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NICOLAS RENTERIA RAMIREZ

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9 **SUPERIOR COURT OF CALIFORNIA**

10 **FOR THE COUNTY OF SAN JOAQUIN**

11 JORGE ARMANDO AYALA NAVA, and
12 NICOLAS RENTERIA RAMIREZ,
13 individually and on behalf of all other
similarly situated employees,

14 Plaintiffs,

15 vs.

16 ANTHONY FUSO, individually and doing
17 business as ANTHONY AND DAVID FUSO
18 FARMS; DAVID FUSO, individually and
19 doing business as ANTHONY AND DAVID
FUSO FARMS; and DOES 1 to 100, inclusive,

20 Defendants.

Case No. STK-CV-UOE-2025-0003211

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Unfair Competition
9. Private Attorneys General Act

INDIVIDUAL CLAIMS

10. Violation of Labor Code § 1102
11. Wrongful Termination/Retaliation

DEMAND FOR JURY TRIAL

1 Plaintiffs JORGE ARMANDO AYALA NAVA and NICOLAS RENTERIA RAMIREZ
2 (“Plaintiffs”), on behalf of themselves and all other similarly situated employees, hereby file this
3 First Amended Complaint against Defendants ANTHONY FUSO, individually and doing business as
4 ANTHONY AND DAVID FUSO FARMS; DAVID FUSO, individually and doing business as
5 ANTHONY AND DAVID FUSO FARMS; and DOES 1 to 100, inclusive (ANTHONY FUSO,
6 DAVID FUSO, and DOES 1 to 100 collectively referred to as “Defendants”). On information and
7 belief, Plaintiffs allege the following:

8 **INTRODUCTION**

9 1. This is a class action, an individual, and a Private Attorneys General Act (“PAGA”)
10 lawsuit brought by Plaintiffs for 1) Failure to Pay Overtime Wages, 2) Failure to Pay Minimum Wages,
11 3) Meal Period Violations, 4) Rest Period Violations, 5) Wage Statement Violations, 6) Waiting Time
12 Penalties, 7) Failure to Reimburse Expenses, and 8) Unfair Competition. Plaintiff JORGE ARMANDO
13 AYALA NAVA is also asserting individual claims for wrongful termination/retaliation and violation of
14 Labor Code section 1102.5.

15 **JURISDICTION AND VENUE**

16 2. The San Joaquin County Superior Court has jurisdiction in this matter pursuant to
17 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
18 Labor Code, California Business and Professions Code, and Wage Order No. 14.

19 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that
20 Defendants reside in San Joaquin County and/or are foreign entities and have not designated any county
21 in California as being where they maintain their principal offices. In addition, some of the wrongful acts
22 and violations of law asserted herein occurred within San Joaquin County, and Defendants' obligation to
23 pay wages arose in San Joaquin County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36
24 Cal.3d 403, 414 (1984).

25 4. Plaintiffs sought permission pursuant to California Labor Code section 2699 *et seq.* to
26 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
27 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
28 Plaintiffs gave written notice via online submission to the Labor and Workforce Development Agency

1 (“LWDA”) on approximately February 28, 2025. Plaintiffs provided facts and legal bases for their
2 claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act
3 cause of action. Plaintiffs also submitted the \$75.00 filing fee. The February 28, 2025, notice was also
4 sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any
5 response to Plaintiffs’ notice correspondence. Accordingly, Plaintiffs have exhausted all administrative
6 remedies pursuant to the Private Attorneys General Act (“PAGA”) and may bring this action on behalf
7 of himself and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code §
8 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19
9 (2005). Aggrieved Employees include, but is not limited to the following: all non-exempt employees
10 who worked, or continue to work, for Defendants in California at any time from February 28, 2024, to
11 the present.

12 PARTIES

13 5. JORGE ARMANDO AYALA NAVA is an individual over the age of eighteen (18)
14 and is a resident of the State of California.

