

BRADLEY/GROMBACHER, LLP

Marcus Bradley, Esq. (SBN 174156)
Kiley Grombacher, Esq. (SBN 245960)
Lirit King, Esq. (SBN 252521)
31365 Oak Crest Drive, Suite 240
Westlake Village, CA 91361
Telephone: (805) 270-7100
Facsimile: (805) 618-2939
Email: mbradley@bradleygrombacher.com
Email: kgrombacher@bradleygrombacher.com
Email: lking@bradleygrombacher.com

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 6/28/2022 5:00 PM
By: Melanie Oliverez, Deputy

MAJARIAN LAW GROUP APC

Garen Majarian, Esq. (SBN 334104)
Sahag Majarian, II, Esq. (SBN 146621)
18250 Ventura Boulevard
Tarzana, California 91356
Telephone: (818) 263-7343
Facsimile: (818) 609-0892
E-Mail: garen@majarianlawgroup.com
E-Mail: sahagii@aol.com

Attorneys for Plaintiff MISAEL SUAREZ on
behalf of himself and others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

MISAEL SUAREZ, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

AL PAK LABOR, INC., a California corporation;
ASA FARMS INCORPORATED, a California
corporation; BRAGA FRESH FOODS, LLC, a
California limited liability company; BRAGA
FRESH FAMILY FARMS, INC., a California
corporation; BRAGA RANCH, INC., a California
corporation; VALLEY FARM APPLICATIONS, a
California corporation; SEBASTIAN
HARVESTING, a California corporation; and
DOES 1 to 10, inclusive

Defendants.

CASE NO. 22CV000704

**FIRST AMENDED CLASS ACTION
COMPLAINT:**

1. Failure to Pay Overtime Wages in Violation of Labor Code sections 510 and 1198;
2. Failure to pay all Wages and Minimum Wages in Violation of Labor Code sections 1182, 1194, 1197, 1198;
3. Failure to Provide Meal Periods in Violation of Labor Code sections 226.7, 512, 516 and 1198;
4. Failure to Provide Rest Periods in Violation of Labor Code sections 226.7, 516, 1198;

5. Failure to Provide Proper Shade in Violation of Labor Code sections 226.7, 6300, 6310, 6400 and California Code of Regulations, title 8, section 3395;
6. Failure to Provide Potable Drinking Water in Violation of Labor Code sections 226.7, 1198, 2441;
7. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Labor Code section 226(a);
8. Failure to Timely Pay Wages During Employment in Violation of Labor Code section 205;
9. Waiting Time Penalties Pursuant to Labor Code sections 201, 203;
10. Failure to Reimburse Business Expenses in Violation of Labor Code section 2802;
11. Violations of Labor Code section 1695.7;
12. Violations of Business & Professions Code section 17200 et seq.
13. Penalties Pursuant to California Labor Code § 2698, et seq.

DEMAND FOR JURY TRIAL

1 Plaintiff, MISAEL SUAREZ (hereinafter "Plaintiff") hereby submits his First Amended
2 Complaint against Defendants AL PAK LABOR, INC. ("Al Pak"), a California corporation; ASA
3 FARMS INCORPORATED ("ASA"), a California corporation; BRAGA FRESH FOODS, LLC
4 ("Braga Foods"), a California limited liability company; BRAGA FRESH FAMILY FARMS, INC.
5 ("Braga Farms"), a California corporation; BRAGA RANCH, INC. ("Braga Ranch"), a California
6 corporation; VALLEY FARM APPLICATIONS ("Valle Farm"), a California corporation;
7 SEBASTIAN HARVESTING ("Sebastian"), a California corporation; and DOES 1 to 10, inclusive
8 (hereinafter referred to as "Defendants") on behalf of himself and the class of all other similarly
9 situated current and former employees of Defendants as follows:

10 **NATURE OF THE CASE**

11 1. This is a class action arising out of Defendants' failure to provide their non-exempt
12 employees with all wages, meal and rest periods, by failing to provide proper shade, failing to
13 provide potable drinking water, by failing to reimburse business expenses, and by failing to provide
14 accurate, itemized wage statements and failing to pay final wages in a timely manner in compliance
15 with the Industrial Welfare Commission ("IWC") wage order No. 14-2001 and/or the California
16 Labor Code.

17 2. Al Pak Labor, Inc. is staffing and employment service for the Braga Ranch family
18 of companies – including ASA Farms Incorporated, Sebastian Harvesting, Valley Farm
19 Application, Braga Fresh Foods, LLC, Braga Fresh Family Farms, Inc., Braga Ranch, Inc.

20 3. Al Pak Labor, Inc., ASA Farms Incorporated, Sebastian Harvesting, Valley Farm
21 Application, Braga Fresh Foods, LLC, Braga Fresh Family Farms, Inc., Braga Ranch, Inc are all
22 headquartered in Soledad, California.

23 4. At all relevant times, Defendants issued and maintained uniform, standardized
24 scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in
25 California, including Plaintiff and others similarly situated, regardless of their location or position.

26 5. Defendants has maintained practices across its locations which have failed and
27 continue to fail to pay Plaintiff and other non-exempt employees all wages. Specifically,
28 Defendants have a company-wide policy of discouraging Plaintiff and other non-exempt employees

1 from recording hours worked off-the-clock. This has resulted in Defendants' failure to pay overtime
2 wages to Plaintiff and other non-exempt employees.

3 6. Further, as a result of Defendants limiting the amount of overtime employees could
4 accrue, Plaintiff and other non-exempt employees were not paid for all hours worked.

5 7. Defendants also failed to provide and prevented Plaintiff and other non-exempt
6 employees from taking compliant meal and rest periods.

7 8. In light of the foregoing, Defendants failed to provide Plaintiff and other non-
8 exempt employees with compliant wage statements and failed to timely pay wages during
9 employment and upon termination or separation from employment.

10 9. Defendants also had a practice of failing to provide Plaintiff and other non-exempt
11 employees with shade and potable drinking water.

12 10. Defendants also failed to reimburse Plaintiff and other non-exempt employees for
13 business related expenses, including but not limited to spatulas, gloves, face masks and mileage
14 which were required for the job.

15 11. Plaintiff brings Causes of Action One through Twelve (the "class claims") as a class
16 action on behalf of himself and other similarly situated individuals who have worked for
17 Defendants in California, at any time from four-years prior to the filing of this complaint, through
18 the resolution of this action. Plaintiff, on his own behalf and on behalf of all Class Members, brings
19 the class claims pursuant to Labor Code sections 200-203, 205, 226, 226.7, 510, 512, 516, 1182,
20 1194, 1197, 1198, 1695.7 2441, 2802, 6300-6400, the applicable wage order and under Business &
21 Professions Code sections 17200-17208, for unfair competition due to Defendants' unlawful, unfair
22 and fraudulent business acts and practices.

23 12. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
24 engaged in, among other things a system of willful violations of the Labor Code and the applicable
25 IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny
26 employees the above stated rights and benefits.

27 PARTIES

28 13. Plaintiff, Misael Suarez is an individual over the age of eighteen (18) and is now,

1 and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State
2 of California. During the relevant time period, Plaintiff worked for Defendants in El Centro,
3 California from approximately 2012 through approximately February 23, 2022. Plaintiff worked as
4 a field worker and earned approximately \$15 per hour. Plaintiff like many other workers, worked
5 seasonally from October to February each year.

6 14. Plaintiff is informed and believes, and based thereon alleges, that Defendant Al Pak
7 is a California corporation, Defendant ASA is a California corporation, Defendant Braga Foods is a
8 California limited liability company, Defendant Braga Farms is a California corporation,
9 Defendant Braga Ranch is a California corporation, Defendant Valley Farm is a California
10 corporation, and Defendant Sebastian is a California corporation. Plaintiff is further informed and
11 believes that at all times relevant hereto, Defendants has transacted, and continue to transact,
12 business throughout the State of California.

13 15. Plaintiff is informed and believes, and based upon such information and belief
14 alleges, that Defendants are, now and/or at all times mentioned in this Complaint were in some
15 manner legally responsible for the events, happenings and circumstances alleged in this Complaint.

16 16. Plaintiff is further informed and believes, and based upon such information and
17 belief alleges, that at all times herein mentioned, Defendants proximately caused Plaintiff, all
18 others similarly situated, and the general public to be subjected to the unlawful practices, wrongs,
19 complaints, injuries and/or damages alleged in this Complaint.

