



BOKHOUR LAW GROUP, P.C.
Mehrddad Bokhour, Esq., CA Bar No. 285256
mehrdad@bokhourlaw.com
Anwar D. Burton, Esq., CA Bar No. 253504
anwar@bokhourlaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

FALAKASSA LAW, P.C.
Joshua S. Falakassa, CA Bar No. 295045
josh@falakassalaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

Attorneys for Plaintiff and the Putative Classes

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

AUSTIN PANKRATZ, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

APRICOT LANE FARMS OPERATIONS,
LLC, a California Limited Liability Company;
and DOES 1-50, inclusive.

Defendants.

CASE NO.: 56-2022-00565252-CU-OE-VTA

**FIRST AMENDED CLASS ACTION AND
PAGA COMPLAINT:**

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) MEAL PERIOD VIOLATIONS;
- (4) REST PERIOD VIOLATIONS;
- (5) WAGE STATEMENT VIOLATIONS;
- (6) WAITING TIME PENALTIES;
- (7) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES;
- (8) UNFAIR COMPETITION;
- (9) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Austin Pankratz ("Plaintiff") on behalf of himself, the State of California, and all
2 other similarly situated non-exempt employees, alleges and complains of defendant Apricot Lane
3 Farms Operations, LLC, and DOES 1 to 50 (collectively, "Defendants") and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant Apricot Lane Farms Operations, LLC, operates a 214-acre farm located in
6 Moorpark, California. Plaintiff brings this class and PAGA representative action against Defendant
7 for alleged violations of the California Labor Code and Business and Professions Code.

8 2. As set forth below, Plaintiff alleges that Defendants failed to pay for all hours worked
9 as a result of an unlawful rounding policy/practice that resulted in Plaintiff and other similarly situated
10 employees not being paid for all hours worked. Plaintiff further alleges that Defendants' meal and
11 rest period policies and practices did not provide him and all other similarly situated employees with
12 all compliant and timely meal and rest periods, or premium wages in lieu thereof. As a result, Plaintiff
13 alleges that Defendants failed to provide non-exempt employees with accurate written itemized wage
14 statements and failed to timely pay all final wages upon separation of employment. Finally, Plaintiff
15 alleges that Defendants failed to reimburse all necessary business expenses, including but not limited
16 to a reasonable percentage of their monthly cellular phone bills. Based on these alleged Labor Code
17 violations, Plaintiff now brings this class action to recover unpaid wages, restitution, penalties, and
18 other related relief on behalf of himself and all others similarly situated.

19 3. Plaintiff further alleges that Defendants' meal and rest period policies and practices did
20 not provide him and all other similarly situated employees with all compliant/timely meal and rest
21 periods, or premium wages in lieu thereof. Additionally, Plaintiff alleges that Defendants failed to
22 provide non-exempt employees with accurate written itemized wage statements and failed to timely
23 pay all final wages upon separation of employment.

24 4. Finally, Plaintiff alleges that Defendants failed to reimburse all necessary business
25 expenses, including but not limited to a reasonable percentage of their monthly cellular phone bills.

26 5. Based on these alleged Labor Code violations, Plaintiff now brings this class and
27 PAGA representative action to recover unpaid wages, restitution, penalties, and other related relief
28 on behalf of himself and all others similarly situated.

1 **JURISDICTION AND VENUE**

2 6. Plaintiff, on behalf of himself and all others similarly situated employees hereby brings
3 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
4 203, 204, 210, 226, 226a, 226(e), 226.3, 226.7 510, 512, 516, 1194, 1197.1, 1199, 2800-2802, 2698,
5 *et seq.*, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to
6 seeking declaratory relief and restitution pursuant to California Business and Professions Code §
7 17200, *et. seq.* This class action is brought pursuant to California Code of Civil Procedure § 382.

8 7. This Court has jurisdiction over Defendants’ violations of the California Labor Code
9 and applicable Wage Orders because the amount in controversy exceeds this Court’s jurisdictional
10 minimum.

11 8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
12 §§ 395(a) and 395.5, Defendants own, maintain offices, transact business, have an agent or agents in
13 Moorpark within the County of Ventura, and/or otherwise are found within the County of Ventura,
14 and Defendants are within the jurisdiction of this Court for purposes of service of process.

