as to the amount of damages. These common questions of law and fact include:

- 11 a. Whether Defendants failed to pay Employees minimum wages;
- 12 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 13 c. Whether Defendants failed to pay Employees overtime as required under Labor
14 Code § 510 and Wage Order No. 14;
- 15 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
16 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
17 premium pay in lieu thereof;
- 18 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
19 Orders, by failing to authorize and permit Employees to take requisite rest breaks
20 or provide premium pay in lieu thereof;
- 21 f. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not
22 providing employees with all required sick days and COVID-19 supplemental sick
23 leave;
- 24 g. Whether Defendants violated Labor Code § 226(a) by providing Employees with
25 inaccurate wage statements;
- 26 h. Whether Defendants violated Labor Code § 221;
- 27 i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
28 wages and compensation due and owing at the time of termination of employment;

- j. Whether Defendants' conduct was willful;
- k. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;
- l. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- n. Whether Defendants violated Labor Code §§ 551 and 552 by failing to provide one day of rest out of seven consecutive work days;
- o. Whether Defendants violated Labor Code § 2802 by failing reimburse necessary business expenses incurred by Employees;
- p. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- q. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

58. The claims of the named Plaintiff are typical of those of the other Employees. The Employee Class members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for the off the clock work and meal and rest violations he was required to endure are typical of those of the other Class members.

D. Adequacy of Representation

59. Plaintiff will fairly and adequately represent and protect the interest of the Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are experienced and competent in litigating employment class actions.

1 **E. Superiority of Class Action**

2 60. A class action is superior to other available means for the fair and efficient
3 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
4 questions of law and fact common to all Employees predominate over any questions affecting only
5 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery
6 by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

7 61. As to the issues raised in this case, a class action is superior to all other methods for
8 the fair and efficient adjudication of this controversy, as joinder of all Class members is
9 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
10 members. Further, as the economic or other loss suffered by vast numbers of Class members may
11 be relatively small, the expense and burden of individual actions makes it difficult for the Class
12 members to individually redress the wrongs they have suffered. Moreover, in the event
13 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
14 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
15 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
16 to vindicate their rights for violations they endured which they would otherwise be foreclosed
17 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

18 62. Class action treatment will allow those persons similarly situated to litigate their
19 claims in the manner that is most efficient and economical for the parties and the judicial system.
20 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
21 Plaintiff contemplate the eventual issuance of notice to the proposed Class members that would set
22 forth the subject and nature of the instant action. The Defendants' own business records can be
23 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
24 that any further notice is required, additional media and/or mailings can be used.

25 63. Defendants, as prospective and actual employers of the Employees in the Class,
26 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
27 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
28 Employees as well as the effect of any alleged arbitration agreements that may have been forced

1 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
2 and policies, most notably intentionally refusing to pay for all hours actually worked which should
3 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
4 agreements and policies and practices on the Employees and Class as a whole.

5 64. Plaintiff and the Employees in the Class did not discover the fact that they were
6 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
7 any discussion about Plaintiff' and the Class' wavier of their Constitutional rights of trial by jury,
8 to collectively organize and oppose unlawful pay practices under California law as well as obtain
9 injunctive relief preventing such practices from continuing. As a result, the applicable statutes of
10 limitation tolled until such time as Plaintiff and the Class members discovered their claims.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY MINIMUM WAGES**

13 **(Against All Defendants)**

14 65. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
15 full herein.

16 66. Defendants failed to pay Employees minimum wages they were owed, including
17 by their consistent policy of failing to pay Employees for all hours worked. Employees would
18 work hours and not receive wages, including as alleged above in connection with unlawful
19 rounding and off the clock work, including all the time required to remain on duty and under
20 Defendants' control and during breaks and due to the work demands placed upon them by
21 Defendants' management. Defendants also imposed difficult to attain job and shift scheduling
22 requirements on Plaintiff and the Class members, which resulted in off the clock work and
23 underpayment of all wages owed to Employees over a period of time, while benefiting
24 Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum
25 wages to Plaintiff and the Class members, including by requiring systematic off the clock work
26 and by unlawful rounding. Defendants' uniform pattern of unlawful wage and hour practices
27 manifested, without limitation, applicable to the Class as a whole, as a result of implementing a
28 uniform policy and practice that denied accurate compensation to Plaintiff and the other members

1 of the Class as to minimum wage pay.

2 67. In California, employees must be paid at least the then applicable state minimum
3 wage for all hours worked, including under Labor Code § 1197, and paragraphs 2(K), 2(S), and
4 4(A)-4(C) of the applicable IWC Wage Orders, including Wage Order No. 14. Paragraph 2(H) of
5 the applicable IWC Wage Orders defines “Hours Worked” as “the time during which an
6 employee is subject to the control of an employer, and includes all the time the employee is
7 suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to
8 California Labor Code § 204, other applicable laws and regulations, and public policy, an
9 employer must timely pay its employees for all hours worked. Defendants failed to do so. To the
10 extent Plaintiff and the Class members were employed by Defendants in their capacity as a
11 temporary services employer, Defendants failed to timely pay all wages owed and provide
12 accurate wage statements to Plaintiff and the Class members on a weekly basis, as required under
13 Labor Code § 201.3, and failed to pay them all wages owed at the end of their seasonal or
14 temporary employment, as required under Labor Code § 203.