20 17. Plaintiff is informed and believes and based thereon alleges that at all times herein
21 mentioned Defendants and DOES 1 through 10, are and were corporations, business entities,
22 individuals, and partnerships, licensed to do business and actually doing business in the State of
23 California.

24 18. Plaintiff does not know the true names or capacities, whether individual, partner or
25 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said
26 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
27 complaint when the true names and capacities are known. Plaintiff is informed and believes and
28 based thereon alleges that each of said fictitious Defendants were responsible in some way for the

1 matters alleged herein and proximately caused Plaintiff and members of the general public and
2 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

3 19. At all times herein mentioned, each of said Defendants participated in the doing of
4 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
5 Defendants, and each of them, were the agents, servants and employees of each of the other
6 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
7 within the course and scope of said agency and employment.

8 20. Plaintiff is informed and believes and based thereon alleges that at all times material
9 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint
10 venturer of, or working in concert with each of the other co-Defendants and were acting within the
11 course and scope of such agency, employment, joint venture, or concerted activity. To the extent
12 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
13 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

14 21. At all times herein mentioned, Defendants, and each of them, were members of, and
15 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
16 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

17 22. At all times herein mentioned, the acts and omissions of various Defendants, and
18 each of them, concurred and contributed to the various acts and omissions of each and all of the
19 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
20 herein mentioned, Defendants, and each of them, ratified each and every act or omission
21 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and
22 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
23 damages as herein alleged.

24 23. The members of the Classes (as defined below), including the representative
25 Plaintiff named herein, have been employed during the Class Period in California. The practices
26 and policies which are complained of by way of this Complaint are enforced throughout the State
27 of California.

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

24. The Court has jurisdiction over this class action pursuant to article 6, section 10 of

25. Additionally, this Court has jurisdiction over Plaintiff's and the Class' claims for

26. The Court has jurisdiction over Defendants because they are authorized to do

27. Venue is proper in Monterey County because the acts which give rise to this

17
18
19
20
21
22
23
24
25
26
27

28. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

29. Defendants have engaged in, and continue to engage in, unfair business practices in

30. As a direct result of the wage and hour violations herein alleged, Plaintiff and

Employers' Failure to Pay Overtime Wages

31. During the Class Period, upon information and belief, Defendants have, and

1 continue to have, a company-wide policy of discouraging and impeding Plaintiff and other non-
2 exempt employees from recording hours worked that were outside of their scheduled shifts in order
3 to limit the amount of overtime employees could accrue. On information and belief, this policy of
4 limiting overtime, led Plaintiff and other non-exempt employees to work off-the-clock before and
5 after their scheduled shift times. For example, prior to almost every shift, Plaintiff was required to
6 arrive early and undergo a temperature check before clocking in. Additionally, Plaintiff was
7 required to walk to the job site from the place where the company bus drops them off which is
8 about a half mile walk.

9 32. Moreover, Defendants' company-wide policy resulted in a failure to provide
10 Plaintiff and other non-exempt employees with adequate meal periods. Defendants also failed to
11 provide compliant meal breaks as meal breaks were typically interrupted by supervisors who
12 needed Plaintiff and members of the Classes to sign time logs. As a result, Plaintiff and members
13 of the Classes had meal periods interrupted in order to complete their assigned tasks. Consequently,
14 Plaintiff and members of the Classes performed work during meal periods for which they were not
15 paid. Further, on information and belief, because Defendants frowned upon employees accruing
16 meal period penalties, employees were required to continue working after clocking out for their
17 meal periods. Thus, Plaintiff and members of the Classes performed work during meal periods for
18 which they were not paid. Defendants knew or should have known that as a result of these
19 company-wide practices and/or policies, Plaintiff and members of the Classes were performing
20 assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform
21 work for which they were not paid. Because Plaintiff and members of the Classes worked shifts of
22 eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work
23 qualified for overtime premium pay.

24 33. Therefore, Plaintiff and members of the Classes were not paid overtime wages for
25 all of the overtime hours they actually worked.

26 ***Defendants' Failure to Pay all Wages and Minimum Wages***

27 34. As stated above, during the relevant time period, as a result of Defendants' policy of
28 limiting the amount of overtime employees could accrue, and because Plaintiff and members of the

1 Classes were forced to work off-the-clock, they were not paid all wages.

2 35. Further, as stated, in order to prevent employees from accruing meal period
3 penalties, upon information and belief, Plaintiff and members of the Classes would be interrupted
4 and have to work off-the-clock during meals. Further, Plaintiff and members of the Classes spent
5 approximately 15 to 20 minutes off the clock each day when they had to walk to and from
6 breakrooms (approximately 5 minutes each way). Moreover, Plaintiff and members of the Classes
7 had to undergo mandatory temperature checks prior to starting each shift. Plaintiff and members of
8 the Classes would also have to walk to the job site from the place where the company bus drops
9 them off, about a half mile walk prior to beginning their shifts. Thus, Defendants did not pay at
10 least minimum wages for all hours worked by Plaintiff and other non-exempt employees. To the
11 extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants
12 did not pay at least minimum wages for those hours worked off-the-clock.

13 ***Defendants' Failure to Provide Compliant Meal Periods***

14 36. As stated above, Defendants had, and continue to have, a company-wide policy of
15 failing to provide Plaintiff and other non-exempt employees from taking all timely, uninterrupted
16 meal periods to which they were entitled. As a result, Plaintiff and other non-exempt employees
17 were forced to work in excess of five (5) hours before taking a meal period and, at times, had their
18 meal periods interrupted.

19 37. For example, on several occasions, Plaintiff was unable to take his meal period until
20 after his sixth hour after the start of his scheduled shift. Moreover, upon information and belief,
21 because Defendants frowned upon employees accruing meal period penalties, Defendants would
22 require Plaintiff and other non-exempt employees to clock out but continue to work to reflect
23 compliant meal periods, regardless of whether they had received a compliant meal period, in order
24 to strictly limit meal penalties that would need to be paid by Defendants. Specifically, Defendants
25 would interrupt Plaintiff's and other members of the Class' meal periods and ask them to sign time
26 logs. Meal breaks were also short as a result of having to walk approximately 5 minutes each way
27 to the resting area.

28 38. Plaintiff and members of the Classes did not sign valid meal period waivers on days

1 that they were entitled to meal periods and were not relieved of all duties.

2 ***Defendants' Failure to Provide Compliant Rest Breaks***

3 39. During the relevant time period, Defendants regularly failed to authorize and permit
4 Plaintiff and members of the Classes to take a ten (10) minute rest period per each four (4) hour
5 period worked or major fraction thereof.

6 40. Specifically, Plaintiff alleges that Defendants provided late rest breaks. Moreover,
7 rest breaks were short as a result of having to walk approximately 5 minutes each way to the break
8 room. Furthermore, Defendant's failed to authorize and permit Plaintiff from taking a second rest
9 break when required.

10 ***Defendants' Failure to Provide Proper Shade***

11 41. Defendants failed to provide proper cool down rest periods by not providing shade
12 or a place where Plaintiff and members of the Classes could seek relief.

13 ***Defendants' Failure to Provide Potable Water***

14 42. Labor Code section 226.7 requires that employers provide rest periods that comply
15 with state laws, including those that require potable drinking water. Labor Code section 2441
16 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and
17 convenient times and places. California Code of Regulations, title 8, section 3395 requires the
18 provision of "potable drinking water meeting the requirements of §§1524, 3363, and 3457, as
19 applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and
20 provided to employees free of charge." California Code of Regulations, title 8, section 3457(c)
21 further requires the provision of potable drinking water and single use cups. Plaintiff and members
22 of the Classes were not provided with potable drinking water. Specifically, Plaintiff alleges that the
23 water provided was filthy and undrinkable.

24 ***Defendant's Failure to Provide Compliant Wage Statements***

25 43. During the relevant time period, Defendants have knowingly and intentionally
26 provided Plaintiff and members of the Classes with uniform, incomplete, and inaccurate wage
27 statements. For example, Defendants issued uniform wage statements to Plaintiff and other non-
28 exempt employees that fail to correctly list: gross wages earned; total hours worked; net wages

1 earned; and all applicable hourly rates in effect during the pay period, including rates of pay for
2 overtime wages and/or meal and rest period premiums, and the corresponding number of hours
3 worked at each hourly rate.