15 6. NICOLAS RENTERIA RAMIREZ is an individual over the age of eighteen (18) and
16 is a resident of the State of California.

17 7. On information and belief, Plaintiffs allege ANTHONY FUSO is now and/or at all
18 times mentioned in this Complaint was an individual over the age of eighteen (18) and doing
19 business as ANTHONY AND DAVID FUSO FARMS, in the State of California. On information
20 and belief, Plaintiffs alleges that ANTHONY FUSO is an owner, director, officer, and/or managing
21 agent of ANTHONY AND DAVID FUSO FARMS, and is responsible for causing the violations
22 outlined in the Causes of Action identified herein. As such ANTHONY FUSO is individually liable
23 pursuant to California Labor Code section 558.1. On information and belief, Plaintiffs allege that
24 ANTHONY FUSO trained subordinate staff to implement and carry out the policies and practices
25 identified herein. As a result, whether directly or indirectly, ANTHONY FUSO caused the
26 violations identified herein. ANTHONY FUSO was responsible for the violations stated herein as he
27 was in a position of authority with the power and responsibility to monitor, institute, and/or modify
28 the unlawful practices, but chose to ratify them instead.

1 8. On information and belief, Plaintiffs allege DAVID FUSO is now and/or at all times
2 mentioned in this Complaint was an individual over the age of eighteen (18) and doing business as
3 ANTHONY AND DAVID FUSO FARMS, in the State of California. On information and belief,
4 Plaintiffs allege that DAVID FUSO is an owner, director, officer, and/or managing agent of
5 ANTHONY AND DAVID FUSO FARMS, and is responsible for causing the violations outlined in
6 the Causes of Action identified herein. As such DAVID FUSO is individually liable pursuant to
7 California Labor Code section 558.1. On information and belief, Plaintiffs allege that DAVID
8 FUSO trained subordinate staff to implement and carry out the policies and practices identified
9 herein. As a result, whether directly or indirectly, DAVID FUSO caused the violations identified
10 herein. DAVID FUSO was responsible for the violations stated herein as he was in a position of
11 authority with the power and responsibility to monitor, institute, and/or modify the unlawful
12 practices, but chose to ratify them instead.

13 9. DOES 1 through 100 are individuals, affiliates, subsidiaries and/or related entities and the
14 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
15 are liable for the actions herein alleged. Plaintiffs will seek to amend this Complaint to allege the true
16 names and capacities of these DOE Defendants when they are ascertained.

17 10. At all times mentioned herein, each Defendant was the agent or employee of each of the
18 other Defendants and was acting within the course and scope of such agency or employment. The
19 Defendants are jointly and severally liable to Plaintiffs.

20 11. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
21 were members of and/or engaged in a joint employment, joint venture, partnership and common
22 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
23 joint venture, partnership and common enterprise.

24 12. Defendants, and each of them, now and/or at all times mentioned in this Complaint
25 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

26 13. Defendants proximately caused Plaintiffs to be subjected to the unlawful practices,
27 wrongs, complaints, injuries and/or damages alleged in this Complaint.

28 //

CLASS ALLEGATIONS

14. Plaintiffs bring the First through Eighth Causes of Action on behalf of themselves and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiffs seek to represent is composed of, and defined, as follows:

All non-exempt employees who worked for or continue to work for Defendants in California at any time between March 3, 2021, to the present.

15. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiffs at this time, Plaintiffs are informed and believes that Defendants have employed as many as one hundred and twenty (120) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants paid for all hours worked;
- (2) Whether Defendants did not pay putative class members for overtime;
- (3) Whether Defendants did not pay putative class members for rest periods;
- (4) Whether Defendants provided compliant meal, rest, and recovery periods to putative class members;
- (5) Whether Defendants required putative class members to work off-the-clock;

- 1 (6) Whether Defendants authorized and permitted putative class members to take all
2 meal and rest periods;
3 (7) Whether Defendant maintained accurate payroll records;
4 (8) Whether as a result of Defendants' policies and practices Plaintiffs' and putative
5 class members received all wages, due and owing, at the time of their termination
6 or separation; and
7 (9) Whether Defendants provided Plaintiffs' and putative class members with wage
8 statements that complied with Labor Code section 226.

