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Superior Court of California,
County of Tulare
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

PABLO REYES FELICIANO, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

JOHN MOONS dba MOONLIGHT DAIRY,
an individual; and DOES 1 through 100,

Defendants.

Case No.: VCU292586

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

- (1) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 551, 552, 558,
1194, AND 1198);**
- (2) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (4) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);**
- (5) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*);**
- (8) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197); and**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Pablo Reyes Feliciano (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint (“FAC”)
3 against John Moons dba Moonlight Dairy, an individual; and, DOES 1 to 100, inclusive
4 (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business & Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 551-552, 558,
9 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802; and Industrial Welfare Commission Wage
10 Order 14 (“Wage Order 14”), in addition to seeking declaratory relief and restitution. This
11 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
12 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
13 controversy exceeds this Court’s jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
16 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
17 County of Tulare. One or more of the Defendants own, maintain offices, transact business, have
18 agent(s) within the County of Tulare, and/or otherwise are found within the County of Tulare,
19 and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 551-552, 558, 1194, 1198, and 2802; California
28 Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”); and Wage Order 14,

1 which sets employment standards for Agricultural Occupations.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
3 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
4 continue to do) business by employing farm labor employees to harvest agricultural commodities,
5 namely dairy products, in the United States, and employed Plaintiff, and other similarly-situated
6 non-exempt employees, within Tulare County and the state of California and, therefore, were (and
7 are) doing business in Tulare County and the State of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,
9 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
12 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
14 and proximately caused Plaintiff and the Classes (as defined herein) to be subject to the unlawful
15 employment practices, wrongs, injuries and damages complained of herein.

16 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
17 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

18 7. At all times herein mentioned, each of said Defendants participated in the doing
19 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
20 Defendants, and each of them, were the agents, servants, and employees of each and every one of
21 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
22 were acting within the course and scope of said agency and employment. Defendants, and each
23 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
24 omissions complained of herein.

25 8. At all times mentioned herein, Defendants, and each of them, were members of
26 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
27 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
28 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all

1 members of the Classes.

2 **GENERAL FACTUAL ALLEGATIONS**

3 9. Defendants are in the agricultural business and employ farm labor employees to
4 harvest agricultural goods, namely dairy products. Plaintiff commenced employment with
5 Defendants as a non-exempt farm labor employee from approximately 2019 until approximately
6 August 13, 2021 in the position of “Milker”. Plaintiff’s job duties included pumping milk from
7 Defendants’ cows, cleaning stalls, feeding calves, and other general dairy farm related duties.
8 Plaintiff regularly worked six days per week from between 12-14 hours per day from 5:00 p.m.
9 until 8:00 a.m. until 2021, when Defendants hired additional workers resulting in Plaintiff and
10 other non-exempt employees moving to a schedule of 7 hours per day. Beginning in 2021,
11 Plaintiff worked from 5:00 p.m. until 11:30-12:00 p.m. As discussed below, Plaintiff usually
12 worked more hours per shift than he was credited as having worked. Defendants have not boarded
13 or lodged Plaintiff during his employment.

14 10. During Plaintiff’s employment with Defendants, Plaintiff was paid on an hourly
15 basis at approximately \$16.00 per hour. Despite tracking the hours of Plaintiff and other non-
16 exempt employees by way of a facial recognition device, Defendants as a matter of policy and
17 practice systematically failed to pay all overtime wages. For example, while under Wage Order
18 14 Plaintiff and other non-exempt employees are entitled to overtime worked in excess of 9 hours
19 in a day and/or 50 hours in a week, Defendants failed to pay overtime wages to Plaintiff and other
20 non-exempt employees despite the fact that they routinely exceeded these thresholds. Instead,
21 Defendants would arbitrarily and sporadically provide “overtime” compensation that was wholly
22 unreflective of the actual amount of overtime hours that Plaintiff and other non-exempt employees
23 actually worked. As a result of this policy/practice, Defendants failed to properly compensate
24 Plaintiff and other non-exempt employees for all overtime hours worked in compliance with
25 Wage Order 14.