15 68. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
16 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
17 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

18 69. The applicable minimum wage rate fixed by the commission for work during the
19 relevant period is found in the Wage Orders.

20 70. The minimum wage provisions of California Labor Code are enforceable by private
21 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
22 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
23 overtime compensation applicable to the employee is entitled to recover in a civil action the
24 unpaid balance of the full amount of this minimum wage or overtime compensation, including
25 interest thereon, reasonable attorney’s fees and costs of suit.”

26 71. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
27 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
28 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage

1 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
2 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
3 the absence of a contractually agreed upon one. The underpayment of wages to Plaintiff and the
4 Class members is and has been a direct consequence of Defendants' unlawful compensation
5 policies and practices, which applied uniformly to the Class members working for Defendants in
6 California.

7 72. In committing the above described violations of the California Labor Code,
8 Defendants inaccurately recorded, or required Plaintiff and the Class members to input or accept
9 times that did not reflect their actual hours worked, including by requiring off the clock work and
10 rounding, as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment
11 of all earned wages, and other benefits in violation of the California Labor Code, the Industrial
12 Welfare Commission requirements and other applicable laws and regulations. As a result of these
13 violations, Defendants also failed to timely pay all wages earned in accordance with California
14 Labor Code § 1194.

15 73. California Labor Code § 1194.2 also provides for the following remedies: "In any
16 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
17 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
18 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

19 74. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
20 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
21 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
22 pay each employee minimum wages.

23 75. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
24 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
25 interest thereon.

26 76. Defendants have the ability to pay minimum wages for all time worked and have
27 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
28 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

1 77. Additionally, under California Labor Code § 2810.3, Allied shares with Arriola,
2 and any other staffing agency it uses, in civil legal responsibility for all workers supplied to Allied
3 for their collective failure to pay all earned wages. California Labor Code § 2810.3 requires that
4 “A client employer shall share with a labor contractor all civil legal responsibility and civil
5 liability for all workers supplied by that labor contractor for...the payment of wages.” A “labor
6 contractor” (here, e.g., Arriola) is defined as “an individual or entity that supplies, either with or
7 without a contract, a client employer with workers to perform labor within the client employer's
8 usual course of business.” “Client employer” (here Allied) is defined as “a business entity,
9 regardless of its form, that obtains or is provided workers to perform labor within its usual course
10 of business from a labor contractor.” Upon information and belief, Defendant Allied is and has
11 been a client employer within the definition of Labor Code § 2810.3 and shares with Arriola, the
12 labor contractors, all civil legal responsibility and civil liability for the payment of all wages
13 earned by Plaintiffs and the Class Members. Allied is a joint employer of Plaintiff and some of the
14 Class Members with Arriola, including for the reasons set forth above. To the extent Allied also
15 directly hires some Class members, they are subject to similar policies and practices as those
16 Employees placed with Allied by Arriola.

17 78. Wherefore, Plaintiff and the Employee Class members are entitled to recover the
18 unpaid minimum wages (including double minimum wages), liquidated damages in an amount
19 equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees
20 and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of
21 the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,
22 as well as the assessment of any statutory and/or civil penalties against Defendants, in a sum as
23 provided by the California Labor Code, including § 558, and/or other applicable statutes. To the
24 extent minimum wage compensation is determined to be owed to the Class members who have
25 terminated their employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202,
26 and therefore these individuals are also be entitled to waiting time penalties under California
27 Labor Code § 203, which penalties are sought herein on behalf of these Class members.
28 Defendants’ failure to timely pay all wages owed also violated Labor Code § 204 for failure to pay

1 all wages owed twice monthly, and resulted in violations of Labor Code § 226 because they
2 resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was
3 willful, intentional, and not in good faith. Further, Plaintiff and other Class members are entitled to
4 seek and recover statutory costs.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510, WAGE**

7 **ORDER NO. 14**

8 **(Against All Defendants)**

9 79. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
10 full herein.

11 80. California Labor Code § 1194 provides that "any employee receiving less than the
12 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
13 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
14 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
15 may be maintained directly against the employer in an employee's name without first filing a
16 claim with the Division of Labor Standards and Enforcement.

17 81. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
18 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A)-(C) and 4(A)-4(B) of the relevant orders of
19 the Industrial Welfare Commission, including Wage Order No. 14) by failing to pay Employees
20 for all hours worked, including: (a) time and one-half their regular hourly rates for hours worked
21 in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first
22 eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular
23 rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in
24 excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent
25 policy of not paying Employees wages for all hours worked, including by requiring off the clock
26 work as addressed above and by under-reporting actual hours worked, often with the specific
27 intention of avoiding having to pay overtime or double time. With work shifts generally being
28 scheduled for twelve hours or more, this unpaid off the clock work resulted in Plaintiff and the

1 Class members working past eight and often over twelve hours on a shift, which required that they
2 be paid at the correct overtime rate of 1.5 times their regular rate and the correct double time rate
3 of twice the regular rate. This construct applies to Plaintiff and any Class member to the extent
4 they were not serving in an occupation covered under Wage Order No. 14.