4 44. Because Defendants did not record the time Plaintiff and members of the Plaintiff
5 Class spent working off-the-clock and deducted time from their meal periods that were missed
6 and/or interrupted (and therefore time for which they should have been paid), Defendants did not
7 list the correct amount of gross wages and net wages earned by Plaintiff and other non-exempt
8 employees in compliance with Labor Code sections 226(a)(1) and 226(a)(5), respectively.

9 45. For the same reason, Defendants failed to accurately list the total number of hours
10 worked by Plaintiff and other non-exempt employees, and failed to list the applicable hourly rates
11 of pay in effect during the pay period and the corresponding accurate number of hours worked at
12 each hourly rate. Moreover, Defendants also includes sick pay hours within total hours. Moreover,
13 “Al Pak Labor Inc.” is named on the paystub as the employer, however, the details of Employee’s
14 wages show “Al Pak Labor Inc.” and “A.S.A. Farms Inc.” This makes it confusing for Employee to
15 identify which company is his actual employer.

16 46. Because Defendants failed to provide the correct net and gross wages earned,
17 applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and
18 members of the Classes have been prevented from verifying, solely from information on the wage
19 statements themselves, that they were paid correctly and in full. Instead, Plaintiff and members of
20 the Classes have had to look to sources outside of the wage statements themselves and reconstruct
21 time records to determine whether in fact they were paid correctly and the extent of underpayment,
22 thereby causing them injury.

23 ***Defendants’ Failure to Timely Pay Final Wage Upon Termination***

24 47. Defendants willfully failed to pay Plaintiff and other non-exempt employees who
25 are no longer employed by Defendants the earned and unpaid wages set forth above, including but
26 not limited to, overtime wages, minimum wages, and/or meal/rest period premiums, either at the
27 time of discharge, or within seventy-two (72) hours of their leaving Defendants’ employ.

28 48. Further, Defendants did not pay employees on the final day that a season ends, but

1 rather paid Employee and members of Classes their final wages during the next pay period.

2 ***Defendants' Failure to Timely Pay Wages During Employment***

3 49. California Labor Code section 205 requires that all "wages of workers employed by
4 a farm labor contractor shall be paid on payroll periods at least once every week on a business day
5 designated in advance by the farm labor contractor. Payment on such payday shall include all
6 wages earned up to and including the fourth day before such payday."

7 50. During the class period, Defendants willfully failed to pay Plaintiff and members of
8 the Classes all wages due including, but not limited to, minimum wages, and/or meal and rest
9 period premiums, within the time periods specified by California Labor Code section 205.

10 ***Defendants' Failure to Reimburse Business Expenses***

11 51. During the relevant time period, Defendants had a company-wide policy of
12 requiring Plaintiff and members of the Classes to purchase their own tools for the job such as
13 spatulas, masks and gloves which were necessary for their jobs, but Defendants failed to reimburse
14 them for these costs.

15 52. Although Defendants required Plaintiff and members of the Classes to utilize tools,
16 masks and glove to carry out their job duties, Defendants failed to reimburse them for this cost.
17 Defendants could have provided Plaintiff and members of the Classes with the actual tools for use
18 on the job, or reimbursed employees. Instead, Defendants passed these operating costs off onto
19 Plaintiff and members of the Classes.

20 ***Defendant's Violation of Labor Code Section 1695.7***

21 53. On information and belief, at all times relevant to this action, Defendant Al Pak was
22 operating as a farm labor contractor without a license as required by Labor Code section 1683(a).

23 54. On information and belief, Defendants ASA, Braga Foods, Braga Farms, Braga
24 Ranch, Valley Farm, and Sebastian contracted with Defendant Al Pak to supply workers to perform
25 agricultural work.

26 55. On information and belief, at all times relevant to this action, Defendants ASA,
27 Braga Foods, Braga Farms, Braga Ranch, Valley Farm, and Sebastian knowingly entered into an
28 agreement for the services of a farm labor contractor who was not licensed under Labor Code

1 section 1683(a).

2 56. On information and belief, at all times relevant to this action, Defendants recruited,
3 solicited, hired, and/or employed Plaintiff and members of the Classes, and were employers
4 pursuant to California Code of Regulations, title 8, section 1140(2)(G).

5 57. At all times relevant to this action, each Defendants directly or indirectly or through
6 an agent or other person, engaged, suffered or permitted to work Plaintiffs and members of the
7 Classes.

8 58. At all times relevant to this action, each Defendant directly or indirectly or through
9 an agent or other person exercised control over the wages, hours or working conditions of Plaintiffs
10 and members of the Classes.

11 ***Facts Regarding Willfulness***

12 59. Plaintiff is informed and believes, and based thereon alleges, that Defendants are
13 and were advised by skilled lawyers, other professionals, employees with human resources
14 background and advisors with knowledge of the requirements of California wage and hour laws
15 and that at all relevant times, Defendants knew or should have known, that the Plaintiff Class
16 Members, including Plaintiff, were entitled to receive one hour of pay at the employee's regular
17 rate of compensation for each day that a meal and/or rest period was not provided and were and are
18 entitled to received pay for all hours worked, accurate itemized wage statements, and final pay in a
19 timely manner.

20 ***Unfair Business Practices***

21 60. Defendants has further engaged in, and continue to engage in, unfair business
22 practices in California by practicing, employing and utilizing the unlawful employment practices
23 and policies outlined above.

24 61. As a direct result of the wage and hour violations herein alleged, Plaintiff and
25 members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the
26 use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in
27 seeking to compel Defendants to perform their obligations under state law, all to Plaintiff's and the
28 Plaintiff Class members' respective damage in amounts according to proof at the time of trial.

1 ***Plaintiff's Exhaustion of Administrative Remedies***

2 62. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
3 section 2699.3.

4 63. By letter dated March 11, 2022, required notice was provided to Labor and
5 Workforce Development Agency ("LWDA") and Defendants, of the specific provisions of the
6 Labor Code alleged to have been violated, including the facts and theories to support the alleged
7 violations.

8 64. More than sixty-five (65) days have passed since the date the notice was mailed to
9 Defendants and the LWDA has not notified Plaintiff that it intends to investigate the allegations
10 herein.

11 **CLASS ACTION ALLEGATIONS**

12 65. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

13 66. Pursuant to Code of Civil Procedure section 382, this action is brought and may be
14 properly maintained as a class action. This action satisfies the ascertainability, numerosity,
15 commonality, typicality, adequacy, predominance, and superiority requirements of those
16 provisions.

17 67. Plaintiff brings this suit as a class action on behalf of two classes of individuals
18 defined as follows (collectively the "Classes"):

19 68. Plaintiff Class: All persons who have been, or currently are, employed by Defendants
20 and who held, or hold, job positions which Defendants has classified as "non-exempt" employees in
21 the State of California, at any time since four years prior to filing this action, through the date
22 judgment is rendered in this action.

23 69. Terminated Sub Class: All members of the Plaintiff Class whose employment ended
24 during the Class Period.

25 70. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during
26 the class period hundreds of class members have been employed by Defendants as non-exempt
27 employees in the State of California. Because so many persons have been employed by Defendants
28 in this capacity, the members of the Plaintiff Class are so numerous that joinder of all members is

impossible and/or impracticable.

71. Common Questions of Law and/or Fact: Common questions of law and fact exist as to all members of the Plaintiff Class and predominate over any questions affecting solely individual members of the Plaintiff Class. Among the questions of law and fact, that are relevant to the adjudication of Class Members' claims are as follows:

- a. Whether Plaintiff and Class Members are subject to and entitled to the benefits of California wage and hour statutes;
- b. Whether Defendants failed to pay Plaintiff and Class Members for all hours worked;
- c. Whether Defendants failed to pay Plaintiff and Class Members all overtime;
- d. Whether Defendants had a standard policy of not providing compliant meal breaks and premiums to Plaintiff and members of the Plaintiff Class;
- e. Whether Defendants had a standard policy of not providing compliant rest breaks and premiums to Plaintiff and members of the Plaintiff Class;
- f. Whether Defendants had a standard policy of not providing Plaintiff and members of the Plaintiff Class with shade;
- g. Whether Defendants failed to provide Plaintiff and the Plaintiff Class with potable drinking water;
- h. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and members of the Plaintiff Class with true and proper wage statements upon payment of wages, in violation of Labor Code section 226;
- i. Whether Defendants unlawfully and/or willingly failed to timely pay Plaintiff and the Plaintiff Class during employment;
- j. Whether Defendants unlawfully and/or willingly failed to timely pay Plaintiff and the Terminated Sub Class upon termination;
- k. Whether Defendants failed to reimburse Plaintiff and members of the Plaintiff Class for business-related expenses;
- l. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if

1 so, the proper measure of such damages, as well as interest, penalties, costs,
2 attorneys' fees, and equitable relief;

3 m. Whether Defendants conduct as alleged herein violates the Unfair Business
4 Practices Act of California (Bus. & Prof. Code, § 17200 et seq.)

