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For All Purposes

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

NICANDRO CRUZ, as an individual, and on
behalf of all others similarly situated,

Plaintiff,

v.

LUIS ANTONIO GONZALEZ DBA
LATINO FARM LABOR SERVICE, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: VCU295351

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *e seq.*).**

UNLIMITED CIVIL CASE

Case Management Conference

05/24/2023 08:30 AM - Department 01

1 Plaintiff Nicandro Cruz (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this Representative Action Complaint against Luis Antonio Gonzalez dba Latino
3 Farm Labor Service, an individual; and, DOES 1 to 100, inclusive (collectively “Defendants”),
4 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 Representative Action Complaint for recovery of unpaid wages and penalties under Labor Code
8 § 2698 *et seq.*, in addition to seeking declaratory relief and restitution. This Court has jurisdiction
9 over Defendants’ violations of the California Labor Code because the amount in controversy
10 exceeds this Court's jurisdictional minimum.

11 **VENUE**

12 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
13 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
14 County of Tulare. One or more of the Defendants, transact business, have agent(s) within the
15 County of Tulare, and/or otherwise are found within the County of Tulare, and Defendants are
16 within the jurisdiction of this Court for purposes of service of process.

17 **PARTIES**

18 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
19 Plaintiff was and currently is, a California resident. During the one years immediately preceding
20 the filing of the Complaint in this action and within the statute of limitations periods applicable
21 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
22 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
23 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
24 §§ 201-203, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, and 1198; and Wage
25 Order 14, which sets employment standards for Agricultural Occupations.

26 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
27 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
28 continue to do) business by employing seasonal farm labor employees to harvest agricultural

1 commodities in the United States, and employed Plaintiff and other, similarly-situated non-
2 exempt employees within Tulare County and the state of California and, therefore, were (and are)
3 doing business in Tulare County and the State of California.

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

12 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
13 herein, Defendants were and are the employers of Plaintiff and all other aggrieved employees.

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

21 8. At all times mentioned herein, Defendants, and each of them, were members of
22 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
23 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
24 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all other
25 aggrieved employees.

26 9. Defendants' client farms (to be ascertained through discovery) are also jointly
27 liable with Defendant Luis Antonio Gonzalez dba Latino Farm Labor Service for all civil legal
28 responsibility and civil liability for the payment of wages, including all sums payable to an

1 employee or the state of California based upon any failure to pay wages, pursuant to Labor Code
2 §2810.3.

3 **GENERAL FACTUAL ALLEGATIONS**

4 10. Plaintiff began his employment with Defendants around 2014 and generally
5 worked six days a week, Monday through Saturday, at least eight hours per shift. Plaintiff
6 performed general farm-labor tasks, mainly picking and/or pruning kiwis, peaches, and other
7 fruits at various farms that Defendant contracted Plaintiff and other non-exempt employees to
8 perform work at. Plaintiff generally worked from 6:30 a.m. until 2:30 p.m. However, as
9 discussed below, Plaintiff worked considerably more hours than he was credited for on the
10 timesheets prepared by his supervisors, who did not properly track the hours worked by Plaintiff
11 and other non-exempt employees, instead opting to compensate Plaintiff and other non-exempt
12 employees based on their pre-scheduled hours regardless of how many hours they actually
13 worked. Plaintiff was paid at a rate of \$15.00 per hour at the time of his separation with
14 Defendants.

15 11. Throughout the duration of Plaintiff's employment with Defendants, Plaintiff and
16 other non-exempt employees were not paid for all hours worked as their supervisors would not
17 keep track of their actual hours worked, instead electing to compensate them for their scheduled
18 hours regardless of the amount of hours they were actually performing work, which functionally
19 served to underreport and undercompensate Plaintiff and other non-exempt employees for all of
20 the time that they were actually working. Furthermore, Plaintiff and other non-exempt
21 employees routinely worked overtime hours, based on the requirements of Wage Order 14, per
22 workweek but did not receive overtime compensation equal to one and one-half times their
23 regular rates of pay for all overtime hours worked. For example, upon information and belief,
24 Plaintiff and other non-exempt employees routinely worked longer than their actual pre-
25 scheduled hours so as to ensure that the days' work was all completed prior to departing the work
26 site, but were only provided compensation for their pre-scheduled hours despite this reality.
27 Additionally, on paydays, Plaintiff and other non-exempt employees would be required to wait
28 in lines to collect their wages, whether by check or cash, all time that was wholly uncompensated
by Defendants. Defendants also failed to provide "Reporting Time Pay" to Plaintiff and other