5 82. To whatever extent Defendants' managers were correct that agricultural workers
6 are not paid overtime under the same schedules as employees in other occupations, Defendants
7 still failed to pay overtime wages to Plaintiff and the Class members as required under Assembly
8 Bill No. 1066 ("AB 1066") and Wage Order No. 14-2001 (IWC No. 14-2001) ("Wage Order No.
9 14") regulating the wages, hours, and working conditions of employees in agricultural
10 occupations, effective January 1, 2019. The applicable Wage Order No. 14 provisions specify the
11 following: (1) all employers shall not work over ten hours in a workday or more than six days in a
12 week unless paid at a rate of 1.5 times the regular rate for all hours over ten in a workday and for
13 the first eight hours on the seventh day of work; and (2) the same employees must be paid at
14 double the employees' regular rate of pay for all hours worked over eight on the seventh day of
15 work in a workweek. (*See*, Wage Order No. 14, paragraph 3(A)).

16 83. Additionally, upon information and belief, Defendants have employed more than
17 25 Class members during the relevant time period, and are therefore subject to the following
18 overtime requirements under AB 1066 and Wage Order No. 14: (1) Starting January 1, 2019, an
19 employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-
20 five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such
21 employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one
22 workday or more than fifty-five (55) hours in any one workweek; (2) Starting January 1, 2020, an
23 employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per
24 workweek unless the employee receives one and one-half (1 1/2) times such employee's regular
25 rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50)
26 hours in any one workweek; and (3) Starting January 1, 2021, an employee shall not be employed
27 more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek
28 unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay

1 for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-
2 five (45) hours in any one workweek. (Wage Order No. 14, paragraphs 3(A)(2)(a)-(c)). Under the
3 above requirements, Defendants failed to pay all overtime wages owed to Class members when
4 they worked over 9.5 hours on a work shift and over 55 hours in a work week after January 1,
5 2019 and also when they worked over nine hours in a shift and over 50 in a workweek after
6 January 1, 2020, and Defendants' unlawful policies will result in further violations for all Class
7 members who work more than 8.5 hours on a work shift and more than 45 hours during a work
8 week starting in January of 2021 if Defendants fail to take subsequent remedial measures to rectify
9 their unlawful policies.

10 84. Additionally, the Wage Order applicable to the agricultural occupations further
11 specifies that: "An employee may be employed on seven (7) workdays in one workweek with no
12 overtime pay required when the total hours of employment during such workweek do not exceed
13 30 and the total hours of employment in any one workday thereof do not exceed six (6), subject to
14 Labor Code Sections 510 and 550-556." (Wage Order No. 14, paragraph 3(B)). Upon information
15 and belief, Plaintiff and the Class members worked more than 30 hours during their workweeks,
16 and this provision is inapplicable.

17 85. Finally, Wage Order No. 14 further specifies that the requirements of paragraph
18 3(A) do not apply to irrigators, but paragraph 3(A)(2) (addressed above) shall apply to such an
19 employee employed by a large employer (more than 25 employees) beginning January 1, 2019.
20 (Wage Order No. 14, paragraph 3(C)). Therefore, to the extent the Class members comprise
21 Employees employed as irrigators, the above detailed requirements are applicable to them. In
22 summary, Defendants systematically failed to pay Plaintiff and the Class Members for all hours
23 worked at the applicable regular, overtime, and double time rates as required under the Labor
24 Code and AB 1066 and Wage Order No. 14.

25 86. Defendants thus had a consistent policy of not paying Employees wages for all
26 hours worked, including hours at their required regular, overtime, and double-time rates, and as
27 required under applicable living wage ordinances. Defendants required Plaintiff and the Class
28 members to work off the clock to avoid paying all their earned and owed straight time and

1 overtime wages and other benefits, in violation of the California Labor Code, the California Code
2 of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
3 Standards and Enforcement. Defendants have also violated these provisions by requiring Plaintiff
4 and other similarly situated non-exempt employees to work through meal periods when they were
5 required to be clocked out or to otherwise work off the clock to complete their daily job duties or
6 and participate in company required activities or complete work tasks and remain under
7 Defendants' control. Therefore, Employees were not properly compensated, nor were they paid
8 overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours in a
9 given week, or at double time rate for hours over twelve in a shift, or as otherwise required and
10 addressed above under Wage Order No. 14. Based on information and belief, Defendants did not
11 make available to Employees a reasonable protocol for correcting time records when Employees
12 worked overtime or double time hours or to fix incorrect time entries or those that Defendants
13 unlawfully under-recorded to the Employee's detriment. Defendants also under-paid Plaintiff and
14 the putative Class members all wages by systematically miscalculating and underpaying overtime
15 wages they earned.

16 87. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
17 regular wages owed and overtime compensation for all hours worked, as required by California
18 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
19 IWC Wage Order, including Wage Order No. 14, and is therefore unlawful.

20 88. Additionally, Labor Code § 558(a) provides "any employer or other person acting
21 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
22 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
23 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
24 pay period for which the employee was underpaid in addition to an amount sufficient to recover
25 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
26 underpaid employee for each pay period for which the employee was underpaid in addition to an
27 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
28 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in

1 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
2 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
3 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
4 Code § 558.