9 (c) Typicality: Plaintiffs' claims are typical of the claims of the members of the putative
10 class. The putative class also sustained damages arising out of Defendants' common
11 course of conduct in violation of the law as complained of herein. Plaintiffs and all
12 members of the putative class were non-exempt employees who were subject to the same
13 working conditions which Plaintiffs alleges are unlawful, such as not being paid for all
14 hours worked, not being paid for overtime, not being paid for rest and recovery rest
15 periods, not being paid for meal and rest period premiums, not being provided with
16 compliant meal and rest periods, resulting in failure to pay minimum wages, failure to
17 pay for overtime, and failure to pay for meal and rest period premiums. Additionally,
18 Defendants issued Plaintiffs and all members of the putative class wage statements that
19 did not comply with Labor Code section 226. As a result, Plaintiffs and each member of
20 the putative class will have suffered the same type of harm and seek the same type of
21 recovery based on the same legal theories.

22 (d) Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of the
23 putative class. For all relevant times, Plaintiffs resided in California and worked for
24 Defendants in California. Moreover, Plaintiffs is an adequate representative of the
25 putative class as Plaintiffs have no interests that are adverse to those of putative class
26 members. Additionally, Plaintiffs have retained counsel who has substantial experience
27 in complex civil litigation and wage and hour matters.
28

1 (c) Superiority: A class action is superior to other available means for the fair and efficient
2 adjudication of the controversy since individual joinder of all members of the putative
3 class is impracticable. Class action treatment will permit a larger number of similarly
4 situated persons to prosecute their common claims in a single forum simultaneously,
5 efficiently, and without the unnecessary duplication of effort and expense that numerous
6 individual actions would engender. Further, as damages suffered by each individual
7 member of the class may be relatively small, the expenses and burden of the individual
8 litigation would make it difficult or impossible for individual members of the class to
9 redress the wrongs done to them, and an important public interest will be served by
10 addressing the matter as a class action. The cost to the court system of adjudication of
11 such individualized litigation would be substantial. Individualized litigation would also
12 present the potential for inconsistent or contradictory judgments.

13 16. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
14 management of this action that would preclude its maintenance as a class action.

15 GENERAL ALLEGATIONS

16 17. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 16 as though fully
17 set forth herein.

18 18. Plaintiff JORGE ARMANDO AYALA NAVA worked for Defendants from
19 approximately 2018 to August 1, 2024, as a non-exempt employee. Plaintiff NICOLAS RENTERIA
20 RAMIREZ worked for Defendants from approximately 2019 to May 2024 as a non-exempt employee.
21 Plaintiffs and similarly situated employees worked over eight (8) hours per day and/or forty (40) hours
22 per week. However, Defendants failed to accurately record Plaintiffs' and similarly situated employees'
23 hours worked. Defendants' supervisors and managerial staff would write down the daily total hours that
24 Plaintiffs and similarly situated employees worked. Employees did not maintain their own timecards.
25 For example, Plaintiffs and similarly situated employees were required to show up approximately ten
26 (10) to fifteen (15) minutes before the start of their scheduled shift in order to be driven out to fields and
27 start working in the fields by the start of their scheduled shift start time. They could not drive their own
28 vehicles into the fields. Defendants' supervisors and/or managerial staff would not start to count hours

