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CALIFORNIA SUPERIOR COURT

IN AND FOR THE COUNTY OF MERCED

MARIA GUADALUPE MARTINEZ and
ADRIAN ARROYO, individually and on behalf
of other persons similarly situated,

Plaintiff,

vs.

AMANDEEP KAUR KANDOLA and
BHUPINDER SINGH KANDOLA, individuals
doing business as KANDOLA FARMS; and
Does 1-20, inclusive,

Defendants.

Case No. 22CV-02963

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay for all Hours Worked;
2. Violation of the Minimum Wage;
3. Failure to Pay Overtime Wages;
4. Failure to Provide Meal Periods, or Pay Premium Wages in Lieu Thereof;
5. Failure to Provide Rest Breaks, or Pay Premium Wages in Lieu Thereof;
6. Failure to Furnish Accurate Itemized Wage Statements;
7. Failure to Pay Final Wages Timely Upon Cessation of Employment;
8. California's Unfair Competition Law ("UCL");
9. Private Attorney Generals Act, Cal. Lab. Code § 2698, *et seq.*

DEMAND FOR JURY TRIAL

2. Plaintiffs bring this class action pursuant to California Code of Civil Procedure section 382 against Amandeep Kaur Kandola and Bhupinder Singh Kandola, dba B Kandola Farm, and Does 1-20, inclusive (collectively “Defendants”), on behalf of themselves and other similarly situated non-exempt employees who worked for Defendants in the State of California (collectively referred to as the “Class” or “Class Members”) during the period four (4) years prior to the filing of the initial complaint in this action through the date of this action’s final disposition (hereinafter “Class Period”). Plaintiffs also bring this action to enforce the state’s labor laws and recover civil penalties payable to the State of California and other current or former employees of Defendants (the “PAGA Pool”), pursuant to the Private Attorneys General Act, California Labor Code section 2699, *et seq.* (“PAGA”).

3. During the Class Period, Defendants systematically violated the employment rights of Plaintiff and Class Members by engaging in widespread wage theft. Specifically, Defendants deny compensation for all hours worked, fail to comply with the minimum wage, and deny proper compensation of overtime. Defendants' conduct violates the minimum wage, overtime, and other wage and hour provisions of the Labor Code and Wage Orders. Defendants also violate the Labor Code and Wage Order by failing to provide proper meal periods or premium wages in lieu thereof; failing to provide proper rest breaks or premium wages in lieu thereof; failing to reimburse necessary business expenses incurred; failing to pay all wages owed upon cessation of the employment relationship; and failing to furnish accurate itemized wage statements.

4. Plaintiffs and the Class are entitled to wages, statutory penalties, interest, attorney’s fees and costs for Defendants’ violations of the Labor Code and Wage Orders as described in this complaint. Furthermore, Defendants’ acts constitute unfair and unlawful business practices that violate the California Unfair Competition Law (“UCL”), Business & Professions Code sections 17200, *et seq.* Plaintiff and the Class are therefore entitled to restitution and all remedies provided under the UCL.

28 5. Plaintiffs have satisfied the administrative prerequisites of Labor Code section 2699.3

6. At all times relevant to this action, Defendants' conduct has been willful and in reckless disregard of the rights of Plaintiff and the Class. Defendants have been on notice of the alleged illegalities but have deliberately continued to exploit Plaintiffs and the Class by enforcing and maintaining the illegal practices described herein. This action is brought not only to recover rightfully earned wages for Plaintiff and the Class, but also to enforce the state's laws, restore ill-gotten gains, and deter Defendants from their illegal conduct. Plaintiffs therefore seek all remedies available to them and the Class.

7. Plaintiff Maria Guadalupe Martinez (“Martinez”) is an individual who is and at all relevant times has been a resident of California resident. Martinez worked for Defendants in California for more than a year as a non-exempt hourly employee. Martinez’s hourly rate fluctuated at the will of Amandeep Kaur Kandola and Bhupinder Singh Kandola owners, officers, and/or managing agents of Kandola, between \$15.00 and \$17.00 per hour. She routinely worked overtime and in the high season, from July to October, approximately, she worked shifts of more than 14 hours. Defendants failed to compensate Martinez for all hours worked, denying her compensation for substantial portions of the workday and for compensable activities, as well as for time during which she was subject to employer control or time she was knowingly suffered or permitted to work without compensation. Defendants also failed to compensate Martinez for overtime. In addition to performing work in agricultural fields, Ms. Martinez performed work in facilities (approximately 10 minutes walking from the fields) used to refrigerate produce Defendants grew and harvested, including sweet potatoes. For example, Ms. Martinez washed produce, arranged boxes of produce, identified and removed spoiled produce, and loaded boxes of produce onto trucks. Martinez was denied proper meal