5 89. Defendants’ failure to pay compensation in a timely fashion also constituted a
6 violation of California Labor Code § 204, which requires that all wages shall be paid
7 semimonthly. From four years prior to the filing of this lawsuit to the present, in direct violation
8 of that provision of the California Labor Code, Defendants have failed to pay all wages and
9 overtime compensation earned by Employees. Each such failure to make a timely payment of
10 compensation to Employees constitutes a separate violation of California Labor Code § 204. To
11 the extent Plaintiff and the Class members were employed by Defendants in their capacity as a
12 temporary services employer, Defendants failed to timely pay all wages owed and provide
13 accurate wage statements to Plaintiff and the Class members on a weekly basis, as required under
14 Labor Code § 201.3, and failed to pay them all wages owed at the end of their seasonal or
15 temporary employment, as required under Labor Code § 203.

16 90. Employees have been damaged by these violations of California Labor Code §§
17 204 and 510 (and the relevant orders of the Industrial Welfare Commission, including Wage
18 Order No. 14). Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and
19 Defendants are subject to a fine of not less than \$100 for causing Employees “to work for longer
20 hours than those fixed, or under conditions of labor prohibited by an order of the commission” or
21 if the employer pays “a wage less than the minimum fixed by an order of the commission” or
22 “violates...any provision of this chapter or any order or ruling of the commission.”

23 91. Additionally, under California Labor Code § 2810.3, Allied shares with Arriola,
24 and any other staffing agency it uses, in civil legal responsibility for all workers supplied to
25 Allied for their collective failure to pay all earned wages. California Labor Code § 2810.3
26 requires that “A client employer shall share with a labor contractor all civil legal responsibility
27 and civil liability for all workers supplied by that labor contractor for...the payment of wages.” A
28 “labor contractor” (here, e.g., Arriola) is defined as “an individual or entity that supplies, either

1 with or without a contract, a client employer with workers to perform labor within the client
2 employer's usual course of business.” “Client employer” (here Allied) is defined as “a business
3 entity, regardless of its form, that obtains or is provided workers to perform labor within its usual
4 course of business from a labor contractor.” Upon information and belief, Defendant Allied is
5 and has been a client employer within the definition of Labor Code § 2810.3 and shares with
6 Arriola, the labor contractors, all civil legal responsibility and civil liability for the payment of all
7 wages earned by Plaintiffs and the Class Members. Allied is a joint employer of Plaintiff and
8 some of the Class Members with Arriola, including for the reasons set forth above. To the extent
9 Allied also directly hires some Class members, they are subject to similar policies and practices
10 as those Employees placed with Allied by Arriola.

11 92. Consequently, pursuant to the California Labor Code, including Labor Code §§
12 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the Wage Orders,
13 including Wage Order No. 14, and including paragraphs 2(K), 2(S), 3(A), 3(B), 3(C), 4, and 18
14 or 20, Defendants are liable to Employees for the full amount of all their unpaid wages and
15 overtime compensation for all their hours worked, with interest, plus their reasonable attorneys’
16 fees and costs, as well as the assessment of any statutory penalties against Defendants, and each
17 of them, and any additional sums as provided by the Labor Code and/or other statutes.

18 **THIRD CAUSE OF ACTION**

19 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

20 **(Against All Defendants)**

21 93. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 94. Employees regularly worked shifts greater than five hours and in most instances,
24 greater than ten hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC
25 Wage Order, an employer may not employ someone for a shift of more than five hours without
26 providing him or her with a meal period of not less than thirty minutes or for a shift of more than
27 ten hours without providing him or her with a second meal period of not less than thirty (30)
28 minutes.

1 95. Defendants failed to provide Employees with meal periods as required under the
2 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
3 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
4 provided them after Employees worked beyond the fifth hour of their shifts or Employees
5 otherwise had them shortened and interrupted by work demands and requirements to remain under
6 Defendants' control during off the clock time. Furthermore, upon information and belief, on the
7 occasions when Employees worked more than ten hours in a given shift, they often did so without
8 receiving a second uninterrupted thirty minute meal period as required by law.

9 96. Defendants thus failed to provide Plaintiff and the Class members with meal
10 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
11 including by not providing them with the opportunity to take meal breaks, by providing them late
12 or for less than thirty minutes, or by requiring them to perform work during breaks or otherwise
13 remain under Defendants' control during them, including through radio communications and
14 refusing to permit them to leave Defendants' premises during breaks.

15 97. Moreover, Defendants failed to compensate Employees for each meal period not
16 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
17 20 or 18 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide
18 an employee a meal period in accordance with this section, the employer shall pay the employee
19 one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
20 period is not provided. Defendants failed to compensate the Employees in the Class for each meal
21 period not provided or inadequately provided, as required under Labor Code § 226.7 and
22 paragraphs 11 and 20 or 18 of the applicable IWC Wage Order.

23 98. Upon information and belief, Defendant Allied is and has been a client employer
24 within the definition of Labor Code § 2810.3. Therefore, Arriola, the labor contractors, must share
25 all civil legal responsibility and civil liability for the payment of all wages earned by Plaintiff and
26 the Class Members, with Arriola, including the premium penalty wages owed for Defendants'
27 failure to provide meal periods.