15 **PARTIES**

16 9. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a
17 California resident residing in the State of California. Defendants employed Plaintiff as a non-exempt
18 employee in Moorpark, California in the County of Ventura.

19 10. Plaintiff is informed and believes and thereon alleges that defendant Apricot Lane
20 Farms Operations, LLC is a California Limited Liability Company authorized to and doing business
21 in Moorpark, California, and is and/or was the legal employer of Plaintiff and the Class Members
22 during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants’ policies and/or
23 practices complained of herein and has been deprived of the rights guaranteed to him by California
24 Labor Code §§ 201-203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 516, 1194, 1197.1,
25 1199, 2800-2802 and the California Business and Professions Code § 17200 *et seq.*, and applicable
26 Wage Orders.

27 11. Plaintiff is informed and believes, and based thereon alleges, that during the four years
28 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to

1 do) business in the State of California, County of Ventura.

2 12. Plaintiff does not know the true names or capacities, whether individual, partner, or
3 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
4 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
5 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
6 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
7 corporate, were responsible in some manner for the acts and omissions alleged herein, and
8 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
9 alleged herein.

10 13. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
11 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
12 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
13 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
14 them, were the agents, servants, and employees of each and every one of the other Defendants, as
15 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
16 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
17 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

18 14. At all times mentioned herein, Defendants, and each of them, were members of and
19 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
20 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
21 alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the
22 Classes.

23 **COMMON FACTUAL ALLEGATIONS**

24 15. Defendants operate a 214 acre farm located in Moorpark, California, and grows fruit
25 and nut trees, vegetables, and raise cows, sheep, pigs, and various other livestock. Plaintiff worked
26 for Defendants as a landscaper from April 2021 until his termination on or about March 16, 2022.
27 Plaintiff and the other non-exempt employees (including but not limited to landscapers, pickers,
28 orchard workers, drivers, packhouse team members, and other non-exempt positions) were

1 responsible for all aspects of Apricot Lane Farm's operations in California.

2 16. First, at all relevant times, Defendants has had a uniform payroll practice/policy of
3 rounding/shaving Plaintiff and other non-exempt employees' time entries. Defendants'
4 rounding/shaving practice/policy is not fair or neutral on its face or in application, as over a period of
5 time, non-exempt employees are not compensated for all the hours that they work and all of the
6 overtime hours they work in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and
7 applicable Wage Orders.

8 17. California courts have held that "rounding time policies can be lawful, "if the rounding
9 policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a
10 period of time, in failure to compensate the employees properly for all the time they have actually
11 worked." *See's Candy Shops v. Superior Court* (2012) 210 Cal. App. 4th 889, 907; See also 29 C.F.R.
12 § 785.48; see also DLSE Manual, *supra*, §§ 47.1, 47.2.

13 18. Here, Defendants' rounding time policy is not neutral on its face or in its application
14 as Plaintiff and other non-exempt employees are subject to discipline, including termination for being
15 tardy in reporting to work. Thus, Plaintiff and other non-exempt employees were consistently
16 reported to work on time or early, but the time rounding practice resulted in non-exempt employees
17 not being paid for all hours actually worked. Indeed, because Defendants is capable of tracking the
18 exact time worked by non-exempt employees to the minute, the policy itself exists not for the
19 convenience or benefit of the employees who are reporting their time accurately on timecards or
20 otherwise, but for Defendants' benefit.

21 19. In addition, at all relevant times, Defendants have a uniform policy/practice that
22 automatically deducts 30 minutes for meal periods, regardless of whether a 30-minute meal period
23 was actually taken. Indeed, non-exempt employees' meal periods were often cut short, and lasted
24 fewer than 30 minutes. As a result of this auto deduct practice, over a period of time, Plaintiff and
25 other non-exempt employees were also not properly paid for all hours worked, including overtime
26 hours, in violation of Labor Code §§ 204, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

27 20. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
28 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of

1 wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed,
2 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
3 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
4 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
5 underpaid regardless of whether the initial violation is intentionally committed.

6 21. Labor Code § 510 requires an employer to compensate an employee who works more
7 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
8 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
9 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
10 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
11 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
12 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
13 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
14 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

15 22. As set forth above, Defendants failed to compensate Plaintiff and other non-exempt
16 employees for all hours worked, including all minimum and overtime wages, due to its unlawful time
17 rounding practice and policy of automatically deducting 30 minutes for meal periods. Accordingly,
18 and to the extent permitted by law Plaintiff and other non-exempt employees are entitled to recover
19 liquidated damages for violations of Labor Code §§ 204, 510, 1194, 1197.1, 1199.