1 periods or additional compensation in lieu of proper meal periods. Defendants failed to relieve
2 Martinez of all duty for periods of at least 30 minutes within the first five hours of work, or for a
3 second meal period for shifts greater than 10 hours. Despite Defendants' meal period non-compliance,
4 Defendants never paid Martinez a meal period premium. Similarly, Defendants failed to relieve
5 Martinez of all duty for periods of net-10 minutes of rest at the rate of one rest period for shifts of at
6 least 3.5 hours, two rest periods for shifts greater than 6 and up to 10 hours, three rest periods for shifts
7 greater than 10 hours up to 14, and so on. Despite the failure to provide proper rest periods, Defendants
8 never paid Martinez a rest period premium. Defendants also failed to provide Martinez with accurate
9 itemized wage statements as required by Labor Code section 226. The stub detached from the check
10 (statement) which Martinez received did not meet the requirements of Labor Code section 226, failing
11 to state the inclusive dates of the pay period for which the employee is paid and the name and address
12 of the legal entity that is the employer. The stub/statement also failed to state accurately the gross and
13 net wages earned, total hours worked, the number of piece-rate units earned and all applicable piece
14 rates, all applicable hourly rates in effect during the pay period and the corresponding number of hours
15 worked at each hourly rate, and available sick leave. Martinez was denied payment for all wages
16 earned timely upon cessation of the employment relationship, entitling her to waiting time penalties
17 pursuant to Labor Code section 203. As a result of Defendants' violations of California law, Martinez
18 has suffered injury in fact and lost money or property as described in this complaint.

19 8. Plaintiff Adrian Arroyo ("Arroyo") is an individual who is and at all relevant times has
20 been a resident of California resident. Arroyo worked for Defendants in California for about a year as
21 a non-exempt hourly employee earning between \$14.00 and \$15.00 per hour. Arroyo routinely worked
22 overtime and in the high season he worked shifts of more than 14 hours. Defendants failed to
23 compensate Arroyo for all hours worked, denying him compensation for substantial portions of the
24 workday and for compensable activities, as well as for time during which he was subject to employer
25 control or time she was knowingly suffered or permitted to work without compensation. Defendants
26 also failed to compensate Arroyo for overtime. In addition to performing work in Defendants sweet
27 potato and almond fields, Arroyo performed work in facilities (approximately 10 minutes walking
28 from the fields) used to refrigerate produce that Defendants grew and harvested. Arroyo was denied

proper meal periods or additional compensation in lieu of proper meal periods. Defendants failed to relieve Arroyo of all duty for periods of at least 30 minutes within the first five hours of work, or for a second meal period for shifts greater than 10 hours. Despite Defendants' meal period non-compliance, Defendants never paid Arroyo a meal period premium. Similarly, Defendants failed to relieve Arroyo of all duty for periods of net-10 minutes of rest at the rate of one rest period for shifts of at least 3.5 hours, two rest periods for shifts greater than 6 and up to 10 hours, three rest periods for shifts greater than 10 hours up to 14, and so on. Despite the failure to provide proper rest periods, Defendants never paid Arroyo a rest period premium. Defendants also failed to provide Arroyo with accurate itemized wage statements as required by Labor Code section 226. The statements Arroyo received did not meet the requirements of Labor Code section 226, as they failed to state the inclusive dates of the pay period for which the employee is paid and the name and address of the legal entity that is the employer. The statements also failed to state accurately the gross and net wages earned, total hours worked, the number of piece-rate units earned and all applicable piece rates all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, and available sick leave. Arroyo was denied payment for all wages earned timely upon cessation of the employment relationship, entitling her to waiting time penalties pursuant to Labor Code section 203. As a result of Defendants' violations of California law, Arroyo has suffered injury in fact and lost money or property as described in this complaint

9. On information and belief, Defendant Amandeep Kaur Kandola is an individual residing in California who operates a business in California that grows and harvests agricultural products, handles agricultural products after harvest, and/or prepares agricultural products for market. The business goes by the fictitious name B Kandola Farm, located at 12225 Magnolia Ave., Livingston, CA, 95334. The fictitious name has been registered to Defendants Amandeep Kaur Kandola and Bhupinder Singh Kandola in the County of Merced, California since November 26, 2018 under File #18-1187. Defendant Amandeep Kaur Kandola has employed Plaintiffs and members of the class in California to perform labor for her and her California business and is liable to Plaintiffs and the Class for wages, interest, penalties, attorney's fees, and costs for the violations of the Labor Code and applicable Wage Orders alleged in this complaint.