28 99. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 or 18 of the

1 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
2 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
3 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
4 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and
5 other statutes and applicable IWC Wage Order paragraphs.

6 **FOURTH CAUSE OF ACTION**

7 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

8 **(Against All Defendants)**

9 100. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
10 full herein.

11 101. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
12 provide that employers must authorize and permit all employees to take rest periods at the rate of
13 ten (10) minutes net rest time per four (4) work hours.

14 102. Employees consistently worked consecutive four (4) hour shifts and were generally
15 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
16 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
17 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
18 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
19 breaks of not less than ten minutes for each consecutive four hour shift. Employees were often
20 required to work or to otherwise remain under Defendants' control during rest periods, and had
21 breaks provided untimely as a result of the above described off the clock work. Plaintiff and the
22 Class members were also not permitted to leave their work premises during rest breaks.

23 103. Labor Code §§ 226.7 and paragraphs 12 and 20 or 18 of the applicable IWC Wage
24 Orders provide that if an employer fails to provide an employee rest period in accordance with this
25 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
26 compensation for each workday that the rest period is not provided.

27 104. Defendants, and each of them, have therefore intentionally and improperly denied
28 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and

1 paragraph 12 of the applicable IWC Wage Orders.

2 105. Defendants failed to authorize and permit Plaintiff and the Class members to take
3 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
4 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
5 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
6 12 and 20 or 18 of the applicable IWC Wage Orders.

7 106. Upon information and belief, Defendant Allied is and has been a client employer
8 within the definition of Labor Code § 2810.3. Therefore, Arriola, the labor contractors, must share
9 all civil legal responsibility and civil liability for the payment of all wages earned by Plaintiff and
10 the Class Members, with Arriola, including the premium penalty wages owed for Defendants'
11 failure to provide rest breaks.

12 107. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 or 18 of the
13 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one (1)
14 hour of wages at their effective hourly rates of pay for each day worked without the required rest
15 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
16 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

17 **FIFTH CAUSE OF ACTION**

18 **VIOLATION OF LABOR CODE § 226(a)**

19 **(Against All Defendants)**

20 108. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
21 full herein.

22 109. California Labor Code § 226(a) requires an employer to furnish each of his or her
23 employees with an accurate, itemized statement in writing showing the gross and net earnings,
24 total hours worked, and the corresponding number of hours worked at each hourly rate; these
25 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
26 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
27 statements may be given to the employee separately from the payment of wages; in either case the
28 employer must give the employee these statements twice a month or each time wages are paid.

1 110. Defendants failed to provide Plaintiff and the similarly situated Employee Class
2 members with accurate itemized wage statements in writing, as required by the Labor Code and
3 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to
4 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
5 including by failing to pay for all hours worked, failure to pay for all overtime hours and double
6 time hours worked and for providing deficient meal periods and rest breaks, all of which
7 Defendants knew or reasonably should have known were owed to the Employees, as alleged
8 above.

9 111. Defendants also provided Plaintiff and the Class members with wage statements
10 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
11 Due to Defendants' failure to record and compensate for all hours worked or failure to do so
12 accurately, Plaintiff and the Employees in the Class were unable to discern from their wage
13 statements along the actual hours they worked in total during a pay period.

14 112. Throughout the liability period, Defendants intentionally failed to furnish to
15 Plaintiff and the Class members, upon each payment of wages, itemized statements accurately
16 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
17 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
18 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
19 the employee and only the last four digits of his or her social security number or an employee
20 identification number other than a social security number, (8) the name and address of the legal
21 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
22 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
23 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
24 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
25 members with such timely and accurate wage and hour statements.

26 113. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
27 and intentional failure to provide them with the wage and hour statements as required by law and
28 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the

1 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
2 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
3 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
4 wage statement alone one or more of the following: (i) The amount of the gross wages or net
5 wages paid to the employee during the pay period or any of the other information required to be
6 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
7 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
8 wages paid to the employee during the pay period, (iii) The name and address of the employer
9 and, (iv) The name of the employee and only the last four digits of his or her social security
10 number or an employee identification number other than a social security number. For purposes
11 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an
12 objective standard] would be able to readily ascertain the information without reference to other
13 documents or information.

14 114. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
15 are required “to pay each employee, on the established payday for the period involved, not less
16 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
17 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
18 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members
19 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
20 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 or 18 of the
21 applicable IWC Wage Orders. To the extent Plaintiff and the Class members were employed by
22 Defendants in their capacity as a temporary services employer, Defendants failed to timely pay all
23 wages owed and provide accurate wage statements to Plaintiff and the Class members on a weekly
24 basis, as required under Labor Code § 201.3, and failed to pay them all wages owed at the end of
25 their seasonal or temporary employment, as required under Labor Code § 203.

26 115. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
27 § 226(a) and paragraphs 4(b), 7, and 20 or 18 of the applicable IWC Wage Orders, the Employees
28 in the Class suffered injuries, including among other things confusion over whether they received

1 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
2 forcing them to make mathematical computations to analyze whether the wages paid in fact
3 compensated them correctly for all hours worked.