5 72. Typicality: The claims of the named Plaintiff are typical of the claims of the
6 members of the Plaintiff Class. Defendants' common course of conduct in failing to provide their
7 non-exempt employees with meal and rest periods and all wages in compliance with the applicable
8 wage order, or premium compensation at the regular rate in lieu thereof, failing to provide them
9 with proper shade and potable drinking water, failing to reimburse them for work related expenses,
10 and failing to provide them with compliant wage statements has caused Plaintiff and the proposed
11 Class to sustain the same or similar injuries and damages. Plaintiff's claims are thereby
12 representative of and co-extensive with the claims of the proposed Class. Plaintiff and the proposed
13 Class sustained the same or similar injuries and damages arising from Defendants' common
14 policies, practices, procedures, protocols, routines, and rules which were applied to other Class
15 Members as well as Plaintiff. Plaintiff seeks recovery for the same type of losses, injuries, and
16 damages as were suffered by other members of the proposed class.

17 73. Adequacy of Representation: Plaintiff is an adequate representative of the proposed
18 classes because he is a member of the class, and his interests do not conflict with the interests of
19 the members he seeks to represent. Plaintiff has retained competent counsel, experienced in the
20 prosecution of complex class actions, and together Plaintiff and his counsel intend to prosecute this
21 action vigorously for the benefit of the classes. The interests of the Class Members will fairly and
22 adequately be protected by Plaintiff and his attorneys.

23 74. Superiority of Class Action: A class action is superior to other available methods for
24 the fair and efficient adjudication of this litigation since individual litigation of the claims of all
25 Class Members is impracticable. It would be unduly burdensome to the courts if these matters were
26 to proceed on an individual basis, because this would potentially result in hundreds of individual,
27 repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or
28 contradictory judgments, and the prospect of a "race to the courthouse," and an inequitable

1 allocation of recovery among those with equally meritorious claims. By contrast, the class action
2 device presents far fewer management difficulties, and provides the benefit of a single
3 adjudication, economics of scale, and comprehensive supervision by a single court.

4 75. The various claims asserted in this action are additionally or alternatively certifiable
5 under the provisions of the Code of Civil Procedure section 382 because:

6 a. The prosecution of separate actions by hundreds of individual class members would
7 create a risk of varying adjudications with respect to individual class members, thus establishing
8 incompatible standards of conduct for Defendants, and

9 b. The prosecution of separate actions by individual class members would also create
10 the risk of adjudications with respect to them that, as a practical matter, would be dispositive of the
11 interest of the other class members who are not a party to such adjudications and would
12 substantially impair or impede the ability of such non-party class members to protect their interests.

13 **FIRST CAUSE OF ACTION**

14 **Unpaid Overtime**

15 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

16 76. Plaintiff incorporates herein by reference the allegations set forth above.

17 77. At all times relevant herein, which comprise the time period not less than four (4)
18 years preceding the filing of this action, Defendants were required to compensate their hourly
19 employees for all overtime hours worked.

20 78. California Labor Code sections 510 and 1198 and the applicable IWC wage order
21 require employers to pay employees working more than eight (8) hours in a day or more than forty
22 (40) hours in a workweek at the rate of one-and-one-half (1 ½) times the regular rate of pay for all
23 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.
24 The applicable IWC wage order further provides that employers are required to pay employees
25 working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times
26 their regular rate of pay. An employee's regular rate of pay includes all remuneration for
27 employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and
28 incentive pay.

1 79. Defendants willfully failed to pay all overtime wages owed to Plaintiff and members
2 of the Classes. During the relevant time period, Plaintiff and members of the Classes were not paid
3 overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess
4 of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that
5 they worked were not recorded.

6 80. Defendants knew or should have known that as a result of company-wide practices
7 and/or policies, that prevents Plaintiff and members of the Classes from earning overtime, Plaintiff
8 and members of the Classes were performing assigned duties off-the-clock before and after their
9 shifts and/or during meal periods, and were suffered or permitted to perform work for which they
10 were not paid. Because Plaintiff and members of the Classes worked shifts of eight (8) hours a day
11 or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
12 premium pay. Therefore, Plaintiff and members of the Classes were not paid overtime wages for all
13 of the overtime hours they actually worked.

14 81. For example, prior to almost every shift, Plaintiff was required to arrive early and
15 undergo a mandatory temperature check. Additionally, Plaintiff was required to walk to the job site
16 from the place where the company bus drops them off which is about a half mile walk. Employee
17 and aggrieved employees also spent approximately 15 to 20 minutes off the clock each day when
18 they had to walk to and from breakrooms during meal breaks and rest breaks (about 5 minutes each
19 way).

20 82. Moreover, Defendants' company-wide policy resulted in a failure to provide
21 Plaintiff and other non-exempt employees with adequate meal periods. Defendants also failed to
22 provide compliant meal breaks as meal breaks were typically interrupted by supervisors who
23 needed Plaintiff and members of the Classes to sign time logs. As a result, Plaintiff and members
24 of the Classes had meal periods interrupted in order to complete their assigned tasks. Consequently,
25 Plaintiff and members of the Classes performed work during meal periods for which they were not
26 paid. Further, on information and belief, because Defendants frowned upon employees accruing
27 meal period penalties, employees were required to continue working after clocking out for their
28 meal periods. Thus, Plaintiff and members of the Classes performed work during meal periods for

1 which they were not paid. Defendants knew or should have known that as a result of these
2 company-wide practices and/or policies, Plaintiff and members of the Classes were performing
3 assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform
4 work for which they were not paid. Because Plaintiff and other non-exempt employees worked
5 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-
6 clock work qualified for overtime premium pay.

7 83. Defendants' failure to pay Plaintiff and members of the Classes the balance of
8 overtime compensation, as required by California law, violates the provisions of Labor Code
9 sections 510 and 1198. Plaintiff and members of the Classes are entitled to recover civil penalties,
10 attorney's fees, costs, and interest thereon.

11 **SECOND CAUSE OF ACTION**

12 **Failure to Pay All Wages**

13 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

14 84. Plaintiff incorporates herein by reference the allegations set forth above.

15 85. At all times relevant herein, which comprise the time period not less than four (4)
16 years preceding the filing of this action, Defendants were required to compensate their hourly
17 employees for all hours worked.

18 86. For at least the four (4) years preceding the filing of this action, Defendants failed to
19 compensate employees for all hours worked. Defendants implemented policies that actively
20 prevented employees from being compensated for all time worked by subjecting Plaintiff and
21 members of the Classes to work off-the-clock as mentioned above.

22 87. Under the applicable wage order and state regulations, Plaintiff and the Plaintiff
23 Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years
24 preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in
25 accordance with Labor Code section 218.5, and penalties pursuant to Labor Code section 206.

26 88. The applicable IWC wage order section 2(G) defines "hours worked" to mean "the
27 time during which an employee is subject to the control of an employer and includes all the time
28 the employee is suffered or permitted to work, whether or not required to do so."

1 89. Defendants suffered or permitted Plaintiff and members of the Classes to work
2 portions of the day for which Defendants failed to compensate them. This includes time spent
3 under Defendants' control prior to clocking in, after clocking out, and during meal periods.

4 90. Labor Code section 1194(a) provides in relevant part: "Notwithstanding any
5 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ...
6 is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
7 ... including interest thereon, reasonable attorney's fees, and costs of suit."

8 91. Labor Code section 1194.2(a) provides in relevant part: "In any action under section
9 1193.6 or section 1194 to recover wages because of the payment of a wage less than the minimum
10 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated
11 damages in an amount equal to the wages unlawfully unpaid and interest thereon."

