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CALIFORNIA SUPERIOR COURT

IN AND FOR THE COUNTY OF SANTA CRUZ

EUFRONIO MARCOS, an individual, on
behalf of himself, other persons similarly
situated,

Plaintiff,

vs.

CONTINENTAL FLORAL CA, LLC, a
California entity; CONTINENTAL FLORAL,
LLC, a Florida entity; and Does 1-20, inclusive,

Defendants.

Case No. 22CV01857

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wage;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods, or Pay Premium Wages in Lieu Thereof;
4. Failure to Provide Rest Breaks, or Pay Premium Wages in Lieu Thereof;
5. Failure to Reimburse Necessary Expenses;
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

1. Eufronio Marcos (“Plaintiff” or “Marcos”), for himself and on behalf of other persons similarly situated, complains and alleges upon personal knowledge and on information and belief as follows:

I. INTRODUCTION

2. Eufronio Marcos brings this class action pursuant to California Code of Civil Procedure section 382 against Continental Floral CA, LLC, Continental Floral, LLC, and Does 1-20, inclusive (collectively “Defendants”), on behalf of himself 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”). He also brings 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 proper compensation for all hours worked; fail to pay all overtime wages owed; fail to provide proper rest and meal periods or premium wages in lieu thereof; fail to reimburse necessary business expenses; fail to pay all wages owed upon cessation of the employment relationship; and by fail to furnish wage statements accurately stating, among other things, total hours worked, gross and net wages earned, all applicable hourly rates and corresponding hours at each rate, and available sick leave. Defendants' conduct violates provisions of the Labor Code and Wage Orders.

4. Plaintiff and the Class are entitled to wages, statutory penalties, interest, attorney’s fees and costs for Defendants’ violations of the Labor Code and Wage Order 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.

5. Plaintiff has satisfied the administrative prerequisites of Labor Code section 2699.3 by giving notice to the employer and the Labor & Workforce Development Agency (“LWDA”) of the

facts and theories supporting the alleged violations (the “PAGA Notice”). The period for the LWDA to investigate has lapsed and Plaintiff is now statutorily authorized to act on behalf of the state to enforce the state’s labor and employment laws and collect civil penalties. Defendants and other persons who violated or caused violations of the Labor Code and Wage Orders as described herein are liable for civil penalties pursuant to Labor Code sections 558 and 1197.1.

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 Plaintiff 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. Plaintiff therefore seeks all remedies available to him and the Class.

II. THE PARTIES

7. Plaintiff Eufonio Marcos (“Marcos”) is an individual who is and at all relevant times has been a resident of California resident. Marcos was employed as a non-exempt employee and worked for Defendants in agricultural fields and packing facilities for several years within the Class Period until in or around July 2022. Defendants failed to pay Plaintiff for all hours worked and all overtime wages owed. Similarly, Plaintiff was denied lawful rest breaks and meal periods and was denied premium wages in lieu thereof. Defendants did not obtain valid and voluntary meal period waivers or on-duty meal period agreements from Plaintiff and failed to pay Plaintiff premium wages for denied, untimely, short, interrupted, and otherwise non-compliant meal periods. Defendants also failed to authorize and permit off-duty rest breaks of at least 10 minutes at the rate of one rest period for shifts greater than 3.5 hours, two rest periods for shifts greater than six hours and up to 10 hours, and three shifts for shifts greater than 10 hours and so on. Despite the failure to authorize and permit rest periods in compliance with the applicable Wage Order, Plaintiff was denied premium wages in lieu of lawful rest breaks. Further, Marcos was provided inaccurate itemized wage statements that failed to state accurately the gross and net wages owed, all applicable rates of pay and corresponding hours, total hours worked, and available sick leave. As a result of Defendants’ violations of California

1 law, Marcos has suffered injury in fact and lost money or property as described in this complaint.

2 8. On information and belief, Continental Floral CA, LLC (“CFCA”) is a California
3 limited liability company registered in the State of California under entity #201426510118. According
4 to filings submitted to the California Secretary of State, CFCA’s California address is 321 San Andreas
5 Road, Watsonville, CA 95076 and its registered agent for service of process is Registered Agent
6 Solutions, Inc., Registered Corporate 1505 Agent. James A. Milgard Jr. is listed as Manger/Member of
7 CFCA.