4
5 116. Pursuant to Labor Code §§ 226(a) and 226(e), and the applicable IWC Wage
6 Orders, including paragraph , Plaintiff and the Employee Class members are entitled to recover the
7 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
8 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
9 exceeding an aggregate penalty of four thousand dollars (\$4,000) under Section 226(e), and are
10 entitled to recover further penalties pursuant to paragraphs 4(B) and 20 of the applicable IWC
11 Wage Orders. They are also entitled to an award of costs and reasonable attorneys' fees.

12 **SIXTH CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE § 221**

14 **(Against All Defendants)**

15 117. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
16 full herein.

17 118. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
18 receive from an employee any part of wages theretofore paid by said employer to said employee."
19 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
20 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
21 to do so.

22 119. Defendants unlawfully received and/or collected wages from the Employees in the
23 Class by implementing a policy understating the hours worked by Employees by requiring off the
24 clock work, as alleged above. In such instances, Plaintiff and the Class members had their wages
25 unlawfully deducted when Defendants' managers recorded fewer hours worked in the timekeeping
26 records than were in fact worked, including by rounding down to the detriment of Employees.
27 Upon information and belief, Defendants took the same unlawful deduction from the other Class
28 members as were reflected on Plaintiff's wage statements. Defendants unlawfully deducted, and

1 upon information and belief continue to deduct, wages earned by and owed to Plaintiff and the
2 Class members, in violation of Labor Code § 221.

3 120. As a direct and proximate cause of the unauthorized deductions, Employees have
4 been damaged, in an amount to be determined at trial, including an amount equal to restitution of
5 the unlawfully deducted wages plus interest.

6 **SEVENTH CAUSE OF ACTION**
7 **VIOLATION OF LABOR CODE § 204**
8 **(Against All Defendants)**

9 121. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
10 full herein.

11 122. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
12 employment are due and payable twice during each calendar month, on days designated in
13 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
14 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
15 during which the labor was performed, and labor performed between the 16th and the last day,
16 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
17 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of
18 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
19 calendar days following the close of the payroll period.” As detailed above, Defendants
20 maintained a consistently applied policy and practice of not paying all wages earned between the
21 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
22 between the 16th and the last day of the month between the 1st and 10th day of the following month.
23 This included failing to pay all wages due and owing to Plaintiff and the Class members for all
24 hours they worked and failing to pay all wages earned by not more than seven calendar days
25 following the close of the payroll period.

26 123. Defendants also required Plaintiff and the Class members to work hours off the
27 clock for which they were not compensated, including during interrupted or otherwise on-duty
28 meal and rest periods. Defendants also took unlawful deductions and failed to pay all overtime and

1 double time premium wages owed for work performed during a work shift and a workday, as
2 addressed above. Therefore, when Class members received wage statements and pay checks which
3 did not include payments at the correct rates for all hours worked during that pay period, or
4 included unlawful deductions, Defendants failed to compensate Plaintiff and the Class members
5 for all their hours worked on a timely basis, resulting in Defendants' systematic failure to pay all
6 wages owed to Plaintiff and the Class members twice monthly in accordance with the
7 requirements of Labor Code § 204. Additionally, to the extent Plaintiff and the Class members
8 were employed by Defendants in their capacity as a temporary services employer, Defendants
9 failed to timely pay all wages owed and provide accurate wage statements to Plaintiff and the
10 Class members on a weekly basis, as required under Labor Code § 201.3, and failed to pay them
11 all wages owed at the end of their seasonal or temporary employment, as required under Labor
12 Code § 203.

13 124. Given the above described off the clock work and unlawful rounding and
14 deductions from hours worked perpetrated by Defendants' management, Plaintiff would often
15 notice on his wage statements that he was being paid for substantially fewer hours than he actually
16 worked, and that he was not paid at the correct overtime or double time rates for all hours worked.
17 Defendants' uniformly applied payroll policies and practices thus resulted in further systematic
18 and ongoing violations of the requirements of Labor Code § 204.

19 125. All wages due and owing to Plaintiff and the Class members, including as required
20 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
21 required by Labor Code § 1194 and other sections became due and payable to each employee in
22 each pay period that he or she was not provided with a meal period or rest period or paid straight
23 or overtime wages to which he or she was entitled.

24 126. Defendants violated Labor Code § 204 by systematically refusing to timely pay
25 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
26 applicable IWC Wage Orders, employers are required "to pay each employee, on the established
27 payday for the period involved, not less than the applicable minimum wage for all hours worked in
28 the payroll period, ..." Under Labor Code § 1198, "[t]he employment of any employee for longer

1 hours than those fixed by the order or under conditions of labor prohibited by the order is
2 unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for
3 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
4 penalties under paragraph 20 or 18 of the applicable IWC Wage Orders.

5 127. As a result of the unlawful acts of Defendants, Plaintiff and the Class they seek to
6 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
7 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
8 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 or 18 of the
9 applicable IWC Wage Orders.

10 **EIGHTH CAUSE OF ACTION**
11 **VIOLATION OF LABOR CODE § 203**
12 **(Against All Defendants)**

13 128. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
14 full herein.

15 129. Plaintiff and numerous Class members are no longer employed by Defendants; they
16 either quit Defendants’ employ or were fired therefrom.

17 130. Defendants failed to pay these Employees all wages due and certain at the time of
18 termination or within seventy-two hours of resignation, as addressed in detail above.