12 92. Labor Code section 1197 provides: "The minimum wage for employees fixed by the
13 commission is the minimum wage to be paid to employees, and the payment of a less wage than
14 the minimum so fixed is unlawful."

15 93. Plaintiff is informed and believes, and therefore alleges, that Defendants'
16 compensation schemes do not fairly compensate Plaintiff and other Class Members for all hours
17 spent performing their job duties.

18 94. As stated, in order to prevent employees from accruing meal period penalties, upon
19 information and belief, Plaintiff and members of the Classes would be interrupted and have to work
20 off-the-clock during meals. Further, Plaintiff and members of the Classes spent approximately 15
21 to 20 minutes off the clock each day when they had to walk to and from breakrooms (about 5
22 minutes each way). Moreover, Plaintiff and members of the Classes had to undergo mandatory
23 temperature checks prior to starting each shift. Plaintiff and members of the Classes would also
24 have to walk to the job site from the place where the company bus drops them off, about a half
25 mile walk prior to each shift. Thus, Defendants did not pay at least minimum wages for all hours
26 worked by Plaintiff and members of the Classes. To the extent that these off-the-clock hours did
27 not qualify for overtime premium payment, Defendants did not pay at least minimum wages for
28 those hours worked off-the-clock.

95. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff Class for each and every hour worked violates Labor Code sections 1182.11-1182.12, 1194, 1194.2, and 1197; the applicable IWC wage order section 4; and Business & Professions Code.

96. The failure to pay designated wages to Plaintiff and members of the Plaintiff Class for each and every hour worked violates Labor Code section 221 and 223; the applicable IWC wage order; and Business & Professions Code.

97. During the applicable time period, Defendants has and continues to have a pattern and practice of not providing its employees all wages, by failing to include all compensable time, including time worked off-the-clock.

98. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff Class have been damaged in an amount according to proof at time of trial.

THIRD CAUSE OF ACTION

Non-Compliant Meal Breaks

(By Plaintiff and Members of the Putative Class Against All Defendants)

99. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

100. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the Class Members regularly worked more than five (5) hours per shift and were entitled to a meal period of not less than thirty (30) minutes without duty.

101. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendants routinely failed to provide Plaintiff and the members of the Classes with such meal periods without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not waived their right to the same. Thus, Defendants failed to provide Plaintiff and the members of the Classes with meal periods required by Labor Code sections 226.7, 512, 516 and the applicable IWC wage order section 11, and categorically failed to pay any and all meal period wages due.

102. Plaintiff and Class Members seek damages pursuant to Labor Code section 226.7(b) and the applicable IWC wage order, in the amount of one additional hour of pay at the regular rate for each work day that the meal period is/was not provided to Plaintiff and any member of the

1 Classes, the cumulative sum of which is to be determined at trial.

2 103. Under the foregoing, California employers must provide meal periods and authorize
3 and permit rest periods to all employees during their shifts. In *Augustus et al. v. ABM Security*
4 *Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme Court reaffirmed that the required meal
5 and rest periods must be “off-duty,” which means that employees must be relieved of “all work-
6 related duties,” including the duty to remain “on call,” and they must be “free from employer
7 control” over how they “spend their time.” *Id.* at 264, 269. Employees must have the freedom to
8 use meal and rest periods for their own purposes. *Id.* at 270; *Brinker Rest. Corp. v. Superior Court*
9 (2012) 53 Cal.4th 1004, 1038-39.

10 104. When employees must either “remain at the ready and capable of being summoned
11 to action,” “respond when the employer seeks contact with [them],” “perform other work if the
12 employer so requests,” and/or remain “on call” during their meal and rest periods, the employees
13 have not been “relieve[d] ... of all work-related duties and employer control.” *Augustus, supra*, 2
14 Cal.5th at 270. Such a meal or rest period is not “off duty” and therefore is “impermissible.” *Ibid.*

15 105. The Supreme Court’s decision in *Augustus* is just the latest in a series of meal and
16 rest break cases that have affirmed California’s broad, protective standard for employees.¹

17 106. Moreover, as the mere existence of a facially lawful meal and rest break policy is
18 unavailing if there are practical constraints and pressures on employees to perform their duties in
19 ways that omit breaks. See *Brinker, supra*, 53 Cal.4th at 1040.

20 107. Yet Defendants did and do not provide Plaintiff and members of the Classes with
21 meal periods during which they are completely relieved of duty for at least thirty (30) minutes by
22 the fifth hour of work and again by the tenth hour of work.

23 108. Rather, Plaintiff and members of the Classes’ meal periods were typically late, and
24

25 ¹ See, e.g., *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Lubin v.*
26 *Wackenhut Corp.* (2016) 5 Cal.App.5th 926 , *rehg. denied* (Dec. 14, 2016); *Faulkinbury v. Boyd &*
27 *Assocs., Inc.* (2013) 216 Cal.App.4th 220; *Berlanga v. Equilon Enterprises LLC* (N.D.Cal., Aug.
28 31, 2017, No. 17-CV-00282-MMC) 2017 WL 3782245 at *3 (a policy requiring employees to
“remain in contact with supervisors and other employees working in their units throughout their
shifts... would appear to be unlawful under [*Augustus*.]”)

1 short, as employees would clock out for their meal breaks but supervisors would ask Plaintiff and
2 members of the Classes to sign time logs. Moreover, meal breaks were typically provided late. By
3 way of example, Plaintiff started work at 5:30 a.m. and meals were at 12 noon. Thus, meals were
4 provided after the fifth hour worked. Further, meal breaks were short as a result of having to walk 5
5 minutes each way to the resting area.

6 109. Thus, Defendants has failed to perform its obligations to provide Plaintiff and the
7 members of the Plaintiff Class with off-duty meal periods by the end of the fifth hour of work.
8 Defendants has also failed to pay Plaintiff and the members of the Plaintiff Class one (1) hour of
9 pay at the regular rate for each off-duty meal period that they have been denied.

10 110. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews*
11 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers
12 must pay premium payments to employees for missed meal, rest, and recovery breaks at the
13 employee's "regular rate of pay" instead of their base hourly rate.

14 111. Defendants knew or should have known that as a result of its policies and/or
15 practices, that Plaintiff and members of the Classes were not actually relieved of all duties to take
16 timely, uninterrupted meal periods. Defendants further knew or should have known that it did not
17 pay Plaintiff and members of the Classes all meal period premiums when meal periods were
18 missed, late, short, and/or interrupted. Furthermore, Defendants have engaged in a company-wide
19 practice and/or policy of not paying meal period premiums owed when compliant meal periods are
20 not provided. Because of this practice and/or policy, Plaintiff and members of the Classes have not
21 received all premium pay for missed, interrupted, or late meal periods. Accordingly, Defendants
22 failed to provide all meal periods in violation of Labor Code sections 226.7, 512(a), 516, and 1198.

23 112. Plaintiff and members of the Classes are entitled to civil penalties, attorney's fees,
24 costs, and interest thereon.

25 **FOURTH CAUSE OF ACTION**

26 **Non-Compliant Rest Breaks**

27 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

28 113. Plaintiff hereby incorporates by reference each and every one of the allegations

1 contained in the preceding paragraphs as if the same were fully set forth herein.

2 114. Labor Code sections 226.7, 516, and 1198, and the applicable IWC wage order
3 require employers to provide rest periods and to pay an employee one (1) additional hour of pay at
4 the employee's regular rate for each work day that a meal or rest period is not provided. Labor
5 Code section 226.7 provides that no employer shall require an employee to work during any rest
6 period mandated by an applicable order of the IWC. The applicable IWC wage order provides that
7 "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as
8 practicable shall be in the middle of each work period" and that the "rest period time shall be based
9 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
10 major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

11 115. Plaintiff is informed and believes, and thereon allege, that Plaintiff and Class
12 Members were entitled to a paid rest period of not less than ten (10) minutes without duty for each
13 and every four (4) hours or major fraction thereof worked during the workday.

14 116. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that
15 Defendants routinely failed to provide Plaintiff and the members of the Classes with such paid rest
16 periods without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not
17 waived their right to the same. Thus, Defendants failed to provide Plaintiff and Class Members
18 with rest periods required by Labor Code sections 226.7, 512, and 516, the applicable IWC wage
19 order section 12 and categorically failed to pay any and all rest period wages due.