1 non-exempt employees on those occasions where they were required to report to Defendants’
2 worksite but not able to perform work due to weather conditions or otherwise. Despite
3 maintaining a policy that required its employees to report to the worksite every day regardless
4 of weather conditions, Defendants failed to provide any sort of compensation to Plaintiff and the
5 other non-exempt employees on those occasions where they reported to the worksite but were
6 unable to perform any work in violation of the “Reporting Time Pay” requirements as set forth
7 in Wage Order 14 § 5. Furthermore, despite meeting the hourly thresholds to be entitled to
8 overtime compensation on a weekly basis by virtue of working on Saturdays after having already
9 worked a 40+ hour workweek Monday through Friday, Plaintiff and other non-exempt
10 employees were rarely, if ever, provided overtime pay. Instead, Plaintiff and other non-exempt
11 employees would be paid at their straight time hourly rate for their Saturday shifts, often in cash,
12 as Defendants made no efforts to properly track their hours worked. For example, during the
13 week of February 13, through February 19, 2022, Plaintiff was only compensated for 30.80 hours
14 of work and 1.20 hours for break time as indicated on wage statement 432894. On information
15 and belief, Plaintiff asserts this wage statement evidences Plaintiff was only credited with 8.0
16 hours of work on the 14th, 15th, 16th, 17th, and 18th. However, Plaintiff worked considerably more
17 time that week than he was compensated for including (i) having to wait in line to receive his
18 paycheck on Friday, February 18, 2022 after his 8.0 scheduled shifted ended, and (ii) Plaintiff
19 worked at least 8.0 hours on Saturday, February 19, 2022, but was paid in cash at his regular
20 hourly rate instead of being properly paid at his overtime rate of pay \$22.50 per hour. Plaintiff
21 worked these shifts with other non-exempt employees and on information and belief asserts these
22 other non-exempt employees suffered the same unpaid wage violations. Due Defendants’
23 unlawful timekeeping and payment policies and practices that failed to compensate for all hours
24 worked, Plaintiff and other non-exempt employees have been deprived of all required minimum
25 and overtime wages earned.

26 12. Plaintiff and other non-exempt employees were not authorized to take all legally
27 required rest periods. Plaintiff and other non-exempt employees rarely, if ever, were provided
28 to exercise the use of rest periods and instead would be made to work through the entirety of
their shifts (outside of the time they were allotted for meal periods). Furthermore, to the extent

1 that rest periods were ever provided, Defendants did not provide Plaintiff and other non-exempt
2 employees with any legally compliant rest periods free of employer control and in the shade of
3 the sun during the entirety of Plaintiff's employment with Defendants. Despite Defendants'
4 failure to authorize and permit Plaintiff and other non-exempt employees to take all lawful paid
5 rest periods, due to their uniform and unlawful practices, Defendants never provided Plaintiff
6 and other non-exempt employees with an hour of pay at their regular rate for each rest period
7 violation as required by Labor Code § 226.7. Upon information and belief, Defendants
8 maintained no payroll code or another mechanism for the payment of rest period premiums in
9 the event Plaintiff and other non-exempt employees were not authorized to take lawful rest
10 periods. These rest period violations are evidenced in part by Plaintiff's wage statement
11 #432894, which shows Plaintiff was credited with 1.20 hours of "Break" time. However, on
12 information and belief neither Plaintiff nor any of Defendant's other non-exempt employees he
13 worked with actual received all 10 minute uninterrupted rest periods they were entitled to during
14 the corresponding workweek.

15 13. Defendants failed to adequately reimburse Plaintiff and other non-exempt
16 employees for all reasonable and necessary work expenditures and required Plaintiff and other
17 non-exempt employees to purchase their own tools including, but not limited to, gloves, scissors,
18 and safety glasses.

19 14. Furthermore, Defendants unlawfully deducted \$7 from the wages of Plaintiff and
20 other non-exempt employees on each occasion that they were paid in cash, in violation of Labor
21 Code § 221. Plaintiff attempted to ascertain the reason for this deduction, however, was met
22 with anger and reprimand from his supervisors any time he inquired about it. For example, on
23 February 19, 2022, Plaintiff worked for Defendant, was paid only in cash, and had \$7.00
24 deducted from earned pay unlawfully and without explanation.

25 15. As a result, in part, of Defendants' failure to pay all minimum and overtime wages,
26 and rest period premium wages, Defendants maintained inaccurate payroll records, and issued
27 inaccurate and deficient wage statements. Furthermore, Defendants issued facially inaccurate
28 wage statements in violation of Labor Code 226(a)(8) which requires that farm labor contractors
identify the legal name and address that is the client-employer. Specifically, Defendants failed

1 to meet its affirmative obligation to identify the legal entity and address of the client-employer
2 grower(s), which requires that that farm labor contractors identify “the name and address of the
3 legal entity that secured the services of the employer” at any point during Plaintiff’s employment
4 with Defendants. Furthermore, for at least a portion of the class period, Defendants issued
5 facially inaccurate wage statements in violation of Labor Code 226(a)(7) by unlawfully including
6 its employees’ entire social security numbers on their wage statements. For example, Plaintiff’s
7 wage statement # 432894 does not list the grower Plaintiff performed work for on behalf of
8 Defendants.