8 9. On information and belief, Continental Floral, LLC (“CF”) is a Florida limited liability
9 company registered in the State of California under entity #201427410330. According to filings
10 submitted to the California Secretary of State, CFCA’s California address is 321 San Andreas Road,
11 Watsonville, CA 95076 and its registered agent for service of process is Registered Agent Solutions,
12 Inc., Registered Corporate 1505 Agent. James A. Milgard Jr. is listed as Manger/Member of CF.

13 10. Defendants CFCA and CF operate as an integrated enterprise employing Plaintiff and
14 Class Members in California. Defendants employed or jointly employed Plaintiff and Class Members
15 and are liable for wages, interest thereon, penalties, attorney’s fees, and costs for violations of the
16 Labor Code and Wage Orders as described herein.

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

24 **III. JURISDICTION & VENUE**

25 12. This Court has jurisdiction over Plaintiff’s claims under the California Labor Code and
26 the California’s Unfair Competition Law, Business & Professions Code sections 17200, et seq.

27 13. Venue is proper in the Superior Court of the County of Santa Cruz pursuant to
28 California Code of Civil Procedure section 395(a), because Defendants reside in San Cruz County and

1 Plaintiff and substantial portion of the Class have been harmed by Defendants' violations of the Labor
2 Code in Santa Cruz County. At all relevant times, Defendants have conducted business in Santa Cruz
3 County and engaged employees to work at Defendants' fields and packing facilities within the County.

4 5 **IV. GENERAL ALLEGATIONS**

6 14. Defendants have violated and, on information and belief, continue to violate the Labor
7 Code and Wage Orders by failing to compensate Class Members for all hours worked and all overtime
8 wages owed, failing to comply with rest and meal period requirements and denying premiums for rest
9 and meal period non-compliance, failing to reimburse necessary work expenses, failing to provide
10 accurate wage statements, and failing to pay all wages owed timely upon termination of employment.

11 15. Defendants employ Class Members in farms and facilities located in California,
12 including in the Watsonville area of California. The operations at these facilities include growing,
13 processing, and distributing floral greens for wholesale.

14 16. Defendants failed to pay Plaintiff and, on information and belief, Class Members for all
15 hours worked, in violation of the minimum wage.

16 17. Defendants failed to pay Plaintiff and, on information and belief, Class Members for all
17 overtime hours worked, in violation of the overtime laws.

18 18. Plaintiff and, on information and belief, Class Members were denied lawful rest breaks
19 and meal periods and were denied premium wages in lieu thereof.

20 19. Defendants maintained practices that resulted in failure to provide timely, complete,
21 uninterrupted, off-duty meal periods that were free of the employer's control. Defendants also
22 maintained a policy or practice of denying premium wages for meal period non-compliance.

23 20. Plaintiff is informed and believes and thereon alleges that Defendants did not obtain
24 valid and voluntary meal period waivers or on-duty meal period agreements from Class Members.

25 21. Defendants also failed to authorize and permit Plaintiff and, on information and belief,
26 Class Members, to take off-duty rest breaks of at least 10 minutes at the rate of one rest period for
27 shifts greater than 3.5 hours, two rest periods for shifts greater than six hours and up to 10 hours, and
28 three shifts for shifts greater than 10 hours and so on. Defendants maintained a practice or policy of

denying premiums despite the failure to authorize and permit rest periods in compliance with the applicable Wage Order.

22. Plaintiff and, on information and belief, Class Members were required to purchase equipment to perform their work and were not reimbursed for the expense.

23. Plaintiff is informed and believes that Defendants provided to Class Members inaccurate itemized wage statements that failed to state accurately the gross and net wages owed, all applicable rates of pay and corresponding hours at each rate, total hours worked, and available sick leave.

24. Plaintiff is further informed and believes and thereon alleges that Defendants failed to pay Class Members all wages owed timely upon their separation from employment.

25. 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, Plaintiff seeks 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

26. Plaintiff Eufonio Marcos brings 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.

27. **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.

28. **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

1 California and who satisfy the definition of the Proposed Class. The Class Members are so numerous
2 that joinder of all Class Members is impracticable. The individuals and the identity of such
3 membership is readily ascertainable by inspection of Defendants' employment records.

4 29. **Typicality:** Plaintiff's claims are typical of all other Class Members as demonstrated
5 herein.