1 worked until after arriving at the particular field location at the scheduled shift start time. Similarly,
2 Plaintiffs and similarly situated employees were required to work approximately ten (10) to fifteen (15)
3 minutes after Defendants' supervisors and/or managerial staff clocked them out for the day to "make
4 up" for time employees spent going to the bathroom earlier in the day. Defendants would also require
5 extra time worked at the end of the day, off-the-clock, if Plaintiffs and similarly situated employees
6 attempted to take a rest and/or water break earlier in the day. When Plaintiffs and similarly situated
7 employees worked on Saturdays, Defendants did not add these hours to the total hours worked for
8 purposes of weekly overtime calculations or otherwise. Instead, these hours were paid at Plaintiffs' and
9 similarly situated employees' basic hourly rates. Defendants did not provide Plaintiffs and similarly
10 situated employees with a timekeeping clock, application, or system where Plaintiffs and similarly
11 situated employees could clock in and out. Defendants did not provide Plaintiffs and similarly situated
12 employees with timecards showing their hours worked.

13 19. Defendants did not authorize and permit Plaintiffs and similarly situated employees to
14 take all meal and rest periods owed to them. Although Plaintiffs and similarly situated employees
15 started work before 5:30 a.m., Defendants would not allow any meal periods to be taken until
16 approximately 11:00 a.m. or later, causing meal periods to commence after the completion of the fifth
17 hour worked. Furthermore, Defendants automatically deducted thirty (30) minutes for meal periods
18 even when Defendants did not provide Plaintiffs and similarly situated employees with thirty (30)
19 minute meal periods. Plaintiffs and similarly situated employees could not take food out into the fields
20 with them. Plaintiffs and similarly situated employees would have to walk back to where they were
21 transported from in the morning in order to get food and take their meal periods. Defendants'
22 supervisors and managerial staff regularly shortened Plaintiffs' and similarly situated employees' meal
23 periods in order to get back to the fields they were working in within the thirty (30) minute period.
24 Plaintiffs and similarly situated employees were required to end their meal periods and return to work
25 only after approximately twenty (20) to twenty-five (25) minutes after they began. Moreover, Plaintiffs
26 and similarly situated employees did not receive adequate rest and recovery periods or an uninterrupted
27 ten (10) minute rest period every four hours worked or major fraction thereof. Defendants did not
28 provide the requisite shade or cool, fresh water as required by the California Labor Code, causing

1 Plaintiffs' and similarly situated employees to have to walk ten (10) to fifteen (15) minutes to try and get
2 water. Defendants required Plaintiffs and similarly situated employees to work off-the-clock at the end
3 of their shifts for any time Plaintiffs and similarly situated employees spent during a break or traveling
4 to get fresh water. Additionally, if a field was finished before an employee who traveled to get water or
5 went to the bathroom had returned, that employee would be left behind and have to walk to the next
6 field that the rest of the employees were transported to by vehicle. Defendants did not have a policy to
7 provide paid rest and recovery periods for Plaintiffs and similarly situated employees.

8 20. Defendants required Plaintiffs and similarly situated employees to incur expenses for
9 work without paying reimbursement for such expenses. For instance, Defendants required Plaintiffs and
10 similarly situated employees to use their own tools to work on the vineyards or pick grapes. Plaintiffs
11 and similarly situated employees used their own gloves, and tools such as special scissors and knives to
12 cut the grape vines. Defendants did not reimburse them for such expenses.

13 21. Defendants failed to provide Plaintiffs and similarly situated employees with accurate
14 wage statements. The wage statements Defendants provided did not accurately itemize employees'
15 gross and net wages, meal period premiums, rest period premiums, total hours worked, and the
16 corresponding number of hours worked at each hourly rate.

17 22. On or about August 1, 2024, Plaintiff JORGE ARMANDO AYALA NAVA and others
18 working that day walked to get fresh drinking water after working for several hours. Plaintiff JORGE
19 ARMANDO AYALA NAVA's supervisor became angry that the employees left to get water and, at the
20 end of the day, informed Plaintiff and approximately seven (7) to eight (8) other individuals "for you,
21 there is no more work." Plaintiffs and similarly situated employees' supervisors were regularly head
22 saying "we are going to work fast and quick and whoever doesn't like it, there is the road to go." As a
23 result, Defendants' manager wrongfully terminated and retaliated against Plaintiff JORGE ARMANDO
24 AYALA NAVA for leaving the work area in order to drink water.