19 131. The wages withheld from these Employees by Defendants remained due and owing
20 for more than thirty days from the date of separation from employment.

21 132. Defendants failed to pay Plaintiff and the Class members without abatement, all
22 wages as defined by applicable California law. Among other things, these Employees were not
23 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked
24 or requiring off the clock work or by unlawfully under-recording time entries to the detriment of
25 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and
26 rest periods, as further detailed in this Complaint. Defendants’ failure to pay said wages within the
27 required time was willful within the meaning of Labor Code § 203. To the extent Plaintiff and the
28 Class members were employed by Defendants in their capacity as a temporary services employer,

1 Defendants failed to timely pay all wages owed and provide accurate wage statements to Plaintiff
2 and the Class members on a weekly basis, as required under Labor Code § 201.3, and failed to pay
3 them all wages owed at the end of their seasonal or temporary employment, as also required under
4 Labor Code § 203.

5 133. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
6 are required “to pay each employee, on the established payday for the period involved, not less
7 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
8 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
9 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members
10 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
11 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 or 18 of the
12 applicable IWC Wage Orders. Also, under Labor Code § 1199(a)-(c), it is a misdemeanor and
13 Defendants are subject to a fine of not less than \$100 for causing Employees “to work for longer
14 hours than those fixed, or under conditions of labor prohibited by an order of the commission” or
15 if the employer pays “a wage less than the minimum fixed by an order of the commission” or
16 “violates...any provision of this chapter or any order or ruling of the commission.”

17 134. Upon information and belief, Defendant Allied is and has been a client employer
18 within the definition of Labor Code § 2810.3. Therefore, Arriola, the labor contractors, must share
19 all civil legal responsibility and civil liability for the payment of all wages earned by Plaintiff and
20 the Class Members, with Arriola, including regular and overtime wages and the premium penalty
21 wages owed for Defendants’ failure to provide meal periods or rest breaks

22 135. Defendants’ failure to pay wages, as alleged, entitles Plaintiff and these former
23 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
24 the IWC Wage Orders as addressed above, including the requirement that an employee’s wages
25 shall continue until paid for up to thirty (30) days from the date they were due.

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NINTH CAUSE OF ACTION
FOR FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES
UNDER LABOR CODE § 2802
(Against All Defendants)

136. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

137. Plaintiff and the Class are informed and believe and based thereon alleges that throughout the period applicable, Defendants required Plaintiff and the Class members to pay for necessary work related expenses they incurred. Defendants' managers and supervisors contacted Plaintiff on his personal cellular phone on a daily basis to request information on the status of completion of his various job duties and to address scheduling and the hours he worked, and such calls came when he was both on and off duty. Plaintiff would often receive calls when off duty from Defendants' managers to ask him to report at an earlier or later time or to address other work related matters. Defendants failed to reimburse Plaintiff for any of these business expenses incurred in performing his daily job duties.

138. Plaintiff and upon information and belief other Class members were also required to drive their own vehicles during work shifts. Including on the occasions when they were asked to work in multiple fields, they were also required to then drive their personal vehicles to those further field locations. Defendants did not reimburse Plaintiff and the Class members for their mileage or other expenses incurred in transporting themselves to further field assignments during their shifts.

139. Defendants thus followed a uniform policy and practice of failing to reimburse Employees in the Class for these necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

140. Defendants' knowing and willful failure to reimburse lawful necessary work related expenses and losses to Plaintiff and the Class members resulted in damages because, among other

1 things, Defendants did not inform employees of their right to be reimbursed for those work related
2 expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard
3 to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and
4 necessary expenses was an expected and essential function of their employment with Defendants
5 and that failure to incur those expenses would have adverse consequences on their employment.

6 141. Therefore, Plaintiff and the Class members are entitled to reimbursement for any
7 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
8 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while
9 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed
10 from the date Plaintiff and the Class members incurred those expenses. Further, Plaintiff and the
11 Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

12 **TENTH CAUSE OF ACTION**

13 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

14 **(Against All Defendants)**

15 142. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
16 full herein.

17 143. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
18 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
19 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
20 harmful to Employees and the general public. Plaintiff seek to enforce important rights affecting
21 the public interest within the meaning of Code of Civil Procedure § 1021.5.

22 144. Plaintiff is a "person" within the meaning of Business & Professions Code
23 § 17204, have suffered injury, and therefore have standing to bring this cause of action for
24 injunctive relief, restitution, and other appropriate equitable relief.

25 145. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
26 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
27 fraudulent in that Defendants' policy and practice failed to provide the required amount of
28 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and

1 Class members for all hours worked or reimburse them for necessary business expenses, due to
2 systematic business practices as alleged herein that cannot be justified, pursuant to the applicable
3 California Labor Code and Industrial Welfare Commission requirements in violation of California
4 Business and Professions Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
5 and equitable relief, pursuant to California Business & Professions Code § 17203, including
6 restitution of wages wrongfully withheld.

7 146. Wage-and-hour laws express fundamental public policies. Paying employees their
8 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
9 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
10 vigorously to enforce minimum labor standards, to ensure that employees are not required or
11 permitted to work under substandard and unlawful conditions, and to protect law-abiding
12 employers and their employees from competitors who lower costs to themselves by failing to
13 comply with minimum labor standards.