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

14 31. **Predominant Common Questions:** Common questions of law and fact exist to all
15 members of the Proposed Class and predominate over any questions solely affecting individual
16 members of the Proposed Class, including, but not limited to:

- 17 a. Whether Defendants, as a matter of policy and/or practice, suffered and
18 permitted Plaintiff and the Class to work without proper compensation, in violation of
19 the Wage Orders and Labor Code sections 204, 204b, 223, 510, 1194, 1197, 1198;
- 20 b. Whether Defendants, as matter of policy and/or practice, violated the minimum
21 wage by failing to compensate Plaintiffs and the Class for all hours worked;
- 22 c. Whether Defendants, as a matter of policy and/or practice, failed to pay Plaintiff
23 and the Class overtime wages at one and one-half times and twice the regular rate of
24 pay for hours worked in excess of the overtime thresholds, in violation of the Wage
25 Orders and California Labor Code section 510;
- 26 d. Whether Defendants failed, as a matter of practice or policy, to comply with the
27 meal period provisions of the Wage Orders and Labor Code sections 226.7 and 512;

- 1 e. Whether Defendants failed, as a matter of practice or policy, to comply with the
2 rest period provisions of the Wage Orders and Labor Code section 226.7;
- 3 f. Whether Defendants, as a matter of policy and/or practice, failed to relieve
4 Plaintiff and the Class of all duty for a first unpaid, uninterrupted, thirty (30) minute
5 meal period before the end of the fifth (5th) hour of work, or a second unpaid,
6 uninterrupted, meal period for work periods lasting at least ten (10) hours, in violation
7 of applicable Wage Orders and Labor Code sections 226.7 and 512;
- 8 g. Whether Defendants, as a matter of policy or practice, failed to pay Plaintiff and
9 the Class premium wages for missed or incomplete meal periods, in violation of
10 applicable Wage Orders and Labor Code section 226.7;
- 11 h. Whether Defendants, as a matter of policy and/or practice, failed to authorize
12 and permit Plaintiff and the Class to take rest breaks at a rate of one rest period for
13 shifts greater than three and one-half (3.5) hours up to six (6) hours, two (2) rest breaks
14 for shifts greater than six (6) hours up to ten (10) hours, and three (3) rest breaks for
15 shifts greater than ten (10) hours up to fourteen (14) hours, and so on, in violation of
16 applicable Wage Orders and Labor Code section 226.7;
- 17 i. Whether Defendants, as a matter of policy or practice, failed to pay Plaintiff and
18 the Class premium wages for missed or incomplete rest breaks, in violation of
19 applicable Wage Orders and Labor Code section 226.7;
- 20 j. Whether Defendants failed, as a matter of practice or policy, to pay rest and
21 meal period premiums, in violation of the Wage Orders and Labor Code section 226.7;
- 22 k. Whether Defendants failed, as a matter of practice or policy, to reimburse
23 necessary expenses, in violation of Labor Code section 2802;
- 24 l. Whether Defendants, as a matter of policy and/or practice, failed to issue
25 accurate itemized wage statements to Plaintiff and the Class showing total hours
26 worked, all applicable rates of pay and corresponding hours at each rate, gross and net
27 wages earned, available sick leave, and other required items, in violation of Labor Code
28 section 226;

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

4 n. Whether Defendants, as a matter of policy and/or practice, willfully failed to
5 timely pay all wages owed to Plaintiff and the Class upon their discharge or resignation
6 in violation of Labor Code sections 201 and 202; and

7 o. Whether Defendants, as a matter of policy and/or practice, engaged in unfair
8 business practices in violation of California Business & Professions Code section
9 17200, *et seq* causing Plaintiff and Class Members to lose money or property.

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

26 33. Plaintiff intends to send notice to all members of the Proposed Class to the extent
27 required by section 382. The names and addresses of the Proposed Class are available from
28 Defendants.

1
2 **VI. CAUSES OF ACTION**

3
4 **FIRST CAUSE OF ACTION**

5 **Failure to Compensate For All Hours Worked
(Violation of Minimum Wage and Wage Orders)**

6 **Plaintiff Marcos, Individually and on Behalf of the Class and the PAGA Pool, Against
Defendants**

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

8 35. At all relevant times, Defendants have been subject to Labor Code and Wage Order
9 provisions requiring compensation for all “hours worked” at the legal minimum and contractual or
10 agreed upon rates. Defendants violated the Wage Order and Labor Code sections 204, 204b, 223,
11 1194, 1197 and 1198 by failing to compensate Plaintiff and the Class for all hours worked, and for
12 compensating below the required minimum and/or contractual/agreed upon rates.