11. The true names and capacities, whether individual, corporate, associates, or otherwise of Defendants sued as Does 1 through 20, inclusive, are currently unknown to Plaintiffs, who therefore sue such Defendants by fictitious names as permitted under law. Plaintiffs are informed and believes that each Doe Defendant is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court pursuant to Code of Civil Procedure section 474 to amend this Complaint to reflect the true names and capacities of the Defendants designated as Does when such identities become known.

19 12. This Court has jurisdiction over Plaintiff's claims under the California Labor Code and
20 the California's Unfair Competition Law, Business & Professions Code sections 17200, *et seq.*

13. Venue is proper in the Superior Court of the County of Merced pursuant to California Code of Civil Procedure section 395(a), because Defendants reside in Merced County and Plaintiff and substantial portion of the Class have been harmed by Defendants' violations of the Labor Code in Merced County. At all relevant times, Defendants have conducted business in Merced County and engaged employees to work at Defendants' fields and packing facilities within the County.

14. Defendants have violated and, on information and belief, continue to violate the Labor Code and Wage Orders by failing to compensate Class Members for all hours worked, failing to pay at

1 least the minimum wage for all hours worked, failing to pay proper overtime wages, failing to comply
2 with rest and meal period requirements and denying premiums for rest and meal period non-
3 compliance, failing to reimburse necessary work expenses, failing to provide accurate wage
4 statements, and failing to pay all wages owed timely upon termination of employment.

5 15. Defendants employ Class Members in farms and facilities located in California,
6 including in the Merced area of California. The operations at these facilities include growing,
7 processing, packing, and distributing agricultural products.

8 16. Defendants failed to pay Plaintiffs and, on information and belief, Class Members for
9 all hours worked, in violation of the minimum wage and overtime laws.

10 17. Plaintiffs and Class Members frequently worked overtime without proper compensation
11 at applicable overtime rates.

12 18. Plaintiffs and, on information and belief, Class Members were denied lawful meal
13 periods and were denied premium wages in lieu thereof. Defendants maintained practices that resulted
14 in failure to provide timely, complete, uninterrupted, off-duty meal periods that were free of the
15 employer's control. Defendants also maintained a policy or practice of denying premium wages for
16 meal period non-compliance.

17 19. Plaintiffs are informed and believe and thereon allege that Defendants did not obtain
18 valid and voluntary meal period waivers or on-duty meal period agreements from Class Members.

19 20. Defendants also failed to authorize and permit Plaintiff and, on information and belief,
20 Class Members, to take off-duty rest breaks of at least 10 minutes at the rate of one rest period for
21 shifts greater than 3.5 hours, two rest periods for shifts greater than six hours and up to 10 hours, and
22 three shifts for shifts greater than 10 hours and so on. Defendants maintained a practice or policy of
23 denying premiums despite the failure to authorize and permit rest periods in compliance with the
24 applicable Wage Order.

25 21. Plaintiffs are informed and believe that Defendants provided to Class Members
26 inaccurate itemized wage statements that failed to state the inclusive dates of the pay period for which
27 the employee is paid and the name and address of the legal entity that is the employer. The statements
28 also failed to state accurately the gross and net wages earned, total hours worked, the number of piece-

rate units earned and all applicable piece rates, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, and available sick leave.

22. Plaintiffs are further informed and believe and thereon allege that Defendants failed to pay Class Members all wages owed timely upon their separation from employment.

23. In engaging in the conduct described herein, Defendants have violated the Labor Code, applicable Wage Order(s), and UCL, entitling Plaintiff and Class Members to statutory damages, including wages and interest thereon; and restitution, declaratory and injunctive relief under the UCL. In addition, Plaintiffs intend to seek civil penalties under PAGA for the violations described herein against Defendants as employers and persons who caused the violations pursuant to Labor Code sections 558 and 1197.1.

V. CLASS ALLEGATIONS

24. Plaintiffs bring this action as a class action under Code of Civil Procedure section 382 on behalf of the following Class:

All non-exempt employees who worked for Defendants within the State of California during the period commencing four years prior to the filing of the initial complaint in this action through the date of its final disposition.

25. Reservations of Rights: Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into subclasses, and/or by limitation to particular issues.

26. Numerosity: The Proposed Class is so numerous that joinder of all members is impracticable. Plaintiff is informed and believes, and on that basis alleges, that during the relevant time period, Defendants employed over 100 individuals who are geographically dispersed throughout California and who satisfy the definition of the Proposed Class. The Class Members are so numerous that joinder of all Class Members is impracticable. The individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

27. Typicality: Plaintiff's claims are typical of all other Class Members as demonstrated herein.

1 28. **Adequacy:** Plaintiff will fairly and adequately protect the interests of each class
2 member, with whom he has a well-defined community of interest and typicality of claims, as
3 demonstrated herein. Plaintiff has no interest that is antagonistic to the other Class Members.
4 Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action
5 discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action
6 will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended
7 for the prosecution of this action for the substantial benefit of each class member. Plaintiff has
8 retained competent counsel experienced in wage and hour class action litigation.