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

20 148. Defendants' conduct, as alleged above, constitutes unfair competition in violation
21 of the Business & Professions Code § 17200 *et seq.*

22 149. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
23 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
24 reasonable care should have known that their conduct was unlawful; therefore their conduct
25 violates the Business & Professions Code § 17200 *et seq.*

26 150. By the conduct alleged herein, Defendants have engaged and continue to engage in
27 a business practice which violates California and federal law, including but not limited to, the
28 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor

1 Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court
2 should issue declaratory and other equitable relief pursuant to California Business & Professions
3 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
4 competition, including restitution of wages wrongfully withheld.

5 151. As a proximate result of the above-mentioned acts of Defendants, Employees have
6 been damaged, in a sum to be proven at trial.

7 152. Unless restrained by this Court, Defendants will continue to engage in the unlawful
8 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make
9 such orders or judgments, including the appointment of a receiver, as may be necessary to prevent
10 the use by Defendants or their agents or employees of any unlawful or deceptive practice
11 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
12 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
13 failed to pay.

14 **ELEVENTH CAUSE OF ACTION**

15 **PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.***

16 **(Against All Defendants)**

17 153. Plaintiff realleges and incorporate all preceding paragraphs, as though set forth in
18 full herein.

19 154. Plaintiff and the Employees in the Class are also aggrieved employees as defined
20 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and
21 either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time
22 period.

23 155. In failing to pay Aggrieved Employees minimum wages and overtime, not
24 providing proper meal and rest periods, failing to provide accurate itemized wage statements, and
25 failing to pay Employees wages upon termination or timely upon resignation, all discussed above,
26 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required
27 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours
28 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and

1 paragraph 7 of the applicable IWC Wage Orders.

2 156. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
3 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5,
4 including the penalty provisions, without limitation, based, inter alia, on the following California
5 Labor Code sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185,
6 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, and 2698 *et seq.*

7 157. More specifically, after complying with the notice procedures of Labor Code §
8 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
9 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
10 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
11 including as follows:

12 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
13 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
14 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
15 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
16 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
17 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
18 to Labor Code § 2699(g)(1);

19 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
20 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
21 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
22 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
23 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
24 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
25 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
26 pursuant to Labor Code § 2699(g)(1);

27 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
28 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to

maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages, under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For Defendants' failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5,

558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

(g) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections:

For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

158. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also seek the penalties and remedies set forth in Labor Code § 558, which states:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

159. Plaintiff has exhausted his administrative remedies by sending a certified letter to the LWDA and Defendants postmarked on January 27, 2022 (LWDA-CM-865091-22) addressing in detail the specific provisions of the Labor Code Defendants have violated and addressing the facts and legal theories to support the alleged violations and requested penalties. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed herein and in the PAGA Notice letter and the original Complaint.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
8. For restitution and/or damages and penalties for Defendants' failure to pay all wages due twice monthly under Labor Code § 204, as may be proven;
9. For restitution and/or damages for all amounts unlawfully withheld from the wages for all class members in violation of Labor Code § 221, as may be proven;
10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
11. For damages and restitution for failure to reimburse all reasonable and necessary business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;
12. For liquidated damages pursuant to California Labor Code 1194.2(a) for failure to pay minimum wages;

1 13. For restitution for unfair competition pursuant to Business & Professions Code
2 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

3 14. For an order enjoining Defendants and their agents, servants, and employees, and
4 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
5 duties as alleged in this Complaint;

6 15. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

7 16. For penalties under Labor Code § 558, as may be proven;

8 17. For other wages and penalties under the Labor Code as may be proven;

9 18. For all general, special, and incidental damages as may be proven;

10 19. For an award of pre-judgment and post-judgment interest;

11 20. For an award providing for the payment of the costs of this suit;

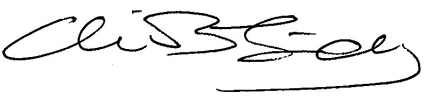
12 21. For an award of attorneys' fees; and

13 22. For such other and further relief as this Court may deem proper and just.

14
15 DATED: August 19, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

16
17 By



18 David Yeremian
19 Alvin B. Lindsay
20 Attorneys for Plaintiff RENE GARCIA
21 CRUZ, on behalf of himself and all others
22 similarly situated
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DEMAND FOR JURY TRIAL

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

DATED: August 19, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

By



David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff RENE GARCIA
CRUZ, on behalf of himself and all others
similarly situated

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 2540 Foothill Blvd., Suite 201, La Crescenta, CA 91214.

Vanessa Franco Chavez
vchavez@kleinlaw.com
 Mayra G. Estrada
mestrada@kleinlaw.com
**KLEIN, DENATALE, GOLDNER,
 COOPER, ROSENLIB & KIMBALL, LLP**
 10000 Stockdale Highway, Suite 200
 Bakersfield, CA 93311

Gerardo Hernandez
gbernandez@littler.com
LITTLER MENDELSON, P.C.
 5200 N Palm Ave., Suite 302
 Fresno, CA 93704

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at La Crescenta, California. I am “readily familiar” with this firm’s practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Natalia Bermudes
Natalia Bermudes