13 36. The IWC Wage Orders define hours worked as all “time during which an employee is
14 subject to the control of an employer and includes all the time the employee is suffered or permitted to
15 work, whether or not required to do so.”

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

19 38. Labor Code section 1194.2 provides for liquidated damages for a violation of the
20 minimum wage.

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

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

25 41. At all times relevant, Defendants have violated these provisions by failing to
26 compensate Plaintiff and the Class for all “hours worked,” including time that is not recorded but is
27 compensable, time that is recorded but is unpaid, and time that is improperly deducted, such as for
28 auto-deducted meal periods that are not taken or last less than 30 minutes. Defendants’ conduct

1 violates the minimum wage and provisions of the Labor Code and Wage Orders described herein.

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

7 43. Plaintiff seeks unpaid wages, liquidated damages, and interest on behalf of himself and
8 the Class in amounts to be proven at trial, pursuant to Labor Code sections 1194 and 1194.2. Plaintiff
9 also seeks attorneys' fees and costs pursuant to Labor Code section 1194.

10 **SECOND CAUSE OF ACTION**

11 **Failure to Pay Overtime Wages**

12 **(Violation of Wage Orders and Labor Code sections 204, 204b, 223, 510, 1194, 1198)**
13 **Plaintiff Marcos, Individually and on Behalf of the Class and the PAGA Pool, Against**
14 **Defendants**

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

16 45. At all relevant times, Defendants have been subject to Labor Code and Wage Order
17 provisions requiring overtime compensation.

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

21 47. At all times relevant, Defendants have violated the overtime provisions of California
22 law by failing to compensate Plaintiff and the Class for all "hours worked," as defined in the Wage
23 Orders and California law.

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

49. Plaintiff seeks overtime wages and interest on behalf of himself and the Class in

1 amounts to be proven at trial. Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code
2 section 1194.

3 **THIRD CAUSE OF ACTION**

4 **Failure to Provide Meal Periods or Premium Wages in Lieu Thereof**
5 **(Violation of Wage Orders and Labor Code sections 226.7 and 512)**

6 **Plaintiff Marcos, Individually and on Behalf of the Class and the PAGA Pool, Against**
7 **Defendants**

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

9 51. California Labor Code section 512 and the Wage Orders prohibit employers from
10 employing workers for a work period of more than five (5) hours per day without providing the
11 employee with a meal period of at least thirty (30) minutes, or for a work period of more than ten (10)
12 hours without a second meal period of at least thirty (30) minutes. California law requires the meal
13 periods to be off duty, without interruption, and the first meal period of the day must occur within five
14 (5) hours from the start of the shift.

15 52. California Labor Code section 226.7 prohibits any employer from requiring any
16 employee to work during any meal period mandated by an applicable IWC wage order, and states that
17 an employer that fails to provide an employee with a required meal period in compliance with Section
18 512 and the Wage Orders shall pay that employee one additional hour of pay at the employee's regular
19 rate of compensation (i.e., a meal period premium) for each work day that the employer does not
20 provide a compliant meal period.

21 53. At all times relevant to this action, Defendants violated the provisions of the Labor
22 Code and Wage Orders regulating meal periods by failing to pay meal premiums when Plaintiff and
23 the Class were denied timely (within five (5) hours of work) meal periods of at least thirty (30) minutes
24 off duty and without interruption.

25 54. At all times relevant to this action, Defendants failed to pay premium wages for each
26 workday in which Plaintiff and the Class were not relieved of all duty for uninterrupted, off duty, and
27 complete meal periods of at least 30 minutes.

28 55. Defendants are therefore liable to Plaintiff and the Class for meal period premiums
pursuant to Labor Code section 226.7.

1 56. The violations of Labor Code sections 226.7, 512, and the applicable Wage Order
2 described herein serve as predicates for PAGA penalties. Plaintiff has complied with the administrative
3 procedures set forth in California Labor Code § 2699.3 to bring a claim for civil penalties under PAGA
4 and as such seeks civil penalties on behalf of the State of California, the PAGA Pool and themselves.