26 11. Moreover, during Plaintiff’s employment with Defendants, Plaintiff and other
27 non-exempt employees earned production-based bonuses in addition to other forms of non-
28 discretionary pay that must be included in the regular rate of pay (hereinafter referred to as

1 “Incentive Pay”). However, Defendants failed to properly calculate Plaintiff’s and other non-
2 exempt employees’ respective regular rates of pay for overtime purposes as a result of their receipt
3 of Incentive Pay. Instead, Plaintiff and non-exempt employees were paid less than one and one
4 half times (or two times in the case of double-time hours) the legal regular rate of pay for all
5 overtime hours worked.

6 12. Plaintiff and other non-exempt employees were not authorized to take all legally
7 required rest periods. At no point during Plaintiff’s employment with Defendants were he and
8 the other non-exempt employees ever advised of, or permitted to, exercise the use of rest periods
9 to which they were statutorily entitled. Despite Defendants’ failure to authorize and permit
10 Plaintiff and other non-exempt employees to take all lawful paid rest periods, due to their uniform
11 and unlawful practices, Defendants never provided Plaintiff and other non-exempt employees
12 with an hour of pay at their regular rate for each rest period violation as required by Labor Code
13 § 226.7. Upon information and belief, during at least a portion of the class period, Defendants
14 maintained no payroll code or another mechanism for the payment of rest period premiums in the
15 event Plaintiff and other non-exempt employees were not authorized to take lawful rest periods.

16 13. Defendants also never provided Plaintiff and other non-exempt employees with a
17 compliant first meal period when they worked shifts in excess of 5.0 hours. Instead, through the
18 use of its eye scanner that Defendant utilized to keep track of its employees’ time, Plaintiff and
19 other non-exempt employees would have 30 minutes automatically deducted whenever they
20 commenced their meal periods regardless of whether they were actually able to exercise a full
21 duty free uninterrupted 30-minute meal period. Rather, Plaintiff and other non-exempt employees
22 would regularly only be permitted to exercise the use of their meal periods for around 15 minutes,
23 if at all, before being required to recommence their working duties. Accordingly, in addition to
24 the systemic meal period violations that Plaintiff and other non-exempt employees were subjected
25 to by virtue of these shortened meal periods, they were also made to work off-the-clock until
26 Defendants’ system clocked them back in after 30 minutes had elapsed. As a result of this auto-
27 deduct policy, Plaintiff and other non-exempt employees were further denied all minimum wages
28 to which they were entitled. In addition to Defendants’ failure to provide Plaintiff and other non-

1 exempt employees with all legally required and compliant first meal periods, Defendants also
2 failed to provide second meal periods to Plaintiff and other non-exempt employees when they
3 worked shifts in excess of 10 hours (an almost daily occurrence). At no point during Plaintiff's
4 employment with Defendants were he and the other non-exempt employees ever permitted to
5 exercise the use of a second meal period. Despite Defendants' failure to provide Plaintiff and
6 other non-exempt employees with all lawful meal periods due to their uniform and unlawful
7 practices, Defendants never provided Plaintiff and other non-exempt employees with an hour of
8 pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

9 14. Defendants failed to adequately reimburse Plaintiff for all reasonable and
10 necessary work expenditures, including but not limited to, requiring Plaintiff to purchase and
11 maintain mandatory plastic boots, which cost around \$80 per pair, without reimbursement.
12 Furthermore, Plaintiff and other non-exempt employees would regularly have to utilize their
13 personal cellular phones in the performance of their business duties without reimbursement.

14 15. As a result of Defendants' failure to accurately compensate Plaintiff and other
15 non-exempt employees for all minimum and overtime wages, and failure to provide all required
16 meal periods and authorize all rest periods or pay premium pay in lieu thereof, Defendants have
17 maintained inaccurate payroll records, failed to timely pay all wages owed to separating
18 employees at the time of their separation, and issued inaccurate wage statements.