20 117. Plaintiff alleges that he and members of the Classes received late rest periods. By
21 way of example, on 2/2/22, Plaintiff only received one rest break when he worked 6.5 hours. On
22 2/3/22 Plaintiff only received one rest break when he worked 7 hours, and on 1/5/22 only received
23 one rest break after working 7 hours. Rest breaks were also short as a result of having to walk a
24 half mile to the resting area.

25 118. Plaintiff and Class Members seek damages pursuant to Labor section 226.7(b) and
26 the applicable IWC wage order, in the amount of one additional hour of pay at the regular rate for
27 each work day that the rest period is/was not provided or provided late to Plaintiff and any member
28 of the Classes, the cumulative sum of which is to be determined at trial.

119. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation for Defendants' failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of suit pursuant to Labor Code section 226.7(b) and the applicable wage order.

FIFTH CAUSE OF ACTION

Failure to Provide Proper Shade

(By Plaintiff and Members of the Putative Class Against All Defendants)

120. Labor Code section 226.7 requires that employers provide rest periods that comply with state laws, including those that require adequate shade. When employees did receive meal breaks, they were also not compliant because the workplace lacked adequate shade as required by California Code of Regulations, title 8, section 3395(d).

121. California Code of Regulations, title 8, section 3395(d) provides in part that employees working for employers that maintain "outdoor places of employment" shall have access to shade and provides the conditions under which such shade must be provided, both when the temperature exceeds 80 degrees Fahrenheit and when the temperature is below 80, degrees Fahrenheit, as follows:

(1) Shade shall be present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling. The amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so they can sit in a normal posture fully in the shade without having to be in physical contact with each other. The shade shall be located as close as practicable to the areas where employees are working. Subject to the same specifications, the amount of shade present during meal periods shall be at least enough to accommodate the number of employees on the meal period who remain onsite.

(2) Shade shall be available when the temperature does not exceed 80 degrees

1 Fahrenheit. When the outdoor temperature in the work area does not exceed
2 80 degrees Fahrenheit employers shall either provide shade as per subsection
3 (d)(1) or provide timely access to shade upon an employee's request.

4 122. Labor Code sections 6300, 6310 and 6400 et seq. requires all employers take
5 reasonable steps to provide a safe and secure workplace. Defendants' failure to provide adequate
6 shade violates the above provisions.

7 123. Further, at all times herein mentioned, the public policy of the State of California, as
8 codified, expressed and mandated in Labor Code sections 6300, 6310 and 6400 et seq. requires all
9 employers take reasonable steps to provide a safe and secure workplace.

10 124. Upon information and belief, at all times herein, Defendants failed to provide proper
11 shade as required by California Code of Regulations, title 8, section 3395 for its employees
12 working in Defendants' "outdoor place of employment," including Plaintiff and other members of
13 the Classes, thereby exposing both Plaintiff and members of the Classes to a high risk of suffering
14 heat illness and jeopardizing their life, safety, and health.

15 125. Specifically, Defendants did not provide Plaintiff and members of the Classes with
16 any shade, even though Plaintiff and members of the Classes spent the duration of their shifts
17 outdoors.

18 126. Defendants' conduct as alleged herein violates California Code of Regulations, title
19 8, section 3395, and Labor Code section 6400 because in engaging in such conduct, Defendants
20 failed to furnish employment that was safe and healthful for Plaintiff and members of the Classes.
21 Plaintiff and the Classes are therefore entitled to compensation and penalties as provided by law.
22 Plaintiff seeks all available remedies for Defendants' violations including, but not limited to any
23 and all wages due, penalties, monies, interest, attorneys' fees, and costs to the extent permitted by
24 law.

25 **SIXTH CAUSE OF ACTION**

26 **Failure to Provide Potable Drinking Water**

27 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

28 127. Plaintiff hereby incorporates by reference each and every one of the allegations

1 contained in the preceding paragraphs as if the same were fully set forth herein.

2 128. Labor Code section 226.7 requires that employers provide rest periods that comply
3 with state laws, including those that require potable drinking water. Labor Code section 2441
4 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and
5 convenient times and places. California Code of Regulations, title 8, section 3395 requires the
6 provision of "potable drinking water meeting the requirements of §§1524, 3363, and 3457, as
7 applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and
8 provided to employees free of charge." California Code of Regulations, title 8, section 3457(c)
9 further requires the provision of potable drinking water and single use cups. Defendants did not
10 provide any potable drinking water as the water supplied was filthy and undrinkable.

11 129. Pursuant to section 2441, "Any violation of this section is punishable for each
12 offense by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or
13 by imprisonment for not more than 30 days, or by both the fine and imprisonment." Pursuant to
14 Labor Code section 6712, "any employer who fails to provide the facilities required by the field
15 sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars
16 (\$750) for each violation."

17 **SEVENTH CAUSE OF ACTION**

18 **Failure to Furnish Accurate Itemized Wage Statements and**

19 **Failure to Maintain Accurate Records**

20 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

21 130. Plaintiff hereby incorporates by reference each and every one of the allegations
22 contained in the preceding paragraphs as if the same were fully set forth herein.

23 131. Labor Code section 226(a) and the applicable IWC wage order requires employers
24 to furnish each employee with a statement itemizing, among other things, the total hours worked by
25 the employee, on a semi-monthly basis or at the time of each payment of wages.

26 132. Labor Code section 226(e) provides that if an employer fails to comply with
27 providing an employee with properly itemized wage statements as set forth in section 226(a), then
28 the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period

1 in which a violation occurs and \$100 per employee for each violation in a subsequent pay period,
2 not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates
3 section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation
4 in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which
5 the employer fails to provide the employee a wage statement or fails to keep the required records
6 pursuant to section 226(a).

7 133. Defendants knowingly and intentionally failed to furnish Plaintiff and the members
8 of the Classes with timely, itemized statements in compliance with Labor Code section 226(a) and
9 the applicable IWC Wage order. This is a result of failing to pay Plaintiff and members of the
10 Classes all wages, and meal and rest break premiums. Moreover, total hours are also incorrect
11 because Defendants would add sick pay hours to the total hours worked.

12 134. Plaintiff is informed and believes, and thereon alleges, that Defendants knowingly
13 and intentionally failed to furnish Plaintiff and members of the Classes with timely, itemized
14 statements showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all
15 applicable hourly rates in effect during each respective pay period and the corresponding number
16 of hours worked at each hourly rate by each respective individual.

17 135. Plaintiff is informed and believes, and thereon alleges, that Defendants did not
18 maintain accurate business records pertaining to the total hours worked for Defendants by Plaintiff
19 and the members of the Classes as required under Labor Code section 1174.5. This is a result of
20 missing hours worked, and missed meal and rest-break premiums, as illustrated above. Moreover,
21 "Al Pak Labor Inc." is named on Plaintiff's paystub as the employer, however, the details of
22 Plaintiff's wages show "Al Pak Labor Inc." and "A.S.A. Farms Inc." This makes it confusing for
23 Plaintiff and members of the Classes to identify which company is their actual employer.

24 136. As a result of not having kept accurate records, Plaintiff and the Class Members
25 suffered injuries in the form of confusion over whether they received all wages owed to them, and
26 difficulty and expense in reconstructing pay records in addition to other injuries which may come
27 to light during the discovery process.

28 137. Labor Code section 1198 provides that the maximum hours of work and the

1 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
2 applicable IWC wage order. Section 1198 further provides that “[t]he employment of any
3 employees for longer hours than those fixed by the order or under conditions of labor prohibited by
4 the order is unlawful.” Pursuant to the applicable IWC Wage order, employers are required to keep
5 accurate time records showing when the employee begins and ends each work period and meal
6 period.

7 138. During the relevant time period, Defendants failed, on a company-wide basis, to
8 keep accurate records of work and meal period start and stop times for Plaintiff and members of the
9 Classes, in violation of Labor Code section 1198.

10 139. Plaintiff and the members of the Classes herein seek damages and penalties pursuant
11 to Labor Code section 226(e) for Defendants’ violations of Labor Code section 226(a).

12 140. Plaintiff and Class Members also seek preliminary and permanent injunctive relief
13 and an award of reasonable attorneys’ fees and costs pursuant to Labor Code section 226(h).