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

7
8 **FOURTH CAUSE OF ACTION**

9 **Failure to Provide Rest Periods or Premium Wages in Lieu Thereof**
10 **(Violation of Wage Orders and Labor Code section 226.7)**

11 **Plaintiff Marcos, Individually and on Behalf of the Class and the PAGA Pool, Against**
12 **Defendants**

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

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

16 60. At all times relevant to this action, Defendants failed to authorize and permit rest
17 periods of at least 10 minutes of time completely off duty at a rate of one rest period for shifts greater
18 than three and one-half (3.5) hours up to six (6) hours, two (2) rest breaks for shifts greater than six (6)
19 hours up to ten (10) hours, and three (3) rest breaks for shifts greater than ten (10) hours up to fourteen
20 (14) hours, and so on.

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

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

26 63. The violations of Labor Code section 226.7 and the applicable Wage Order described
27 herein serve as predicates for PAGA penalties. Plaintiff has complied with the administrative
28 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.

 64. Plaintiff seeks rest break premium wages, interest and costs on behalf of himself and the

1 Class for violations of the meal period provisions of the Labor Code and Wage Orders.

2 **FIFTH CAUSE OF ACTION**

3 **Failure to Reimburse Expenses**

4 **(Violation of Labor Code section 2802)**

5 **Plaintiff Marcos, Individually and on Behalf of the Class and the PAGA Pool, Against Defendants**

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

7 66. Labor Code section 2802(a) provides as follows:

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

12 67. Plaintiffs and Class Members were required to incur expenses that were necessary to
13 discharge their duties but were not reimbursed. For example, workers required personal certain
14 protective equipment and tools to perform their work, such as gloves and scissors, among other things.
15 Defendants failed to provide all necessary equipment and tools and workers were thus forced to
16 purchase and maintain their own without reimbursement.

17 68. Pursuant to Labor Code section 2802, Defendants are liable to Plaintiff and the Class
18 for expenses incurred in direct consequence of the discharge of their duties.

19 69. The violations of Labor Code section 2802 described herein serve as predicates for
20 PAGA penalties. Plaintiff has complied with the administrative procedures set forth in California
21 Labor Code § 2699.3 to bring a claim for civil penalties under PAGA and as such seeks civil penalties
22 on behalf of the State of California, the PAGA Pool and themselves.

23 70. Wherefore, Plaintiff seeks indemnification for himself and the Class, plus interest,
24 attorney's fees and costs of suit, pursuant to Labor Code section 2802(b) and (c).

25 **SIXTH CAUSE OF ACTION**

26 **Failure to Provide Accurate Itemized Wage Statements**

27 **(Violation of Wage Orders and Labor Code section 226)**

28 **Plaintiff Marcos, Individually and on Behalf of the Class and the PAGA Pool, Against Defendants**

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

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

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

16 73. On information and belief, at all times relevant to this action, the wage statements
17 provided by Defendants to the Class have failed to contain accurate information required by Labor
18 Code section 226, including gross and net wages earned, total hours worked by the employee, all
19 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
20 at each hourly rate by the employee, and available sick leave (Labor Code section 246, et seq.).

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

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

 76. The violations of Labor Code section 226 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.

 77. Plaintiff seeks penalties, damages, and injunctive relief under Labor Code section

226(e) and (h) for himself and the Class, as well as attorney's fees and costs.

SEVENTH CAUSE OF ACTION

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

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

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

80. Defendants have willfully failed to pay all wages owed to Plaintiff and, on information and belief, the Class upon discharge or resignation, including wages for all hours worked, minimum 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 Plaintiff and the Class continue from the due date for up to thirty (30) days at their same rate, pursuant to Labor Code section 203.

81. The violations of Labor Code section 201-203 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.

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

EIGHTH CAUSE OF ACTION

**California Unfair Competition Law
(Violation of Business & Professions Code sections 17200, *et seq.*)
Plaintiff Marcos, Individually and on Behalf of the Class and the PAGA Pool, Against
Defendants**

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

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

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

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

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

10 **NINTH CAUSE OF ACTION**
11 **PRIVATE ATTORNEYS GENERAL ACT**
 (Cal. Labor Code § 2698 *et seq.*)

12 **On behalf of Plaintiff, the State of California and the PAGA Pool against all Defendants**

13 88. Plaintiff realleges and incorporates herein by reference each and every allegation and
14 statement contained in the prior paragraphs, as though fully set forth herein.