20 23. Next, at all relevant times, Defendants often failed to provide Plaintiff and other non-
21 exempt employees with timely and compliant meal periods of exactly thirty (30) minutes before the
22 end of the fifth (5th) hour of work, and second meal period before the end of the tenth (10th) hour of
23 work due to Defendants' uniform meal period policies/practices and work demands.

24 24. Making matters worse, Defendants have a uniform payroll policy/practice that
25 automatically deducts 30-minutes for meal periods from Plaintiff and other non-exempt employees'
26 time entries, notwithstanding the fact that they were not on all occasions provided with compliant,
27 timely and uninterrupted 30-minute meal periods. Courts have long recognized that this meal period
28 deduction issue is certifiable (and thus, manageable):

1 The ultimate underlying factual issue is the existence of the thirty-minute auto-
2 deduct. If class members were not paid for time they actually worked, then
3 Defendant is liable. And there is no question that Defendant deducted thirty minutes
4 per day regardless of whether a break was taken. *Dilts v. Penske Logistics, LLC*,
5 267 F.R.D. 625, 635 (S.D. Cal. 2010); see *Booher v. Poma Cos.*, 2014 Cal. App.
6 Unpub. LEXIS 4524, *25 (Cal. App. 4th Dist. June 26, 2014) (reversing denial of
7 certification of automatic meal period deduction issue).

8 25. Here, Defendants’ practices violate the plain language of the applicable Wage Order
9 and the Labor Code because its policy “places the burden for keeping accurate time records on the
10 employee. Without some diligence on the part of the employer to enforce, monitor or audit whether
11 lunches are in fact taken, the auto-deduct will inevitably lead to days where time actually worked
12 exceeds time that the employer pays in wages.” *Dilts*, 267 F.R.D. at 637. Thus, the validity of
13 Plaintiff’s theory of liability can and should be determined very easily.

14 26. Moreover, in the recent California Supreme Court case *Donohue v. AMN Services, LLC*
15 (2021) 11 Cal.5th 58, the employer’s time-capturing policy rounded time punches to the nearest 10-
16 minute increment, resulting in meal periods that were as short as 22 minutes being rounded up to 30
17 minutes. Although the plaintiff conceded the rounding policy overcompensated the class as a whole,
18 she argued the policy failed to provide full payment for potential meal period violations because the
19 time-keeping software overlooked non-compliant meal periods because of the rounding policy. The
20 California Supreme Court found that employers cannot round time punches for meal periods. Keeping
21 with its respect for the purpose of the Wage Orders, the court noted that rounding potentially conflicts
22 with the precise time requirement because the time keeping inherent to the practice infringes on an
23 employee’s right to a full 30-minute meal period. The court held even a “minor infringement” of
24 Wage Order requirements, such as a meal period of 28 or 29 minutes, triggers an employer’s premium
25 pay obligations.

26 27. As a result, the court found when time records show non-compliant meal periods, a
27 rebuttable presumption of liability attaches. Affirming its holding in *Brinker Restaurant Corp. v.*
28 *Superior Court*, 53 Cal.4th 1004 (2012), the court stated that an employer needs to “ensure that it
provides the employee with bona fide relief from duty and that this is accurately reflected in the
employer’s time records.” The Court adopted the rebuttable presumption discussed by Justice
Werdegart in her concurring opinion in *Brinker*. Under this presumption, “[i]f an employer’s records

1 show no meal period for a given shift over five hours, a rebuttable presumption arises that the
2 employee was not relieved of duty and no meal period was provided.” Id. at 21–22. The Court further
3 explained that this presumption applies not only to records showing “missed meal periods” but also
4 when records show “short and delayed meal periods.” Id. at 24. And “the presumption goes to the
5 question of liability and applies at the summary judgment stage, not just at the class certification
6 stage.” *Id.*

7 28. Each time Plaintiff and other non-exempt employees were unable to take a compliant
8 meal period, Defendants failed and continues to fail to adequately pay meal period premium payments
9 at the regular rate of pay as required by Labor Code § 226.7 and *Ferra v Lowe’s Hollywood Hotel,*
10 *LLC (“Ferra”).*

11 29. Labor Code § 512 requires employers to provide employees with a thirty (30) minute
12 uninterrupted and duty-free meal period within the first five hours of work. An employee who works
13 more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and
14 duty-free meal period. *Brinker Rest. Corp. v. Superior Court*, (2012) 53 Cal. 4th 1004, 1042
15 (“Accordingly, first meal periods must start after no more than five hours.”); see also *Munoz v.*
16 *Giumarra Vineyards Corp.*, 2015 WL 5350563 at *3 (E.D. Cal. Sept. 11, 2015) (holding that meal
17 periods must be taken within the first five hours of work).