9 29. **Predominant Common Questions:** Common questions of law and fact exist to all
10 members of the Proposed Class and predominate over any questions solely affecting individual
11 members of the Proposed Class, including, but not limited to:

- 12 a. Whether Defendants, as a matter of policy and/or practice, suffered and
13 permitted Plaintiffs and the Class to work without compensation, in violation of the
14 Wage Orders and Labor Code sections 204, 204b, 223, 510, 1194, 1197, 1198;
15 b. Whether Defendants, as a matter of policy and/or practice, violated the
16 minimum wage by failing to compensate for all hours worked;
17 c. Whether Defendants, as a matter of policy and/or practice, failed to pay
18 Plaintiffs and the Class overtime wages at one and one-half times and twice the regular
19 rate of pay for hours worked in excess of the overtime thresholds, in violation of the
20 Wage Orders and California Labor Code section 510;
21 d. Whether Defendants failed, as a matter of practice or policy, to comply with the
22 meal period provisions of the Wage Orders and Labor Code sections 226.7 and 512;
23 e. Whether Defendants failed, as a matter of practice or policy, to comply with the
24 rest period provisions of the Wage Orders and Labor Code section 226.7;
25 f. Whether Defendants, as a matter of policy and/or practice, failed to relieve
26 Plaintiffs and the Class of all duty for a first unpaid, uninterrupted, thirty (30) minute
27 meal period before the end of the fifth (5th) hour of work, or a second unpaid,
28

uninterrupted, meal period for work periods lasting at least ten (10) hours, in violation of Wage Order 16 and Labor Code sections 226.7 and 512;

g. Whether Defendants, as a matter of policy or practice, failed to pay Plaintiffs and the Class premium wages for missed or incomplete meal periods, in violation of Wage Order 16 and Labor Code section 226.7;

h. Whether Defendants, as a matter of policy and/or practice, failed to authorize and permit Plaintiffs and the Class to take rest breaks at a rate of one rest period for shifts greater than three and one-half (3.5) hours up to six (6) hours, two (2) rest breaks for shifts greater than six (6) hours up to ten (10) hours, and three (3) rest breaks for shifts greater than ten (10) hours up to fourteen (14) hours, and so on, in violation of Wage Order 16 and Labor Code section 226.7;

i. Whether Defendants, as a matter of policy or practice, failed to pay Plaintiffs and the Class premium wages for missed or incomplete rest breaks, in violation of Wage Order 16 and Labor Code section 226.7;

j. Whether Defendants failed, as a matter of practice or policy, to pay rest and meal period premiums, in violation of the Wage Orders and Labor Code section 226.7;

k. Whether Defendants failed, as a matter of practice or policy, to reimburse necessary expenses, in violation of Labor Code section 2802;

l. Whether Defendants, as a matter of policy and/or practice, failed to issue accurate itemized wage statements to Plaintiffs and the Class showing inclusive dates of the pay period, name and address of the employer, total hours worked, all applicable rates of pay and corresponding hours at each rate, gross and net wages earned, available sick leave, and other required items, in violation of Labor Code section 226;

m. Whether Defendants, as a matter of policy and/or practice, failed to keep complete and accurate payroll records for Plaintiffs and the Class as required by the Labor Code, including *inter alia*, sections 226 and 1174(d);

- n. Whether Defendants, as a matter of policy and/or practice, willfully failed to timely pay all wages owed to Plaintiffs and the Class upon their discharge or resignation in violation of Labor Code sections 201 and 202;
- o. Whether Defendants are liable to Plaintiffs and the Class for waiting time penalties under Labor Code section 203; and
- p. Whether Defendants, as a matter of policy and/or practice, engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et seq* causing Plaintiff and Class Members to lose money or property.

30. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits against a corporate Defendant. A class action is superior to other available means for fair and efficient adjudication of Class Members' claims and offers significant benefits to the parties and the court. A class action will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. The monetary amounts due to many Class Members are likely to be relatively small, thus making it difficult, if not impossible, for individual class members to seek and obtain relief. Moreover, a class action will serve important public interests by enabling the non-waivable statutory rights of class members to be effectively asserted, and fundamental public policies to be vindicated, in one proceeding. A class action will also provide a means for vindicating the rights of current employees who are less likely to come forward to assert those rights based on fears of employer reprisal. Finally, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation and address the problems inherent in random and fragmentary enforcement.

31. Plaintiffs intend to send notice to all members of the Proposed Class to the extent required by section 382. The names and addresses of the Proposed Class are available from Defendants.