15 89. PAGA provides that any provision of law under the Labor Code and applicable IWC
16 Wage Order that provides for a civil penalty to be assessed and collected by the Labor and Workforce
17 Development Agency for violations of the California Labor Code and applicable IWC Wage Order
18 may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of
19 himself and other current or former employees pursuant to procedures outlined in California Labor
20 Code section 2699.3. Plaintiff asserts this PAGA claim on behalf of a PAGA Pool comprised of non-
21 exempt workers employed within the PAGA period, as well as workers misclassified as independent
22 contractors.

23 90. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any person
24 who was employed by the alleged violator and against whom one or more of the alleged violations was
25 committed." Plaintiff and other current and former employees of Defendants are "aggrieved
26 employees" as defined by Labor Code section 2699(c) in that Defendants committed one or more of
27 the alleged violations of employment law against them.

28 91. PAGA is an enforcement action that empowers aggrieved employees to seek penalties

1 on behalf of themselves, current and former employees, and the State, without the need to certify a
2 class.

3 92. Plaintiff is aggrieved employee as defined in Labor Code § 2699(a) who has complied
4 with the administrative requirements of Labor Code section 2699.3 by giving written notice by
5 certified mail on or about October 11, 2022 to the employer and to the LWDA of the Labor Code and
6 IWC Wage Order provisions alleged to have been violated, and the facts and theories supporting the
7 alleged violations. Sixty-five days have passed since the PAGA notice was submitted and the LWDA
8 has not indicated an intent to investigate the alleged violations. Plaintiff may now assert a PAGA claim
9 in this civil action.

10 93. Pursuant to Labor Code section 2699(a), Plaintiff seeks civil penalties for all violations
11 alleged as provided under applicable Labor Code sections. To the extent that any violation alleged
12 herein does not carry a penalty, Plaintiff seeks civil penalties for violations described herein under
13 Labor Code section 2699(f).

14 94. Defendants are liable to Plaintiff, the state, and other current or former employees for
15 civil penalties arising from the violations alleged in this Complaint. Liability for civil penalties
16 attaches to the employer or any person acting on behalf of the employer who violates or causes a
17 violation of the provisions described herein, pursuant to Labor Code sections 558 and 1197.1.
18 Defendants are sued as employers and, alternatively, persons, including DOES who violated or caused
19 the violations of the pertinent Labor Code and Wage Order provisions are liable under Labor Code
20 sections 558 and 1197.1.

21 95. Defendants violated the Wage Orders and Labor Code sections 204, 223, 1194, 1197,
22 and 1198 by failing to compensate Plaintiff and members of the PAGA Pool for all hours worked,
23 failing to compensate for minimum wage, as described in this complaint. Consequently, Defendants
24 are liable to Plaintiff, the PAGA Pool, and the state for civil penalties pursuant to Labor Code sections
25 210, 225.5, 1197.1 and 2699(f).

26 96. Defendants violated the Wage Orders and Labor Code sections 510 and 1198 by failing
27 to pay overtime to Plaintiff and members of the PAGA Pool. Consequently, Defendants are liable to
28 Plaintiff, the PAGA Pool, and the state for civil penalties pursuant to Labor Code sections 558 and

1 2699(f).

2 97. Defendants violated the Wage Orders and Labor Code sections 226.7 and 512 by failing
3 to comply with the state's rest and meal period requirements and failing to pay premiums for non-
4 compliance. Consequently, Defendants are liable to Plaintiff, the PAGA Pool, and the state for civil
5 penalties pursuant to Labor Code sections 558 and 2699(f).

6 98. Defendants violated the Wage Orders and Labor Code section 226 by failing to provide
7 to Plaintiff and members of the PAGA Pool with accurate wage statements. Consequently, Defendants
8 are liable to Plaintiff, the PAGA Pool, and the state for civil penalties pursuant to Labor Code section
9 226.3.

10 99. Defendants violated Labor Code sections 201, 202, and 203 by failing to pay Plaintiff
11 and members of the PAGA Pool all wages owed timely upon separation from employment.
12 Consequently, Defendant are liable to Plaintiff, the PAGA Pool, and the state for civil penalties
13 pursuant to Labor Code sections 256, 1197.1 and/or 2699(f).