18 30. Labor Code § 226.7 provides “an employer shall not require an employee to work
19 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
20 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). See *Brinker Restaurant*
21 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1016-1017 (“[T]he wage order’s meal period
22 requirement is satisfied if the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave
23 the premises, and (3) is relieved of all duty for the entire period. . .The employer satisfies the [meal
24 period] obligation if it relieves its employees of all duty, relinquishes control over their activities and
25 permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede
26 or discourage them from doing so”).

27 31. Pursuant to Labor Code § 226.7 and the applicable Wage Orders, each failure to
28 provide a compliant off-duty meal period entitles Plaintiff and non-exempt employees to receive an

1 additional compensation premium equal to one hour of pay at the regular rate of pay. As a result of
2 Defendants' meal period policies and payroll practices, Plaintiff seeks to recover on behalf of himself
3 and all non-exempt employees, meal period premiums and penalties. Consequently, Defendants has
4 violated Labor Code §§ 226.7, 512 and applicable Wage Orders.

5 32. Next, at all relevant times, Plaintiff and other non-exempt employees were also not
6 provided with all 10-minute rest periods for every four hours worked, or major fraction thereof due
7 to the uniform rest period policies/practices and work demands of Defendants. As a result, Plaintiff
8 and other non-exempt employees were and are routinely unable to take a net 10-minute duty free rest
9 periods for every major fraction of four hours worked. This includes a second rest period for shifts in
10 excess of six hours, and a third rest period for shifts in excess of 10 hours in a workday.

11 33. By not relieving all non-exempt employees of all duties during rest periods, Defendants
12 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
13 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all
14 duties and relinquish control over how employees spend their time.”]. In *Augustus*, the California
15 Supreme Court expressly rejected the employers' assertion that it could provide an on-duty rest period
16 to employees who worked as security guards and further explained “that employers [must] relinquish
17 any control over how employees spend their break time and relieve their employees of all duties.” *Id.*
18 at 273.

19 34. Each time Plaintiff and other non-exempt employees were unable to take a compliant
20 rest period, Defendants failed and continue to fail to adequately pay rest period premium payments
21 at the “regular rate of pay” as required by Labor Code § 226.7. Accordingly, due to Defendants'
22 uniform rest period policies/practices, Plaintiff and other non-exempt employees were also regularly
23 denied legally compliant rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage
24 Orders.

25 35. As a result of Defendants' failure to provide Plaintiff and other non-exempt employees
26 with all minimum and overtime wages, meal and rest periods or compensation at their “regular rate of
27 pay” in lieu thereof, Defendants intentionally failed and continues to fail to furnish non-exempt
28 employees with itemized wage statements that accurately reflect the correct amount of gross wages

1 earned, net wages earned, or the applicable hourly rates in effect during the pay period and premium
2 wages due for missed meal and rest periods as required by Labor Code § 226(a)(1)(2)(5)(9).
3 Consequently, because Defendants failed to comply with Labor Code § 226(a) and applicable Wage
4 Orders, Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor
5 Code §§ 226(e).

6 36. Due to Defendants' failure to pay all minimum and overtime wages, their failure to pay
7 all meal and rest period premiums at the "regular rate of pay", Defendants also failed and continue to
8 fail to pay non-exempt employees all wages owed at their time of separation from employment in
9 violation of Labor Code §§ 201-203. Thus, non-exempt employees would be entitled to recover
10 penalties under Labor Code §§ 201-203, and 256.