19 **CLASS ACTION ALLEGATIONS**

20 16. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
21 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 22 a. The Minimum Wage Class consists of all Defendants' current and former non-
23 exempt employees in California who were subject to Defendants' timekeeping
24 systems and/or practices, during the four years immediately preceding the filing
25 of the Complaint through the present.
- 26 b. The Rest Period Class consists of all current and former non-exempt employees of
27 Defendants in California who worked at least one shift in excess of 3.5 hours
28

1 during the four years immediately preceding the filing of this lawsuit through the
2 present.

3 c. The Overtime Wage Class consists of all current and former non-exempt
4 employees of Defendants in California who worked overtime hours (based on
5 criteria set forth in Wage Order 14) during the four years immediately preceding
6 the filing of this lawsuit through the present.

7 d. The Meal Period Class consists of all current and former non-exempt employees
8 of Defendants in California who: (i) worked at least one shift in excess of 5.0 hours
9 without a meal period of at least 30 minutes in duration commencing prior to the
10 conclusion of the fifth hour of work, and who do not have a corresponding meal
11 period premium payment made for such shifts and/or (ii) worked at least one shift
12 in excess of 10.0 hours without a second meal period of at least 30 minutes in
13 duration commencing prior to the conclusion of the tenth hour of work, and who
14 do not have a corresponding meal period premium payment made for such shifts
15 during the four years preceding the filing of this lawsuit through the present.

16 e. The Employee Expense Class consists of all of Defendants' current and former
17 non-exempt employees in California who were not reimbursed for the purchase
18 and maintenance of boots, cellular phone usage, and/or any other necessary
19 business expenditures during the four years immediately preceding the filing of
20 this lawsuit to the present.

21 f. The Wage Statement Class consists of all members of the Rest Period Class,
22 Overtime Class, and/or Meal Period Class who received a wage statement from
23 Defendants during the one year immediately preceding the filing of this lawsuit
24 through the present.

25 g. The Waiting Time Class consists of all Defendants' formerly employed members
26 of the Rest Period Class, Overtime Class, and Meal Period Class who separated
27 from employment during the three years immediately preceding the filing of this
28 lawsuit through the present.

1 17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
2 joinder of all members would be unfeasible and not practicable. The membership of the Classes
3 is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes
4 number greater than one hundred (100) individuals. The identity of such membership is readily
5 ascertainable via inspection of Defendants' employment records.

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

- 10 i. Whether Defendants paid all minimum wages owed for all hours worked to
11 members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194,
12 1194.2, and 1197;
- 13 ii. Whether Defendants violated the applicable Labor Code provisions, including, but
14 not limited to, §§ 510 and 1194 and Wage Order 14 by requiring members of the
15 Overtime Wage Class to perform overtime work and not paying for said work in
16 accordance with the overtime laws of the State of California;
- 17 iii. Whether Defendants authorized and permitted legally compliant rest periods to
18 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 19 iv. Whether Defendants provided all legally compliant meal periods to members of
20 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 21 v. Whether Defendants failed to reimburse members of the Employee Expense Class
22 for business expenditures necessarily incurred in the performance of their duties;
- 23 vi. Whether Defendants provided accurate, itemized wage statements to members of
24 the Classes; and
- 25 vii. Whether Defendants' policies and/or practices for the timing and amount of
26 payment of final wages to members of the Waiting Time Class at the time of
27 separation from employment were lawful.

28 19. **Predominance of Common Questions:** Common questions of law and fact

predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform overtime policies and practices, meal and rest period policies and practices, timekeeping policies and practices, non-reimbursement, wage statement, and payment of final wages policies and practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

20. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was paid on a hourly basis, was subject to Defendants' minimum wage and overtime policies and practices, was subjected to Defendants' meal/rest period and timekeeping policies and practices, was subjected to Defendants' unlawful failure to reimburse business expenses, was furnished with inaccurate and incomplete wage statements, and was not paid all wages earned at the time of his separation of employment.