25 23. Defendants did not provide any sick leave wages to Plaintiffs and similarly situated
26 employees. Defendants did not pay Plaintiffs and similarly situated employees if they called out sick
27 despite having accrued, but unused sick leave available. This resulted in the failure to pay Plaintiffs and
28 similarly situated employees all sick leave wages.

24. At the time of Plaintiffs' and similarly situated employees' termination, Plaintiffs and similarly situated employees had minimum wages, overtime wages, and meal and rest period premiums owing to them. To date, Defendants have not paid Plaintiffs and similarly situated employees all wages they were owed.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(As to all Defendants)

25. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 24 as though fully set forth herein.

26. Defendants employ more than twenty-five (25) individuals at any given time and were required to pay overtime for hours worked in excess of 8.5 hours per day and 45 hours per week between January 1, 2021, to December 31, 2021, and for hours worked in excess of 8 hours per day and 40 per week from January 1, 2022, to present. *See, e.g.*, IWC Wage Order No. 14, section (3)(A); Cal. Lab. Code §§ 510, 860-862, 1194.

27. Plaintiffs and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiffs and similarly situated employees for all overtime hours worked at their regular rate of pay.

28. Plaintiffs and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

29. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

30. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 29 as though fully set forth herein.

31. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiffs and similarly situated employees with at least California's applicable minimum for every hour worked. *See* MW-Order 2025; IWC Wage Order, No. 14, section 4(A); Cal. Lab. Code § 1194.

32. Plaintiffs were not exempt to the State's Minimum Wage Order. Defendants were aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

33. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

34. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 33 as though fully set forth herein.

35. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

36. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 14, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

37. California Labor Code section 512 and Wage Order No. 14 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

38. Defendants employed Plaintiffs and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiffs and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiffs and similarly situated employees to take

1 their first meal period before the completion of their fifth hour of work and failed to allow Plaintiffs and
2 similarly situated employees to take their second meal period before the completion of their tenth hour
3 of work. Plaintiffs and similarly situated employees did not waive their rights to all meal periods
4 throughout their employment.

5 39. Defendants further failed to pay Plaintiffs and similarly situated employees the applicable
6 meal period premiums for any such missed meal breaks.

7 40. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees
8 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
9 the extent pertinent as if set forth here in full.

10 **FOURTH CAUSE OF ACTION**
11 **REST PERIOD VIOLATIONS**
(As to all Defendants)

12 41. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 40 as though fully
13 set forth herein.

14 42. An employer must provide an employee a rest period in accordance with the applicable
15 Wage Order and California Labor Code section 226.7.

16 43. California Labor Code section 226.7 and Wage Order No. 14, section 12(A) require an
17 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
18 four (4) hours or a major fraction thereof.

19 44. Plaintiffs allege that Defendants failed to authorize and permit Plaintiffs and similarly
20 situated employees to take paid rest periods of at least ten (10) minutes for each work period that they
21 worked more than four (4) hours or a major fraction thereof.

22 45. Defendants further failed to pay Plaintiffs and similarly situated employees the applicable
23 rest period premiums for any such missed rest periods.

24 46. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees
25 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
26 the extent pertinent as if set forth here in full.

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FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

47. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 46 as though fully set forth herein.

48. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 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. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

49. Plaintiffs allege that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, and overtime hours worked and corresponding rates of pay, and gross and net wages earned. The paystubs also did not accurately itemize Plaintiffs' and similarly situated employees' total hours worked. Plaintiffs and similarly situated employees were not able to promptly and easily determine their total hours worked from their paystubs alone. Additionally, Plaintiffs and similarly situated employees suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

50. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

51. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 50 as though fully set forth herein.

52. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. *See* Cal. Lab. Code § 201.

53. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. See Cal. Lab. Code § 202.

54. Plaintiffs and similarly situated employees did not receive all wages, including minimum and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or within the required time after their separation from employment.

55. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. *See* Cal. Lab. Code § 203.

56. Defendants knew of their obligation to pay Plaintiffs' and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiffs and similarly situated employees were not paid all their hours worked because of Defendants' policies and practices of deducing hours worked for meal periods time not taken and requiring, requiring off-the-clock work, requiring overtime work on Saturdays, but only paying straight time, and not paying sick leave wages when employees called out sick. Defendants knew that they did not pay Plaintiffs and similarly situated employees for this time, or the premiums owed. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

57. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)

58. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 57 as though fully set forth herein.

59. California Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

60. Defendants required Plaintiffs and similarly situated employees to use their personal tools such as scissors, knives, and gloves for work purposes but failed to reimburse them for such use. Plaintiffs and similarly situated employees needed to use their gloves, scissors, and knives to cut the grapes and vine trees.

61. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to all Defendants)

62. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 61 as though fully set forth herein.

63. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions ("B&P") Code § 17200.

64. Plaintiffs and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, paid sick leave, or reimbursed for business expenses, during their employment or any time thereafter.

65. Plaintiffs further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

66. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiffs and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 245 et seq, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

67. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 66 as though fully set forth herein.

68. Plaintiffs have alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiffs and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 860-862, 1194; IWC Wage Order 14, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 14, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 14, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 14, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code § 1102 (Whistleblower Retaliation)
- Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)

69. Plaintiffs seek civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

70. Plaintiffs seek these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

71. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

TENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTION 1102.5
(JORGE ARMANDO AYALA NAVA v. Defendants)

72. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 71 as though fully set forth herein.

73. Labor Code section 1102.5(a) states that an employer may not "make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a . . . person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, . . . if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties."

1 74. An employer also may not “retaliate against an employee for disclosing information, or
2 because the employer believes that the employee disclosed or may disclose information, to a
3 government or law enforcement agency, to a person with authority over the employee or another
4 employee who has the authority to investigate, discover, or correct the violation or noncompliance, . . . if
5 the employee has reasonable cause to believe that the information discloses a violation of state or federal
6 statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of
7 whether disclosing the information is part of the employee’s job duties.” Cal. Lab. Code § 1102.5(b).

8 75. Lastly, an employer may “not retaliate against an employee for refusing to participate in
9 an activity that would result in a violation of state or federal statute, or a violation or noncompliance
10 with a state or federal rule or regulation.” Cal. Lab. Code § 1102.5(c).

11 76. Defendants unlawfully retaliated against Plaintiff JORGE ARMANDO AYALA NAVA
12 when he refused to continue working without adequate rest and recovery periods as required by law.
13 Plaintiff JORGE ARMANDO AYALA NAVA had a reasonable, good faith belief that Defendant’s
14 work practices violated the law.

15 77. Defendants’ aforesaid acts in retaliating against and terminating Plaintiff for refusing to
16 participate in unlawful activity were illegal and a reckless disregard for the rights and sensibilities of
17 Plaintiff.

18 78. Defendants’ acts were wanton, willful, intentional, malicious and were a conscious and
19 reckless disregard for the rights and sensibilities of Plaintiffs and, therefore, warrant punitive damages.

20 79. As a proximate result of Defendants’ conduct, Plaintiffs has been damaged as stated in
21 the section below entitled “DAMAGES,” which is incorporated here to the extent pertinent as if set forth
22 here in full.

23 **ELEVENTH CAUSE OF ACTION**
24 **WRONGFUL TERMINATION/RETALIATION**
25 **(JORGE ARMANDO AYALA NAVA v. Defendants)**

26 80. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 79 as though fully
27 set forth herein.

28 81. Defendants terminated Plaintiffs in violation of public policy when they fired Plaintiff
because he had went to get water after working for several hours.