11 37. Finally, at all relevant times, Defendants required Plaintiff and other non-exempt
12 employees to incur necessary business expenses including but not limited to, costs associated with
13 personal cell phones for work related purposes, and other business expenses but did not reimburse
14 non-exempt employees for these necessary expenditures. See *Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 "[i]f an employee is required to make work-related calls
15 on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It
16 does not matter whether the phone bill is paid for by a third person, or at all...it is irrelevant whether
17 the employee changed plans to accommodate work-related cell phone usage...To show liability under
18 section 2802, an employee need only show that he or she was required to use a personal cell phone
19 to make work-related calls, and he or she was not reimbursed"]. Defendants' uniform failure to
20 reimburse Plaintiff and other non-exempt employees for their on-going business expenses incurred
21 in their discharge of their duties continues through the present day. Indeed, any form of
22 reimbursement is absent from Plaintiff's wage statements during his employment. Since Defendants
23 failed to and continue to fail to reimburse Plaintiff and other non-exempt employees for necessary
24 business expenses, they are in violation of Labor Code § 2802-2804.
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26 **CLASS ACTION ALLEGATIONS**

27 38. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
28 § 382 of the Code of Civil Procedure:

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All non-exempt employees who work or worked for Defendants in California, during the four years immediately preceding the filing of the Complaint through the date of trial. (“Class”);

All non-exempt employees who worked for Defendants in California and who worked overtime hours during at least one shift, during the four years immediately preceding the filing of the Complaint through the date of trial. (“Overtime Subclass”);

All employees who work or worked for Defendants in California, during the one year immediately preceding the filing of the Complaint through the date of trial. (“Wage Statement Subclass”)

All employees who work or worked for Defendants in California, and who left their employ during the three years immediately preceding the filing of the Complaint through the date of trial. (“Waiting Time Penalty Subclass”)

(collectively “the Classes”)

39. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants’ employment and payroll records.

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

1. Whether Defendants’ rounding and meal period auto deduction policy/practice resulted in a failure to pay for all hours worked to the members of the Class;
2. Whether Defendants provided legally compliant meal and rest periods or proper compensation in lieu thereof to members of the Class;
3. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Subclass pursuant to Labor Code § 226(a); and
4. Whether the timing and amount of payment of final wages to members of the Waiting Time Penalty Subclass at the time of separation from employment were unlawful; and

1 5. Whether Defendants reimbursed all necessary business expenses, including but not
2 limited to a reasonable percentage of non-exempt employees monthly cellular phone bills.

3 41. **Predominance of Common Questions:** Common questions of law and fact
4 predominate over questions that affect only individual members of the Classes. The common
5 questions of law set forth above are numerous and substantial and stem from Defendants' policies
6 and/or practices applicable to each individual class member, such as Defendants' rounding/time-
7 shaving policy/practice and Defendants' policy/practice of automatically deducting 30 minutes for
8 meal periods, Defendants' uniform policy of failing to provide all compliant meal and rest periods or
9 adequate compensation at the "regular rate of pay" in lieu thereof, Defendants' resulting failure to
10 provide accurate itemized wage statements, and to pay for all wages due upon separation of
11 employment. As well as Defendants' failure to reimburse all necessary business expenses. As such,
12 the common questions predominate over individual questions concerning each individual class
13 member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

14 42. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
15 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
16 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
17 Plaintiff, like the members of the Classes was deprived of minimum and overtime wages, was
18 deprived of meal and rest period premium wages, was subject to Defendants' uniform meal and rest
19 period policies/practices, was not reimbursed all necessary business expenses, was not provided
20 accurate itemized wage statements, and was not timely paid all wages owed upon separation of
21 employment.

22 43. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
23 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
24 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
25 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
26 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
27 members of the Classes.

FIRST CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

13

1 47. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
2 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts
3 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
4 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
5 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to
6 the unpaid wages and interest accrued thereon.

7 48. At all relevant times herein, Defendants failed to conform their pay practices to the
8 requirements of the law. This unlawful conduct includes but is not limited to Defendants' rounding
9 policy/practice, and Defendants' policy/practice of automatically deducting 30 minutes for meal
10 periods, both of which resulted in these individuals not being paid for all hours actually worked.
11 Accordingly, Plaintiff and members of the Classes were not compensated for all hours worked
12 including, but not limited to, all hours they were subject to the control of Defendants and/or suffered
13 or permitted to work under the California Labor Code and applicable Wage Orders.