14 **EIGHTH CAUSE OF ACTION**

15 **Failure to Timely Pay Wages During Employment**

16 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

17 141. Plaintiff hereby incorporates by reference each and every one of the allegations
18 contained in the preceding paragraphs as if the same were fully set forth herein.

19 142. California Labor Code section 205 requires that all “wages of workers employed by
20 a farm labor contractor shall be paid on payroll periods at least once every week on a business day
21 designated in advance by the farm labor contractor. Payment on such payday shall include all
22 wages earned up to and including the fourth day before such payday.”

23 143. During the class period, Defendants willfully failed to pay Plaintiff and members of
24 the Classes all wages due including, but not limited to, minimum wages, and/or meal and rest
25 period premiums, within the time periods specified by California Labor Code section 205.

26 144. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff
27 Class have been damaged in an amount according to proof at time of trial.

28 ///

1 **NINTH CAUSE OF ACTION**

2 **Waiting Time Penalties**

3 **(By Plaintiff and Members of the Terminated Sub Class Against All Defendants)**

4 145. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
5 forth herein.

6 146. At all times, relevant herein, Defendants were required to pay their employees all
7 wages owed in a timely fashion during and at the end of their employment, pursuant to Labor Code
8 section 201-203.

9 147. As a pattern and practice, Defendants regularly failed to pay Plaintiff and the
10 members of the Terminated Sub Class their final wages pursuant to Labor Code sections 201-203,
11 and accordingly owe waiting time penalties pursuant to Labor Code section 203.

12 148. Labor Code sections 201 and 202 provide that if an employer discharges an
13 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
14 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
15 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
16 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
17 entitled to his or her wages at the time of quitting.

18 149. On information and belief, Defendants has a company-wide practice or policy of
19 paying departing employees their final wages late, instead of adhering to the time requirements set
20 forth in Labor Code sections 201 and 202.

21 150. Specifically, Defendants willfully failed to pay Plaintiff and members of the
22 Terminated Sub Class the earned and unpaid wages set forth above, including but not limited to,
23 overtime wages, minimum wages, and/or meal rest period premiums, either at the time of
24 discharge, or within seventy-two (72) hours of their leaving Defendants' employ. Moreover,
25 Plaintiff and members of the Classes did not receive their final pay statements immediately
26 following the end of a season, but rather received their final pay on the next pay date.

27 151. Plaintiff and members of the Terminated Sub Class are entitled to recover civil
28 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 256.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

6
7
8
9
0
1
2
3
4
5
6
7
8

9
0
1
2
3
4
5
6
7
8

5
7
8

1 158. Plaintiff and members of the Classes are entitled to recover civil penalties,
2 attorney's fees, costs, and interest thereon.

3 **ELEVENTH CAUSE OF ACTION**

4 **Violation of Labor Code section 1695.7**

5 **(By Plaintiff and Members of the Putative Class Against**

6 **Defendants ASA, Braga Foods, Braga Farms, Braga Ranch, Valley Farm, and Sebastian)**

7 159. Plaintiffs re-allege and incorporate by reference each preceding paragraph of the
8 complaint as if fully alleged herein, and further allege as follows:

9 160. Pursuant to Labor Code section 1695.7(a)(3)(A), it is unlawful for a grower to enter
10 into a contract or agreement with a person acting in the capacity of a farm labor contractor who
11 fails to provide a copy of his or her license. A grower has an affirmative obligation to inspect the
12 license of any person contracted as a farm labor contractor and to verify with the California Labor
13 Commissioner that the license is valid.

14 161. On information and belief, Defendants ASA, Braga Foods, Braga Farms, Braga
15 Ranch, Valley Farm, and Sebastian contracted with Defendant Al Pak to supply workers to perform
16 agricultural work. On information and belief, Defendants ASA, Braga Foods, Braga Farms, Braga
17 Ranch, Valley Farm, and Sebastian entered into a contract or agreement with Defendant Al Pak,
18 who failed to provide a copy of their license because they did not have a valid license. As a result
19 of Defendants ASA, Braga Foods, Braga Farms, Braga Ranch, Valley Farm, and Sebastian willful
20 violation of Labor Code section 1695.7(a)(3)(A), Plaintiffs and members of the Classes are entitled
21 to bring claims against Defendants ASA, Braga Foods, Braga Farms, Braga Ranch, Valley Farm,
22 and Sebastian for claims arising from violations of California law committed by Defendant Al Pak.
23 Plaintiffs are also entitled to lost wages and injunctive relief prohibiting Defendants from
24 continuing to violate the law as well as attorneys' fees and costs pursuant to Labor Code section
25 1695.7(c)(4).

26 ///

27 ///

28 ///

1 **TWELFTH CAUSE OF ACTION**

2 **Violation of California**

3 **Business and Professions Code Section 17200 et seq.**

4 **(By Plaintiff and the Members of the Putative Class Against All Defendants)**

5 162. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
6 forth herein.

7 163. Business and Professions Code section 17200 defines unfair competition to include,
8 “unlawful, unfair or fraudulent business practices.”

9 164. Plaintiff and all proposed Class Members are “persons within the meaning of
10 Business and Professions Code section 17204, who have suffered injury in fact and have lost
11 money or property as a result of Defendants’ unfair competition.

12 165. Defendants has been committing, and continues to commit, acts of unfair
13 competition by engaging in the unlawful, unfair and fraudulent business practices and acts
14 described in this Complaint, including, but not limited to:

- 15 a) violations of Labor Code sections 510, 1198;
16 b) violations of Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198;
17 c) violations of Labor Code sections 226.7, 512, 516, and 1198;
18 d) violations of Labor Code sections 226, 1174;
19 e) violations of Labor Code sections 201-203;
20 f) violations of Labor Code sections 205;
21 g) violations of Labor Code section 223;
22 h) violations of Labor Code section 1695.7;
23 i) violations of Labor Code section 1198;
24 j) violations of Labor Code section 2802;
25 k) violations of Labor Code sections 6300-6400;
26 l) violations of Labor Code section 6720;
27 m) violations of the applicable wage order and California Code of Regulations, title 8,
28 sections 3395, 3457;

166. As a result of its unlawful, unfair, and/or fraudulent business acts and practices, Defendants has reaped and continues to reap unfair benefits and illegal profits at the expense of Plaintiff and proposed Class Members. Defendants' unlawful, unfair, and/or fraudulent conduct has also enabled Defendants to gain an unfair competitive advantage over law-abiding employers and competitors.

167. Business and Professions Code section 17203 provides that the Court may restore to an aggrieved party any money or property acquired by means of the unlawful, unfair, and/or fraudulent business acts or practices.

168. Plaintiff seeks a court order enjoining Defendants from the unlawful, unfair, and/or fraudulent activity alleged herein.

169. Pursuant to Civil Code section 3287(a), Plaintiff and other members of the Plaintiff Class are entitled to recover pre-judgment interest on wages earned, but not paid.

170. Plaintiff further seeks an order requiring an audit and accounting of the payroll records to determine the amount of restitution of all unpaid wages owed to himself and members of the proposed Plaintiff Class, according to proof, as well as a determination of the amount of funds to be paid to current and former employees that can be identified and located pursuant to a court order and supervision.

171. Plaintiff seeks restitution for himself and all others similarly situated of these amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Code of Civil Procedure section 1021.5.

THIRTEENTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE §§ 2698, et seq. (PAGA)

(Against Defendants on behalf of Plaintiff and the Members of the Plaintiff Class)

172. Plaintiff incorporates all preceding paragraphs as though fully set for herein.

173. PAGA permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in California *Labor Code* §2699.5.

174. PAGA provides as follows: “[n]otwithstanding any other provision of law, a Plaintiff may as a matter of right amend an existing complaint to add a cause of action arising

1 under this part at any time within 60 days of the time periods specified in this part.”