VI. **CAUSES OF ACTION**

FIRST CAUSE OF ACTION
Failure to Compensate for All Hours Worked
(Violation of Wage Orders and Labor Code Section 1194, 223, 204, 204b)
Plaintiffs, Individually and on Behalf of the Class, Against Defendants

32. Plaintiff re-alleges and incorporates the above allegations as if fully stated herein.

33. At all relevant times, Defendants have been subject to Labor Code and Wage Order provisions requiring compensation for all “hours worked” at the legal minimum and contractual or agreed upon rates. Defendants violated the Wage Order and Labor Code sections 204, 204b, 223, 510, 1194, 1197 and 1198 by failing to compensate Plaintiff and the Class for all hours worked, and for compensating below the required minimum and/or contractual/agreed upon rates.

34. The IWC Wage Orders define hours worked as all “time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Further, the Wage Orders and California law require compensation for “All employer-mandated travel that occurs after the first location where the employee’s presence is required by the employer.”

35. At all times relevant to this action, Plaintiff and the Class were entitled to compensation at rates that were not less than the legal minimum wage, pursuant to the Wage Orders and Labor Code sections 1194, 1197, 1198.

36. Labor Code sections 204 and 204b require compensation of all wages due no later than the established pay date.

37. Labor Code section 223 prohibits employers from secretly paying less than the minimum or agreed/contractual rate while purporting to do so.

38. At all times relevant, Defendants have violated these provisions by failing to compensate Plaintiff and the Class for all “hours worked,” as defined in the Wage Orders and California law.

39. The violations of Labor Code sections 204, 204b, 223, 1194, 1197, 1198, and the applicable Wage Order described herein serve as predicates for PAGA penalties. Plaintiff has complied with the administrative procedures set forth in California Labor Code § 2699.3 to bring a claim for civil penalties under PAGA and as such seeks civil penalties on behalf of the State of California, the

1 PAGA Pool and themselves.

2 40. Plaintiff seeks unpaid wages and interest on behalf of himself and the Class in amounts
3 to be proven at trial. Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code section
4 1194.

5 **SECOND CAUSE OF ACTION**

6 **Failure to Pay Minimum Wage**

7 **(Violation of Labor Code sections 1194, 1194.2, 1197 & 1198 and Wage Orders)**

8 **Plaintiffs, Individually and on Behalf of the Class, Against Defendants**

9 41. Plaintiff re-alleges and incorporates the above allegations as if fully stated herein.

10 42. Labor Code section 1194 require compensation at rates that are not less than the
11 minimum rates established in California.

12 43. Labor Code section 1194.2 provides for liquidated damages for a violation of the
13 minimum wage.

14 44. At all times relevant, Defendants have violated the minimum wage by failing to
15 compensate Plaintiff and the Class for all hours worked, as described in this complaint.

16 45. The violation of the minimum wage laws serves as predicate for PAGA penalties.

17 46. As a result of Defendants' conduct, Plaintiffs and the Class are entitled to recover
18 minimum wages, liquidated damages, interest, attorney's fees, and cost of suit pursuant to Labor Code
19 sections 1194 and 1194.2.

20 **THIRD CAUSE OF ACTION**

21 **Failure to Pay Overtime Wages**

22 **(Violation of Wage Orders and Labor Code sections 510, 1194, 1198)**

23 **Plaintiffs, Individually and on Behalf of the Class, Against Defendants**

24 47. Plaintiff re-alleges and incorporates the above allegations as if fully stated herein.

25 48. At all relevant times, Defendants have been subject to Labor Code and Wage Order
26 provisions requiring overtime compensation.

27 49. At all times relevant, Defendants have violated the overtime provisions of California
28 law by failing to compensate Plaintiff and the Class at the required overtime rates for work in excess of
the overtime thresholds.

51. The violations of Labor Code sections 204, 204b, 223, 510, 1194, 1198, and the applicable Wage Order described herein serve as predicates for PAGA penalties. Plaintiff has complied with the administrative procedures set forth in California Labor Code § 2699.3 to bring a claim for civil penalties under PAGA and as such seeks civil penalties on behalf of the State of California, the PAGA Pool and themselves.

FOURTH CAUSE OF ACTION

53. Plaintiff re-alleges and incorporates the above allegations as if fully stated herein.

55. California Labor Code section 226.7 prohibits any employer from requiring any employee to work during any meal period mandated by an applicable IWC wage order, and states that an employer that fails to provide an employee with a required meal period in compliance with Section 512 and the Wage Orders shall pay that employee one additional hour of pay at the employee's regular rate of compensation (i.e., a meal period premium) for each work day that the employer does not provide a compliant meal period.