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

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

22 102. Defendants have violated and continue to violate California Labor Code sections 246,
23 246.5, 247, 247.5, 248.5 by failing to provide notice with the wage statement or separate writing of
24 available sick leave and failing to provide paid sick days, in violation of the Healthy Workplaces,
25 Healthy Families Act of 2014. As a result of its violations of Labor Code sections 226, 246, 246.5,
26 247, 247.5, 248.5, 1174, 1174.5 and 2698 et seq., Defendants are liable for civil penalties pursuant to
27 the California Labor Code and the Healthy Workplaces, Healthy Families Act of 2014.

28 103. Plaintiff, on behalf of himself and other current or former employees and the state seek

1 and award of civil penalties, attorney's fees and cost of suit pursuant to PAGA.

2
3 **VII. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray for relief as follows:

5 1. For an order awarding Plaintiff and the Class compensatory damages for all legal
6 minimum, contractual, and overtime wages earned but not paid, in the amount to be proven at trial,
7 pursuant to Labor Code sections 200, *et seq.*, 204, 204b, 223, 510, 1194, 1197, 1198;

8 2. For liquidated damages to Plaintiff and the Class under Labor Code section 1194.2 for
9 violation of the minimum wage;

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

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

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

15 6. For rest break premium wages to Plaintiff and the Class pursuant to Labor Code section
16 226.7;

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

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

20 9. For an award of penalties to Plaintiff and the Class pursuant to Labor Code section 226;

21 10. For injunctive relief under Labor Code 226;

22 11. For an award of attorneys' fees pursuant to Labor Code section 226;

23 12. For "waiting time" penalties to Plaintiff and the Class under California Labor Code
24 section 203;

25 13. For earned but unpaid wages as equitable relief to Plaintiff and the Class under the UCL
26 for a period that extends the statute of limitations or recovery period for wages to four years;

27 14. For declaratory judgment that the actions, conduct, and practices of Defendants
28 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 Plaintiff Eufonio Marcos as class representative;

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, 246, 246.5, 247, 247.5, 248.5, 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.

Dated: December 16, 2022

ADVOCATES FOR WORKER RIGHTS LLP

Joseph M. Sutton
Marco A. Palau

Marco A. Palau
Joseph D. Sutton
Eric S. Trabucco
Attorneys for Plaintiffs

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss.
4)
5 COUNTY OF ALAMEDA)

6 I am over the age of 18 and not a party to the within action. I am performing the service described
7 herein on behalf of Advocates for Worker Rights, LLP, located at 212 9th St., Ste. 314, Oakland,
California 94607.

8 On, December 16, 2022, I served the documents described as:

9 **SECOND AMENDED CLASS ACTION COMPLAINT**

10
11 on Interested Parties at the following address(es):

12 Natalie P. Vance
13 NVance@klinedinstlaw.com
14 Nancy M.Vanderhorst
15 nvanderhorst@klinedinstlaw.com
16 Raja A. Hafed
17 rhafed@klinedinstlaw.com
Klinedinst Sacramento
801 K Street, Suite 2100 Sacramento, CA 95814
Telephone: (916) 282-0100

18 Counsel for Defendants Continental Floral CA, LLC and Continental Floral, LLC

19 [] BY PERSONAL DELIVERY: at the above address to _____.

20 [] BY MAIL: I am familiar with the firm's practice of collecting and processing correspondence for
21 mailing in the ordinary course of business. Under that practice, mail is deposited with the U.S. Postal
22 Service on the day of service with postage thereon fully prepaid in Oakland, California. I deposited the
document(s) described above in the U.S. Mail with postage paid on the service date.

23 [X] BY EMAIL: I transmitted the document(s) described above by email to the email address (es) of the
24 attorney (s) for Defendant (s) in this action: NVance@klinedinstlaw.com, rhafed@klinedinstlaw.com
and nvanderhorst@klinedinstlaw.com.

25 [] BY FAX: I transmitted the document(s) described above by fax to the fax number(s) of the
26 attorney(s) for Defendant (s) in this action:

27 [X] STATE: I declare under penalty of perjury under the laws of the State of California that the
28 foregoing is true and correct. Executed on December 16, 2022.

Sarahi Ortiz Ll.

Sarahi Ortiz Llanes