21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

22. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff

1 and members of the Classes make the class action format a particularly efficient and appropriate
2 procedure to redress the violations alleged herein. If each employee were required to file an
3 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
4 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
5 their vastly superior financial and legal resources. Moreover, requiring each member of the
6 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
7 employees who would be disinclined to file an action against their former and/or current employer
8 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
9 employment. Further, the prosecution of separate actions by the individual class members, even
10 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
11 with respect to the individual class members against Defendants herein; and which would
12 establish potentially incompatible standards of conduct for Defendants; and/or legal
13 determinations with respect to individual class members which would, as a practical matter, be
14 dispositive of the interest of the other class members not parties to adjudications or which would
15 substantially impair or impede the ability of the class members to protect their interests. Further,
16 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
17 individual prosecution considering all of the concomitant costs and expenses attending thereto.
18 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
19 Civil Procedure.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY ALL OVERTIME WAGE**

22 **(AGAINST ALL DEFENDANTS)**

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

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

28 25. At all times relevant herein, Defendants were required to properly compensate

1 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
2 Labor Code § 1194 and Wage Order 14. Wage Order 14, § 3 requires an employer to pay overtime
3 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth
4 in the Wage Order.

5 26. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
6 employees to work overtime hours but did not compensate Plaintiff or members of the Overtime
7 Class at one and one-half times their regular rate of pay for such hours.

8 27. The foregoing policies and practices are unlawful and create entitlement to
9 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
10 premiums owing, including interest thereon, statutory and civil penalties, and attorneys' fees and
11 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
12 14, and Code of Civil Procedure § 1021.5.

13 **SECOND CAUSE OF ACTION**

14 **MEAL PERIOD VIOLATIONS**

15 **(AGAINST ALL DEFENDANTS)**

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

17 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 failed in their affirmative obligation to provide all of their non-exempt employees in California,
19 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
20 in accordance with the mandates of the California Labor Code and Wage Order 14, § 11. Despite
21 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
22 of the Meal Period Class at their respective regular rates of compensation, in accordance with
23 California Labor Code §§ 226.7, and 512.

24 30. As a result, Defendants are responsible for paying premium compensation for meal
25 period violations including interest thereon, as well as statutory penalties, civil penalties, and
26 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 14, and Civil Code §§
27 3287(b) and 3289.

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1 **THIRD CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

5 32. Wage Order 14, § 12 and California Labor Code §§ 226.7 and 516 establish the
6 right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
7 minutes net rest time for each four (4) hour period worked, or major fraction thereof.

8 33. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
9 of the Rest Period Class to take all legally compliant rest periods.

10 34. The foregoing violations create an entitlement to recovery by Plaintiff and
11 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
12 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
13 according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

16 **(AGAINST ALL DEFENDANTS)**

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

18 36. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
19 states that “an employer shall indemnify his or her employees for all necessary expenditures or
20 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
21 his or her obedience to the directions of the employer...”

22 37. Due to Defendants’ unlawful policy and practice of requiring employees to
23 purchase and maintain uniforms and boots for the performance of their job duties and to utilize
24 their personal cellular phones for Defendants’ business purposes, Defendants have violated Labor
25 Code § 2802.

26 38. Plaintiff and members of the Employee Expense Class are entitled to attorneys’
27 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

28 39. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of

1 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
2 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue
3 from the date on which they incurred the initial necessary expenditure.