2 175. Defendants’ conduct, as alleged herein, violates numerous sections of the California
3 *Labor Code* including, but not limited to, the following:

- 4 a. Failed to pay Employee and aggrieved employees for all overtime (Lab. Code, §§
5 510, 1198);
- 6 b. Failed to pay Employee and aggrieved employees for all hours worked (Lab. Code,
7 §§ 1182, 1194, 1197, 1198)
- 8 c. Failed to provide Employee and aggrieved employees with compliant meal periods
9 (Lab. Code, §§ 226.7, 512);
- 10 d. Failed to provide Employees and aggrieved employees with compliant rest periods
11 (Lab. Code, §§ 226.7, 512);
- 12 e. Failed to provide Employee and aggrieved employees with proper shade (Lab.
13 Code, §§ 226.7, 6300, 6310, 6400);
- 14 f. Failed to provide Employee and aggrieved employees with potable drinking water
15 (Lab. Code, §§ 226.7, 1198);
- 16 g. Failed to provide Employees and aggrieved employees with accurate, itemized wage
17 statements (Lab. Code, § 226(a));
- 18 h. Failed to timely pay Employees and aggrieved employees all wages during
19 employment (Lab. Code, § 204);
- 20 i. Failed to timely pay Employees and aggrieved employees all final wages in a timely
21 manner (Labor Code, §§ 201-203);
- 22 j. Violated Labor Code section 1695.7;
- 23 k. Failed to reimburse all business expenses (Lab. Code § 2802).

24 176. Defendants, at all times relevant to this complaint, were employers or persons acting
25 on behalf of an employer(s) who violated Plaintiff and other aggrieved employees’ rights by
26 violating various sections of the California *Labor Code* and applicable order of the IWC.
27 Accordingly, Plaintiff seeks the remedies set forth in California *Labor Code* for himself, the State
28 of California, and all other aggrieved employees.

1 177. Pursuant to PAGA, and in particular California *Labor Code* §§ 2699(a), 2699.3, and
2 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and
3 collection of unpaid wages and civil penalties for Plaintiff, all other aggrieved employees, and the
4 State of California against Defendants, in addition to other remedies, for violations of California
5 *Labor Code* Sections 200, 201, 202, 203, 226(a), 510, 512, 1174, 1194, and, 1198.

6 178. California *Labor Code* § 1198 makes it illegal to employ an employee under
7 conditions of labor that are prohibited by the applicable wage order. California *Labor Code* § 1198
8 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard
9 conditions of labor for employees. The employment of any employee . . . under conditions of labor
10 prohibited by the order is unlawful.”

11 179. Plaintiff has complied with the procedures for bringing suit specified in California
12 *Labor Code* § 2699.3 and SB 836. By letter dated March 11, 2022, Plaintiff, on behalf of himself
13 and the other aggrieved employees, pursuant to California *Labor Code* § 2699.3 and SB 836, gave
14 written notice by electronic submission to the Labor and Workforce Development Agency
15 (“LWDA”) and certified mail to Defendant of the specific provisions of the California Labor Code
16 alleged to have been violated, including the facts and theories to support the alleged violations.

17 180. More than sixty-five (65) days have passed since the March 11, 2022 Notice to the
18 LWDA and no response has been received.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, and the Class Members pray for judgment as follows:

- 21 1. For an order certifying the proposed Plaintiff and Terminated Sub-Class;
- 22 2. For an order that counsel for Plaintiff be appointed class counsel
- 23 3. Certification of this class action on behalf of the proposed Plaintiff and Terminated
24 Sub-Class;
- 25 4. Designation of Plaintiff as the class representative of the Plaintiff and Terminated
26 Sub Class;
- 27 5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class
28 and disgorgement of all profits from the unlawful business practices of Defendants

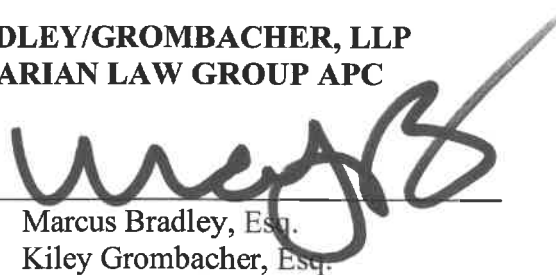
6. Prejudgment and post judgment interest on all sums awarded;
7. For compensatory damages;
8. For penalties pursuant to Labor Code sections 2699, 200, 226, 226.7, 226.3, 226.7, 1695.7, 2441;
9. For interest accrued to date;
10. For costs of suit and expenses incurred herein pursuant to Labor Code sections 2699 (g) (1) 226 and 1194;
11. For reasonable attorneys' fees pursuant to Labor Code section 2699 (g) (1), 226 and Code of Civil Procedure section 1021.5, and/or other applicable law; and
12. A declaratory judgment that Defendants have knowingly and intentionally violated the following provisions of law;
 - a. Labor Code sections 510, 1198 for failing to pay overtime;
 - b. Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198 for failing to pay all wages;
 - c. Labor Code sections 226.7, 512, 516, and 1198 for failing to provide compliant meal and rest breaks;
 - d. Labor Code sections 226, 1174 for failing to provide compliant wage statements;
 - e. Labor Code sections 201 and 202 for failing to pay wages at termination;
 - f. Labor Code sections 205 for failing to pay wages timely during employment;
 - g. Labor Code sections 226.7 for failing to provide shade;
 - h. Labor Code sections 226.7 and 1198 for failing to provide potable drinking water;
 - i. Labor Code section 6300-6400 for maintaining an unsafe workplace;
 - j. Labor Code section 1695.7;
 - k. Labor Code section 2802 for failing to reimburse business expenses;

1 1. Business & Professions Code sections 17200-08 for violating the
2 provisions set forth herein above.

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

4
5 DATED: June 28, 2022

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

6
7 By: 

Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Sahag Majarian, Esq.
Garen Majarian, Esq.

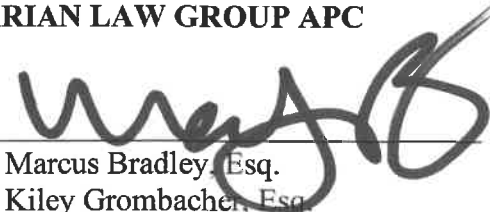
Attorneys for Plaintiff and others similarly
situated

11
12
13
14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands trial of Plaintiff's and the members of the Classes' claims by jury
16 to the extent authorized by law.

17
18 DATED: June 28, 2022

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

19
20 By: 

Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Sahag Majarian, Esq.
Garen Majarian, Esq.

Attorneys for Plaintiff and other similarly
situated

PROOF OF SERVICE

STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address 31365 Oak Crest Drive Suite 240, Westlake Village, CA 91361.

On June 28, 2022, I served the foregoing documents described

1) FIRST AMENDED COMPLAINT

on all interested parties in this action as follows: **SEE ATTACHED SERVICE LIST**

☐ **(VIA US MAIL)** I caused such envelope(s) to be deposited in the mail at Westlake Village, California with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the 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 one day after date of deposit for mailing in affidavit.

☐ **(VIA FEDERAL EXPRESS)** I caused to have served such document(s) by depositing them in the drop box at Westlake Village, California, for priority overnight next day delivery.

☐ **(VIA FACSIMILE)** I caused such document to be faxed to the persons identified with fax numbers on the attached Mailing List.

☐ **(VIA PERSONAL SERVICE)** I delivered such envelope(s) by hand to the offices of the addressee.

☐ **(BY ELECTRONIC SERVICE)** I served the aforementioned document(s) by electronic mail to the parties' email addresses as they are known to me. My email address is mvalle@bradleygrombacher.com. Said document(s) were served by email on April 6, 2022. The names and email addresses of the persons served are set forth in the service list. I did not receive, under a reasonable period of time, any indication that the email did not go through.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed June 28, 2022, at Westlake Village, California.


Maria Valle-Lomeli

Suarez v. Al Pak Labor, Inc.
Monterey Superior Court Case No. 22CV000704

Mailing List

FISHER & PHILLIPS LLP

Rebecca Hause-Schultz, Esq.

Alden Parker, Esq.

621 Capitol Mall, Suite 1400

Sacramento, CA 95814

Telephone: (916) 210-0400

Facsimile: (916) 210-0401

Email:

rhause-schultz@fisherphillips.com

aparker@fisherphillips.com

canton@fisherphillips.com

Attorney for Defendants

AL PAK LABOR, INC., ASA FARMS
INCORPORATED, BRAGA FRESH
FOODS, LLC, BRAGA FRESH FAMILY
FARMS, INC., BRAGA RANCH, INC.,
VALLEY FARM APPLICATIONS, and
SEBASTIAN HARVESTING,