9 16. As a further result of Defendants’ failure to pay all minimum and overtime wages,
10 and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff and the
11 other non-exempt employees upon their separation of employment from Defendants.
12 Furthermore, Defendants violated Labor Code § 204 by failing to pay Plaintiff and other non-
13 exempt employees at least twice during each calendar month. Additionally, Defendants, as a
14 farm labor contractor, violated Labor Code § 205 by paying Plaintiff and other non-exempt
15 employees on a delay of five days or more, in violation of the “fourth day” requirement that
16 Defendants pay its employees for all wages up to and including the fourth day before the
17 scheduled payday. For example, Plaintiff’s wage statement # 432894 states the workweek ended
18 on February 19, 2022, but Plaintiff’s check is not dated until February 26, 2022. Lastly, at the
19 end of each season, employees were laid off (i.e., terminated), but were not provided their pay
20 check until the next regular scheduled pay day, in violation of Labor Code § 201 (“(a) If an
21 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
22 and payable immediately.”)

23 17. Finally, Defendants failed to conform to the requirements of Labor Code § 2810.5
24 by failing to provide Plaintiff and other non-exempt employees written notices, in the language
25 normally used to communicate employment related information to the employees, containing
26 information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part
27 of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the
28 employer; vi) the address of the legal entity that is the employer; vii) the telephone number of
the employer; viii) identifying information for the employer’s workers’ compensation insurance

1 carrier; and ix) information informing the employee of their right to accrue and use paid sick
2 leave. Despite maintaining an obligation to provide these disclosures to Plaintiff and other non-
3 exempt employees, Defendants failed to do so, in violation of Labor Code § 2810.5.

4 **FIRST CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT**

6 **(AGAINST ALL DEFENDANTS)**

7 18. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
8 fully set forth herein.

9 19. Defendants have committed several Labor Code violations against Plaintiff and
10 other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor
11 Code § 2698 et seq., acting on behalf of himself and other aggrieved employees (defined to
12 include all of Defendants’ current and former non-exempt employees in California who worked
13 for Defendants since October 31, 2021), brings this representative action against Defendants to
14 recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of
15 California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including,
16 but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee
17 and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor
18 Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld;
19 (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor
20 Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for
21 each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
22 \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor
23 Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and
24 \$200 for each subsequent violation per employee per pay period for those violations of the
25 Labor Code for which no civil penalty is specifically provided, based on the following Labor
26 Code violations:

- 27 a. Failing to pay minimum wages for all hours worked to Plaintiff and other
28 aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2,

1197, and 1198;

- b. Failing to pay Plaintiff and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages and compensation earned by Plaintiff and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- g. Failing to pay non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- h. Failing to compensate Plaintiff and other aggrieved employees at least once every week on a business day designated in advance and including all wages earned up to and including the fourth day before such payday in violation of Labor Code § 205;
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198;
- j. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses incurred pursuant to Labor Code §§ 2802 and 2804;
- k. Failing to permit and authorize Plaintiff and other aggrieved employees to exercise the use of accrued paid sick leave days in violation of Labor Code § 245.5;

- 1 l. Unlawfully deducting earned wages by Plaintiff and other aggrieved
2 employees in violation of Labor Code § 221; and
3 m. Failing to provide legally mandated disclosures and/or written notices
4 regarding the terms of Plaintiff and other aggrieved employees' employment
5 in violation of Labor Code § 2810.5.

6 20. On October 31, 2022, Plaintiff notified Defendants via certified mail, and notified
7 the California Labor and Workforce Development Agency ("LWDA") via its website, of
8 Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for
9 civil penalties under California Labor Code § 2698 et seq. with respect to violations of the
10 California Labor Code identified in Paragraph 19 (a)-(m). Now that sixty-five days have passed
11 from Plaintiff's notifying Defendants and the LWDA of these violations, and the LWDA has not
12 provided notice that it intends to investigate the violations, Plaintiff has exhausted his
13 administrative requirements for bringing a claim under the Private Attorneys General Act with
14 respect to these violations.

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

19 **PRAYER**

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

22 1. Upon the First Cause of Action, (1) \$100.00 for each initial violation for each
23 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
24 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
25 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
26 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
27 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
28 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent

1 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
2 each initial violation and \$200 for each subsequent violation per employee per pay period for the
3 violations of the Labor Code Sections cited in Labor Code § 2699.5;

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

6 3. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
7 Procedure § 1021.5 and all other applicable statutes; and

8 4. For such other and further relief the Court may deem just and proper.

9 Dated: January 20, 2023 Respectfully submitted,
STANBURY BROWN LAW, PC

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11 By: 
12 Daniel J. Brown
13 Attorney for Plaintiff
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