4 **FIFTH CAUSE OF ACTION**

5 **WAGE STATEMENT VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

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

8 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
10 and the Wage Statement Class with accurate, itemized wage statements that included, among
11 other requirements, accurate total gross wages earned, accurate overtime wages earned, meal and
12 rest period premiums, and total net wages earned in violation of Labor Code §226 *et seq.*

13 42. California Labor Code § 226(a) states that every employer shall, semi-monthly or
14 at the time of each payment of wages, furnish each of his or her employees an accurate itemized
15 statement in writing showing substantial detailed information, including but not limited to, gross
16 and net wages earned, total hours worked, and all applicable hourly rates and the corresponding
17 number of hours worked at each hourly rate. IWC Wage Order 14 § 7(B) similarly requires
18 employers semimonthly or at the time of each payment of wages to furnish to each employee an
19 accurate itemized statement in writing. These required disclosures of information are essential
20 to enable employees to determine whether they have been paid in compliance with the law.

21 43. Labor Code §226 requires employers to list on an itemized wage statement “all
22 amounts earned and now owing, not just those amounts actually paid.” *Naranjo v. Spectrum*
23 *Security Services, Inc.*, 2022 WL 1613499, at *13 (Cal., May 23, 2022).

24 44. Defendants’ policies and practices of failing to pay wages in conformity with the
25 requirements of the LWO necessarily meant that the itemized wage statements of Plaintiff and
26 the Wage Statement Class failed to contain the information required by Labor Code § 226(a)
27 because they failed to reflect the proper wage rates and wages earned.

28 45. Labor Code § 226(e) provides that an employee who suffers injury as a result of a

1 knowing and intentional failure by an employer to comply with § 226(a) may recover the greater
2 of actual damages or the penalties designated by statute of \$50 for the initial pay period in which
3 a violation occurs and \$100 per employee for each violation in a subsequent pay period up to an
4 aggregate penalty of \$4,000.

5 46. The employer's failure to list wages that an employee earned but was not paid
6 "deprives the employee of information needed to evaluate whether the payment is correct, and
7 in so doing results in injury under the terms of the statute." Naranjo, 2022 WL 1613499, at *13.

8 47. As a result of Defendants' knowing and intentional failure list the correct wage
9 rates and wages earned on Plaintiff's wage statements, Defendants deprived Plaintiff and the
10 Wage Statement Class of information needed to evaluate whether Defendants' payments to them
11 were correct. This establishes injury under Labor Code § 226(e)(2).

12 48. As a result of Defendants' knowing and intentional violations, Plaintiff and the
13 Wage Statement Class seek statutory penalties under Labor Code § 226(a) in amounts not to
14 exceed \$4,000 for each pay period in which they were provided with inaccurate wage statements.

15 49. Defendants' failures created an entitlement to Plaintiff and members of the Wage
16 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
17 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to
18 suit pursuant to Labor Code § 226 *et seq.*

19 **SIXTH CAUSE OF ACTION**

20 **WAITING TIME PENALTIES**

21 **(AGAINST ALL DEFENDANTS)**

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

23 51. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
24 an employer to pay all wages immediately at the time of termination of employment in the event
25 the employer discharges the employee or the employee provides at least 72 hours of notice of
26 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
27 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
28 employee's last date of employment.

52. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation including, among other things, underpaid overtime and minimum wages owed, and meal and rest period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

53. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

55. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay Plaintiff and the Classes all minimum and overtime wages, provide all required meal periods and failing to authorize and permit all required rest periods, failing to pay meal and rest period premium wage payments, failing to reimburse for necessary business expenditures, and failing to furnish accurate, itemized wage statements, and willfully failing to timely pay Plaintiff and members of the Waiting Time Class all final wages upon separation of employment.

56. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage

over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

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

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

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

EIGHTH CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

61. Wage Order 14, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours actually worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 14.

62. California Labor Code § 1198 makes unlawful the employment of an employee

1 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a)
2 provide that an employer who has failed to pay its employees the legal minimum wage is liable
3 to pay those employees the balance of the unpaid wages as well as liquidated damages in an
4 amount equal to the wages due and interest thereon.