82. Defendants' acts of discharge herein were malicious, fraudulent, and oppressive, with the wrongful intention of injuring Plaintiffs, and acted with an improper and evil motive amounting to malice, and in conscious disregard of Plaintiffs' rights.

83. As a proximate result of Defendants' conduct, Plaintiffs has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiffs request relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;

1 6. As to the Fifth Cause of Action:

- 2 a. Penalties as provided for in Labor Code section 226, including the greater of all
3 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
4 violation occurred and one hundred dollars (\$100.00) per employee for each
5 violation in the subsequent pay periods, but not to exceed four thousand dollars
6 (\$4,000.00);
- 7 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
8 226(e);

9 7. As to the Sixth Cause of Action:

- 10 a. For statutory penalties equal to an employees' daily rate of pay multiplied by
11 thirty (30) days;
- 12 b. For attorneys fees, costs, and interest as allowed by law;

13 8. As to the Seventh Cause of Action:

- 14 a. An amount to be proven at trial;
- 15 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

16 9. As to the Eight Cause of Action:

- 17 a. For restitution of unpaid wages and unreimbursed expenses in an amount to be
18 proven at trial;

19 10. As to the Ninth Cause of Action:

- 20 a. For civil penalties as provided in the Labor Code for each enumerated
21 violation;
- 22 b. For those Labor Code sections where there is no civil penalty provided for their
23 violation, the default penalty provided in Labor Code section 2699(f): for any
24 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
25 period; For any subsequent violation, two hundred dollars (\$200) for each
26 aggrieved employee per pay period;
- 27 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 28

d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

11. As to the Tenth and Eleventh Causes of Action

a. For compensatory damages, including lost wages, earnings, retirement benefits, and other employee benefits, and all other sums of money, together with interest on these amounts;

b. For a money judgment for mental pain and anguish and emotional distress;

c. For an award of punitive damages, according to proof;

d. For attorneys fees and costs as allowed by law;

12. For such other and further relief as this Court may deem just and proper, including, but not limited to:

a. Wages as proved at trial;

b. Injunctive and Declaratory relief;

c. Attorney's fees and costs as provided for by law; and

d. Interest.

Dated: May 21, 2025

Shimoda & Rodriguez Law, PC

By: _____


Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiffs

1 *Ayala Nava, et al. v. Anthony Fuso, et al.*
2 *Santa Clara County Superior Court of California, STK-CV-UOE-2025-0003211*

3 **PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Shaniya Baird, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On May 21, 2025, I served the following documents on the party below:

9 • **FIRST AMENDED COMPLAINT FOR DAMAGES**

10 Shane Singh Lewis Brisbois Bisgaard & Smith, LLP 2020 West El Camino Ave., Ste 700 Sacramento, CA 95833 Phone: (916) 646-8217 Facsimile: (916) 564-5444 Email: shane.singh@lewisbrisbois.com Grace.mehta@lewisbrisbois.com Anne.french@lewisbrisbois.com	
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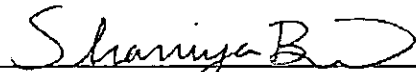
14 [] [By Mail] I am familiar with my employer's practice for the collection and
15 processing of correspondence for mailing with the United States Postal
16 Service and that each day's mail is deposited with the United States Postal
17 Service that same day in the ordinary course of business. On the date set
18 forth above, I served the aforementioned document(s) on the parties in
said action by placing a true copy thereof enclosed in a sealed envelope
with postage thereon fully prepaid, for collection and mailing on this date,
following ordinary business practices, at Salt Lake City, Utah, addressed
as set forth above.

19 [] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

20 [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
21 above. No error was reported by the e-mail service that I used.

22 [] [By Overnight Courier] By causing a true copy and/or original thereof to
be personally delivered via the following overnight courier service: UPS.

23
24 I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct, and that this declaration was executed on May 21, 2025, at Salt Lake City, Utah.

25 
26 Shaniya Baird