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

19 50. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
20 Plaintiff and the Classes have sustained economic damages, including but not limited to unpaid wages
21 and lost interest, in an amount to be established at trial, and they are entitled to recover economic and
22 statutory damages and penalties and other appropriate relief as a result of Defendants' violations of
23 the California Labor Code and applicable Wage Orders.

24 51. Defendants' practice and uniform administration of corporate policy regarding illegal
25 employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members
26 of the Classes in a civil action for the unpaid amount of minimum wages, liquidated damages,
27 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
28 Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

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SECOND CAUSE OF ACTION
FAILURE TO PAY ALL OVERTIME WAGES
(AGAINST ALL DEFENDANTS)

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

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

54. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Classes for all overtime hours worked pursuant to California Labor Code § 1194 and the applicable Wage Orders.

55. Section 3 of the applicable Wage Order requires an employer to pay an employee “one and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours of work in the workweek. The same section also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate Plaintiff or members of the Classes at one and one-half times their regular rate of pay for such hours.

56. Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to 1) Defendants’ rounding/time-shaving policy/practice, and Defendants’ policy/practice of automatically deducting 30 minutes for meal periods, both of which both of which resulted in Plaintiff and the Classes not being paid all overtime wages owed.

57. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the members of the Classes in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, attorney’s fees, and costs of suit according to Labor Code §§ 204, 210. 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

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THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

59. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff and members of the Class, with all required meal periods in accordance with the mandates of the California Labor Code and applicable Wage Orders, for the reasons set forth in the Common Allegations section of this Complaint. Despite Defendants’ violations, Defendants have not paid an additional hour of pay at the “regular rate of pay” to Plaintiff and members of the Class at their respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

60. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

62. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

63. Due to their unlawful rest period policy and practices, Defendants did not authorize and permit Plaintiff and members of the Class to take all rest periods to which they were legally entitled. Despite Defendants’ violations, Defendants have not paid an additional hour of pay at the “regular rate of pay” to Plaintiff and members of the Classes at their respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

64. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Classes in a civil action for the unpaid amount of rest period premiums owing, including interest

thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(AGAINST ALL DEFENDANTS)**

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

66. Labor Code 226(a) states in pertinent part the following:

“(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. . .”

67. As set forth above, during the Class Period, Defendants issued and continue to issue wage statements to its employees including Plaintiff and members of the Wage Statement Subclass, which are inadequate under Labor Code Section 226(a).

68. As a result of Defendants failure to pay Plaintiff and the Wage Statement Subclass for all regular and overtime wages, and missed meal and rest period premiums at the appropriate legal rate, Defendants failed to include required information on Plaintiff and the Wage Statement Subclass’ wage statements, including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226(a)(1,2,5,9).

69. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing

1 and intentional.

2 70. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff
3 and members of the Wage Statement Subclass in violation of section 226(a) of the California
4 Labor Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an
5 initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate
6 penalty of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from
7 Defendants pursuant to Labor Code section 226(e), costs and reasonable attorneys' fees.

8 **SIXTH CAUSE OF ACTION**

9 **WAITING TIME PENALTIES**

10 **(AGAINST ALL DEFENDANTS)**

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

12 72. The actionable period for this cause of action is three years prior to the filing of this
13 Complaint through the present, and on-going until the violation is corrected or the class is certified.

14 73. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing
15 to Plaintiff and the Waiting Time Subclass during the actionable period for this cause of action at or
16 around the time that their employment is or was terminated or ended.

17 74. Labor Code § 203 provides that if an employer willfully fails to pay compensation
18 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the
19 employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

20 75. Defendants willfully failed to pay the Waiting Time Subclass for all hours worked,
21 including all minimum and overtime wages, and their meal and rest period premiums at the "regular
22 rate of pay", prior to or upon termination or separation from employment with Defendants as required
23 by Labor Code §§ 201 and 202.

24 76. As a result, Defendants are liable to the Waiting Time Subclass for waiting time
25 penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time Subclass pursuant
26 to Labor Code § 203. *See, e.g.,* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon
27 termination entitles an employee to recover waiting time penalties).

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

3 **(AGAINST ALL DEFENDANTS)**

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

5 78. Labor Code § 2802(a) states in pertinent part the following:

6 “(a) An employer shall indemnify his or her employee for all necessary
7 expenditures or losses incurred by the employee in direct consequence of
8 the discharge of his or her duties, or of his or her obedience to the directions
9 of the employer, even though unlawful, unless the employee, at the time of
obeying the directions, believed them to be unlawful.”