5 63. As a direct and proximate result of Defendants' unlawful conduct as alleged
6 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
7 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
8 entitled to recover economic and statutory damages and penalties and other appropriate relief as
9 a result of Defendants' violations of the California Labor Code and Wage Order 14.

10 64. Defendants' practice and uniform administration of corporate policy regarding
11 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff
12 and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum
13 wages, liquidated damages, including interest thereon, statutory penalties, and attorneys' fees
14 and costs of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and
15 Code of Civil Procedure § 1021.5.

16 **NINTH CAUSE OF ACTION**
17 **PRIVATE ATTORNEYS GENERAL ACT**
18 **(AGAINST ALL DEFENDANTS)**

19 65. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
20 fully set forth herein.

21 66. Defendants have committed several Labor Code violations against Plaintiff,
22 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
23 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
24 employees, brings this representative action against Defendants to recover the civil penalties due
25 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
26 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
27 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
28 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each

1 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
2 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
3 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
4 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
5 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
6 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
7 subsequent violation per employee per pay period for those violations of the Labor Code for
8 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 9 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
10 Wage Class, and other aggrieved employees in violation of Labor Code §§ 558,
11 1182.12, 1194, 1194.2, 1197, and 1198;
- 12 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
13 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
14 1194, and 1198;
- 15 c. Failing to authorize and permit all legally required rest periods, and failure to
16 pay rest period premium wages, to Plaintiff, the Rest Period Class, and other
17 aggrieved employees at the regular rate of compensation in violation of Labor
18 Code §§ 226.7, 516, 558, and 1198;
- 19 d. Failing to provide all legally required meal periods, and failure to pay meal
20 period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
21 employees at the regular rate of compensation in violation of Labor Code §§
22 226.7, 512, 558, and 1198;
- 23 e. Failing to reimburse Plaintiff, the Employee Expense Class, and other
24 aggrieved employees for all necessary work expenses incurred in violation of
25 Labor Code §§ 2802 and 2804;
- 26 f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
27 employees with complete, accurate, itemized wage statements in violation of
28 Labor Code § 226;
- g. Failing to timely pay all final wages and compensation earned by Plaintiff, the

Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;

- h. Failing to pay non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- i. Failing to permit and authorize Plaintiff and other non-exempt to exercise the use of their accrued paid sick leave days in violation of Labor Code § 245.5;
- j. Failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Reyes and other non-exempt employees in violation of Labor Code § 2810.5;
- k. Failing to permit and authorize Mr. Feliciano and other aggrieved employees to exercise the use of their accrued paid sick leave days in violated Labor Code § 245.5 by;
- l. Failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Feliciano and other aggrieved employees in violation of Labor Code § 2810.5.
- m. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

67. On July 18, 2022, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 66 (a)-(m). Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

68. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf 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, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code § 2802;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
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, 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.*;
11. Upon the Eighth Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
12. Upon the Ninth Cause of Action, for (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the

1 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
2 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
3 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
4 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
5 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
6 each initial violation and \$200 for each subsequent violation per employee per pay period for the
7 violations of the Labor Code Sections cited in Labor Code § 2699.5.

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

10 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
11 §§ 226, 1194 *et seq.*, 2698 *et seq.*, and 2699(g); and Code of Civil Procedure § 1021.5; and

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

13
14 Dated: October 5, 2022 Respectfully submitted,
STANBURY BROWN LAW, PC

15
16 By: 

Daniel J. Brown
Attorneys for Plaintiff

17
18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

20
21 Dated: October 5, 2022 Respectfully submitted,
STANBURY BROWN LAW, PC

22
23 By: 

Daniel J. Brown
Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

On October 5, 2022 I served the documents listed below on the parties in this action as follows:

- **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

- X (BY EMAIL) In accordance with California Code of Civil Procedure section 1010.6 in compliance with the Judicial Council’s Appendix I, Emergency Rules Related to Covid-19, Emergency Rule 12, I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 5, 2022 at Venice, California.



Daniel J. Brown

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