8 58. Defendants are therefore liable to Plaintiff and the Class for meal period premiums
9 pursuant to Labor Code section 226.7.

14 60. Plaintiff seeks meal period premium wages, interest and costs on behalf of himself and
15 the Class for violations of the meal period provisions of the Labor Code and Wage Orders.

**Failure to Provide Rest Periods or Premium Wages in Lieu Thereof
(Violation of Wage Orders and Labor Code section 226.7)
Plaintiffs, Individually and on Behalf of the Class, Against Defendants**

62. California Labor Code section 226.7 prohibits any employer from requiring any employee to work during any rest period mandated by an applicable IWC wage order.

27

28

64. At all times relevant to this action, Defendants failed to pay premium wages for each workday in which Plaintiff and the Class were not provided an off duty rest breaks of net 10 minutes or more.

65. Defendants are therefore liable to Plaintiff and the Class for rest break premiums pursuant to Labor Code section 226.7.

66. The violations of Labor Code section 226.7 and the applicable Wage Order described herein serve as predicates for PAGA penalties. Plaintiff has complied with the administrative procedures set forth in California Labor Code § 2699.3 to bring a claim for civil penalties under PAGA and as such seeks civil penalties on behalf of the State of California, the PAGA Pool and themselves.

67. Plaintiff seeks rest break premium wages, interest and costs on behalf of himself and the Class for violations of the meal period provisions of the Labor Code and Wage Orders.

SIXTH CAUSE OF ACTION
Failure to Provide Accurate Itemized Wage Statements
(Violation of Wage Orders and Labor Code section 226)
Plaintiffs, Individually and on Behalf of the Class, Against Defendants

68. Plaintiff re-alleges and incorporates the above allegations as if fully stated herein.

69. California Labor Code section 226(a) provides, in relevant part, that every employer must furnish each employee with an itemized wage statement that accurately shows the following:

- (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee....

70. On information and belief, at all times relevant to this action, the wage statements provided by Defendants to the Class have failed to contain accurate information required by Labor Code section 226, including gross and net wages earned, total hours worked by the employee, all

1 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
2 at each hourly rate by the employee, and available sick leave (Labor Code section 246, *et seq.*). The
3 statements also failed to state the inclusive dates of the pay period or the name and address of the
4 employer.

5 71. Plaintiff is informed and believes and thereon alleges that Defendants' failure to comply
6 with the requirements of Labor Code section 226 and provide accurate wage statements to Plaintiff and
7 the Class was knowing and intentional within the meaning of that provision. Plaintiff and the Class are
8 deemed to have suffered injury pursuant to Labor Code section 226(e)(2).

9 72. Pursuant to Labor Code section 226(e), Plaintiff and the Class are entitled to recover the
10 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs
11 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to
12 exceed an aggregate penalty of four thousand dollars (\$4,000).

13 73. The violations of Labor Code section 226 described herein serve as predicates for
14 PAGA penalties. Plaintiff has complied with the administrative procedures set forth in California
15 Labor Code § 2699.3 to bring a claim for civil penalties under PAGA and as such seeks civil penalties
16 on behalf of the State of California, the PAGA Pool and themselves.

17 74. Plaintiff seeks penalties, damages, and injunctive relief under Labor Code section
18 226(e) and (h) for himself and the Class, as well as attorney's fees and costs.

19 **SEVENTH CAUSE OF ACTION**

20 **Willful Failure to Pay All Wages Owed Timely Upon Discharge or Resignation**
21 **(Violation of Wage Orders and Labor Code sections 201, 202 & 203)**
22 **Plaintiffs, Individually and on Behalf of the Class, Against Defendants**

23 75. Plaintiff re-alleges and incorporates the above allegations as if fully stated herein.

24 76. California Labor Code sections 201 and 202 require immediate payment of all unpaid
25 wages at the time an employee is discharged or resigns from employment.

26 77. Defendants have willfully failed to pay all wages owed to Plaintiff and, on information
27 and belief, the Class upon discharge or resignation, including wages for all hours worked, minimum
28 wages, overtime and doubletime wages, and meal and rest period premium wages. For Defendants'
willful failure to pay all wages to Plaintiff and the Class upon resignation or discharge, the wages of

1 Plaintiff and the Class continue from the due date for up to thirty (30) days at their same rate, pursuant
2 to Labor Code section 203.

3 78. The violations of Labor Code section 201-203 described herein serve as predicates for
4 PAGA penalties. Plaintiff has complied with the administrative procedures set forth in California
5 Labor Code § 2699.3 to bring a claim for civil penalties under PAGA and as such seeks civil penalties
6 on behalf of the State of California, the PAGA Pool and themselves.