10 79. As set forth above, Plaintiff and members of the Classes must be compensated for all
11 necessary business expenditures, including, but not limited to, a reasonable portion of their monthly
12 personal cell phone bills necessarily incurred in their discharge of their duties. (See *Cochran v.*
13 *Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when employees must use
14 their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to
15 reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited
16 minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”); *Aguilar v.*
17 *Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. 2014) (granting Plaintiff’s motion for partial summary
18 judgment on Plaintiff’s cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014
19 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement claim and
20 adopting the logic of *Cochran*).

21 80. At all relevant times, by failing to reimburse Plaintiff and the Class for all necessary
22 business expenditures, Defendants have failed to comply with Labor Code Section 2802 and the
23 applicable Wage Orders.

24 **EIGHTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION**

26 **(AGAINST ALL DEFENDANTS)**

27 81. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 82. Defendants have engaged and continue to engage in unfair and/or unlawful business

1 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
2 failing to pay for all hours worked including minimum and overtime wages, by failing to provide all
3 legally required meal and rest periods or pay premium payments at the regular rate of pay in lieu
4 thereof, by failing to reimburse necessary business expenses, by failing to provide accurate wage
5 statements, and by failing to pay all earned wages at the time of separation from employment.

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

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

15 85. The acts complained of herein occurred within the last four years immediately
16 preceding the filing of the Complaint in this action.

17 86. Plaintiff was compelled to retain the services of counsel to file this court action to
18 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
19 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
20 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
21 he is entitled to recover under Code of Civil Procedure § 1021.5.

22 **NINTH CAUSE OF ACTION**

23 **PRIVATE ATTORNEYS GENERAL ACT**

24 **(Labor Code § 2698 et seq.)**

25 **(AGAINST ALL DEFENDANTS)**

26 87. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 88. Defendants have committed several Labor Code violations against Plaintiff and other
28 non-exempt employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698

1 et seq., acting on behalf of himself and other non-exempt employees, bring this representative action
2 against Defendants to recover the civil penalties due to Plaintiff, other similarly non-exempt
3 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)
4 including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent
5 violation per employee per pay period for those violations of the Labor Code for which no civil
6 penalty is specifically provided based on the following Labor Code violations:

7 a. Failing to pay Plaintiff and other non-exempt employees for all hours worked,
8 including all minimum and overtime wages in violation of Labor Code §§ 204, 510, 1194, 1197,
9 1198, and 1182.12

10 b. Failing to provide Plaintiff and other non-exempt employees with all of their
11 statutorily mandated meal periods or compensation at the “regular rate of pay” in lieu thereof in
12 violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

13 c. Failing to authorize and permit Plaintiff and other non-exempt employees with all
14 of their statutorily mandated rest periods or compensation at the “regular rate of pay” in lieu thereof
15 in violation of Labor Code §§ 226.7, and 516;

16 d. Failing to reimburse Plaintiff and other non-exempt employees for all necessary
17 business expenditures in violation of Labor Code § 2802;

18 e. Failing to timely compensate Plaintiff and other non-exempt employees with all
19 earnings at their separation of employment in violation of Labor Code §§ 201-203;

20 f. Failing to furnish Plaintiff and other non-exempt employees with complete,
21 accurate, itemized wage statements in violations of Labor Code § 226(a); and

22 89. On or about April 22, 2022, Plaintiff notified Apricot Lane Farms Operations, LLC
23 via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its
24 website of Defendant’s violations of the California Labor Code § 2698 et seq., with respect to
25 violations of the California Labor Code identified in Paragraph 88 (a)-(f). Now that sixty-five days
26 have passed from Plaintiff notifying Defendant and the LWDA of these violations, Plaintiff will have
27 exhausted his administrative requirements for bringing a claim under the Private Attorneys General
28 Act with respect to these violations.

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and reasonable costs and attorneys' fees;
9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
10. Upon the Seventh Cause of Action, penalties pursuant to Labor Code § 2208, and reasonable costs and attorneys' fees;
11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other non-exempt

aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided under the Labor Code.

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

14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194, and Code of Civil Procedure § 1021.5; and

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

Dated: June 14, 2022

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

By: _____

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff and the Putative Classes