7 79. Plaintiff seeks waiting time penalties under Labor Code section 203 for himself and the
8 class, as well as costs of suit.

9
10 **EIGHTH CAUSE OF ACTION**
California Unfair Competition Law
(Violation of Business & Professions Code sections 17200, *et seq.*)
11 **Plaintiffs, Individually and on Behalf of the Class, Against Defendants**

12 80. Plaintiff re-alleges and incorporates the above allegations as if fully stated herein.

13 81. California's Unfair Competition Law ("UCL"), Business and Professions Code sections
14 17200, *et seq.*, defines "unfair competition" to include any unlawful business practice.

15 82. The UCL allows a person who has lost money or property as a result of unfair
16 competition to recover money or property obtained by means of unfair competition.

17 83. As set forth above, Plaintiff and the Class have lost money or property by being denied
18 wages for all hours worked, compensation of all minimum and overtime wages earned, payment of rest
19 and meal period premiums, and reimbursement of expenses. The loss of money or property by Plaintiff
20 and the Class is a result of Defendants' unlawful failure to pay Plaintiff and the Class those wages, and
21 related failures to maintain accurate records, in violation of the requirements of the Labor Code and the
22 Wage Order.

23 84. Pursuant to the UCL, Plaintiff seeks restitution of all money and property, including all
24 unpaid wages that Defendants acquired by means of unfair competition on behalf of himself and the
25 Class, in amounts subject to proof at trial. Plaintiffs also seek declaratory and injunctive relief.

26 **NINTH CAUSE OF ACTION**
PRIVATE ATTORNEYS GENERAL ACT
(Cal. Labor Code § 2698 *et seq.*)
27 **On behalf of Plaintiff, the State of California and the PAGA Pool against all Defendants**
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1 85. Plaintiffs reallege and incorporate herein by reference each and every allegation and
2 statement contained in the prior paragraphs, as though fully set forth herein.

3 86. PAGA provides that any provision of law under the Labor Code and applicable IWC
4 Wage Order that provides for a civil penalty to be assessed and collected by the Labor and Workforce
5 Development Agency for violations of the California Labor Code and applicable IWC Wage Order
6 may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of
7 himself and other current or former employees pursuant to procedures outlined in California Labor
8 Code section 2699.3. Plaintiffs assert this PAGA claim on behalf of a PAGA Pool comprised of non-
9 exempt workers employed within the PAGA period, as well as workers misclassified as independent
10 contractors.

11 87. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any person
12 who was employed by the alleged violator and against whom one or more of the alleged violations was
13 committed.” Plaintiffs and other current and former employees of Defendants are “aggrieved
14 employees” as defined by Labor Code section 2699(c) in that Defendants committed one or more of
15 the alleged violations of employment law against them.

16 88. PAGA is an enforcement action that empowers aggrieved employees to seek penalties
17 on behalf of themselves, current and former employees, and the State, without the need to certify a
18 class.

19 89. Plaintiffs are aggrieved employee as defined in Labor Code § 2699(a) who have
20 complied with the administrative requirements of Labor Code section 2699.3 by giving written notice
21 by certified mail on or about August 1, 2022 to the employer and to the LWDA of the Labor Code and
22 IWC Wage Order provisions alleged to have been violated, and the facts and theories supporting the
23 alleged violations. Sixty-five days have passed since the PAGA notice was submitted and the LWDA
24 has not indicated an intent to investigate the alleged violations. Plaintiffs may now assert a PAGA
25 claim in this civil action.

26 90. Pursuant to Labor Code section 2699(a), Plaintiffs seek civil penalties for all violations
27 alleged as provided under applicable Labor Code sections. To the extent that any violation alleged
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1 herein does not carry a penalty, Plaintiffs seek civil penalties for violations described herein under
2 Labor Code section 2699(f).

3 91. Defendants are liable to Plaintiffs, the state, and other current or former employees for
4 civil penalties arising from the violations alleged in this Complaint. Liability for civil penalties
5 attaches to the employer or any person acting on behalf of the employer who violates or causes a
6 violation of the provisions described herein, pursuant to Labor Code sections 558 and 1197.1.
7 Defendants are sued as employers and, alternatively, persons, including DOES who violated or caused
8 the violations of the pertinent Labor Code and Wage Order provisions are liable under Labor Code
9 sections 558 and 1197.1.

10 92. Defendants violated the Wage Orders and Labor Code sections 204, 223, 1194, 1197,
11 and 1198 by failing to compensate Plaintiffs and members of the PAGA Pool for all hours worked,
12 failing to compensate for minimum wage, as described in this complaint. Consequently, Defendants
13 are liable to Plaintiffs, the PAGA Pool, and the state for civil penalties pursuant to Labor Code sections
14 210, 225.5, 1197.1 and 2699(f).

15 93. Defendants violated the Wage Orders and Labor Code sections 510 and 1198 by failing
16 to pay overtime to Plaintiffs and members of the PAGA Pool. Consequently, Defendants are liable to
17 Plaintiffs, the PAGA Pool, and the state for civil penalties pursuant to Labor Code sections 558 and
18 2699(f).

19 94. Defendants violated the Wage Orders and Labor Code sections 226.7 and 512 by failing
20 to comply with the state's rest and meal period requirements and failing to pay premiums for non-
21 compliance. Consequently, Defendants are liable to Plaintiffs, the PAGA Pool, and the state for civil
22 penalties pursuant to Labor Code sections 558 and 2699(f).

23 95. Defendants violated the Wage Orders and Labor Code section 226 by failing to provide
24 to Plaintiffs and members of the PAGA Pool with accurate wage statements. Consequently,
25 Defendants are liable to Plaintiffs, the PAGA Pool, and the state for civil penalties pursuant to Labor
26 Code section 226.3.

27 96. Defendants violated Labor Code sections 201, 202, and 203 by failing to pay Plaintiffs
28 and members of the PAGA Pool all wages owed timely upon separation from employment.

Consequently, Defendant are liable to Plaintiffs, the PAGA Pool, and the state for civil penalties pursuant to Labor Code sections 256, 1197.1 and/or 2699(f).

97. Defendants violated Labor Code section 2802 by failing to to provide all necessary equipment and tools and workers were thus forced to purchase and maintain their own without reimbursement. As a result, Defendants are liable to Plaintiffs, the PAGA Pool, and the State of California for civil penalties under Labor Code section 2699(f).

98. Defendants violated the Wage Orders and Labor Code sections 1174 and 1198 by failing to maintain accurate payroll records and failing to maintain accurate records of when employees begin and end each work period and meal period. Consequently, Defendant are liable to Plaintiffs, the PAGA Pool, and the state for civil penalties pursuant to Labor Code sections 1174.5 and 2699(f).

99. Plaintiff, on behalf of himself and other current or former employees and the state seek and award of civil penalties, attorney's fees and cost of suit pursuant to PAGA.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. For an order awarding Plaintiff and the Class compensatory damages for all legal minimum, contractual, and overtime wages earned but not paid, in the amount to be proven at trial, pursuant to Labor Code sections 200, *et seq.*, 223, 510, 1194, 1197, 1198;

2. For pre-judgment interest of ten percent (10%) on the unpaid wages and overtime compensation owed to Plaintiff and the Class under Labor Code section 218.6;

3. For liquidated damages to Plaintiff and the Class under Labor Code section 1194.2;

4. For an award of attorney's fees pursuant to Labor Code section 1194;

5. For meal period premium wages to Plaintiff and the Class pursuant to Labor Code section 226.7;

6. For rest break premium wages to Plaintiff and the Class pursuant to Labor Code section 226.7;

7. For reimbursement of expenses to Plaintiff and the Class pursuant to Labor Code section 2802;

8. For attorney's fees and costs pursuant to Labor Code section 2802;

- 9. For an award of penalties to Plaintiff and the Class pursuant to Labor Code section 226;
- 10. For injunctive relief under Labor Code 226;
- 11. For an award of attorneys’ fees pursuant to Labor Code section 226;
- 12. For “waiting time” penalties to Plaintiff and the Class under California Labor Code section 203;
- 13. For earned but unpaid wages as equitable relief to Plaintiff and the Class under the UCL for a period that extends the statute of limitations or recovery period for wages to four years;
- 14. For declaratory judgment that the actions, conduct, and practices of Defendants complained of herein constitute unfair business practices under the UCL;
- 15. For an injunction and order permanently restraining Defendants from engaging in the unlawful business practices complained of herein;
- 16. For an order that the action be certified as a class action;
- 17. For an order appointing Plaintiffs Maria Guadalupe Martinez and Adrian Arroyo as class representatives;
- 18. For an order appointing counsel for Plaintiff as class counsel;
- 19. For reasonable attorney’s fees and costs, including expert witness fees, pursuant to Code of Civil Procedure section 1021.5 and other provisions of the California Labor Code;
- 20. For civil penalties pursuant to PAGA under Labor Code section 2699(a) and 2699(f);
- 21. For civil penalties pursuant to all provisions of the Labor Code referenced herein which provide for penalties, including but not limited to: Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, 1102.5, and 2699(f)(2);
- 22. For attorney’s fees pursuant to Labor Code section 2699;
- 23. For interest to the extent permitted by law;
- 24. For costs and expenses of this action; and
- 25. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, demands a trial by jury on claims so triable.

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Dated: December 19, 2022

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