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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

TERESA CERVANTES, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

FLORES AG SERVICES, INC., a California
corporation; S.C. CRITCHLEY, INC., dba
CRITCHLEY FAMILY FARMS., a
California corporation; and DOES 1 through
100,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of Tulare
01/20/2023
By: Nay Saelee, Deputy Clerk

Case No.: VCU294123

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C).

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

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 551, 552, 558,
1194, AND 1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.2, 226.7, AND
516);**
- (5) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*);**
- (8) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);
AND**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Teresa Cervantes (“Plaintiff”), on behalf of herself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint (“FAC”)
3 against Flores AG Services, Inc., a California corporation; S.C. Critchley, Inc., dba Critchley
4 Family Farms, a California corporation; and, DOES 1 to 100, inclusive (collectively
5 “Defendants”), and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under California Business & Professions
9 Code § 17200 *et. seq.*, Labor Code §§ 201-205, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194,
10 1194.2, 1197, 1198, 2802, 2698 *et seq.*; and Industrial Welfare Commission Wage Order 14
11 (“Wage Order 14”), in addition to seeking declaratory relief and restitution. This Complaint is
12 brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
13 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
14 this Court's jurisdictional minimum.

15 **VENUE**

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

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is, a California resident. During the four years immediately preceding
24 the filing of this action and within the statute of limitations periods applicable to each cause of
25 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
26 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
27 and/or property, and has been deprived of the rights guaranteed by Labor Code §§ 201-205, 226.2,
28 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2802; California Business &

1 Professions Code § 17200 *et seq.* (“Unfair Competition Law”); and Wage Order 14, which sets
2 employment standards for Agricultural Occupations.

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

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

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

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

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

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 9. Defendant S.C. Critchley, Inc., dba Critchley Family Farms is also jointly liable
4 with Defendant Flores AG Services, Inc. for all civil legal responsibility and civil liability for the
5 payment of wages, including all sums payable to an employee or the state of California based
6 upon any failure to pay wages, pursuant to Labor Code §2810.3.

7 **GENERAL FACTUAL ALLEGATIONS**

8 10. Defendants are in the agricultural business and employ seasonal farm labor
9 employees to harvest agricultural goods. Plaintiff worked for Defendants as a non-exempt farm
10 labor employee from approximately May 5, 2022 until she was terminated around June 8, 2022
11 for complaining about not getting paid all wages owed to her. Plaintiff's primary job duties
12 revolved performing general farm labor work such as picking and harvesting agricultural goods,
13 namely blueberries, for the benefit of Defendants.

14 11. Plaintiff and other non-exempt employees were paid on a piece-rate basis,
15 receiving \$7.00 per 12-pound bucket of blueberries picked. Plaintiff and other non-exempt were
16 allegedly paid an hourly minimum wage if their earned piece-rate compensation did not exceed
17 their minimum wages earned in a pay period. However, on information and belief, Plaintiff
18 alleges that Defendants did not employ accurate timekeeping practices when she performed piece
19 work and at no point was Plaintiff made to confirm or sign off on her hours worked. Defendants
20 have not boarded or lodged Plaintiff during her employment.

21 12. Plaintiff was generally tasked with working Monday-Friday, from approximately
22 5:30 a.m. until around 12:30-1:00 p.m. On some occasions, Plaintiff and other non-exempt
23 employees would work on Saturdays. When the workday began, Plaintiff's foreperson would
24 record Plaintiff's name in a notebook and provided a "punch card" to keep track of the number
25 of buckets of blueberries that Plaintiff was able to harvest in a given shift to determine the daily
26 piece rate compensation for herself and other non-exempt employees. However, Defendants
27 frequently would fail to record buckets of blueberries filled by Plaintiff and other non-exempt
28 employees and as such would fail to pay them all wages that were due to them. For example,

1 Plaintiff complained on numerous occasions that her foreperson was not recording the last buckets
2 that she and other non-exempt employees were able to fill at the end of their shifts, resulting in a
3 systemic underpayment of piece rate wages.

4 13. On those occasions where Plaintiff worked overtime hours during the week,
5 Plaintiff was rarely, if ever, compensated at the requisite overtime rate of pay. For example,
6 Plaintiff occasionally worked on Saturdays which would have entitled her to statutory overtime
7 compensation as she would exceed the hourly overtime thresholds as set forth in Wage Order 14,
8 however, did not ever receive overtime pay despite this reality. Upon information and belief,
9 Defendants systemically failed to pay overtime compensation due to Plaintiff and other non-
10 exempt employees regardless of whether they were performing work on a piece rate or hourly
11 basis.

12 14. Throughout Plaintiff's employment, Defendants failed to record the hours Plaintiff
13 worked. Plaintiff was not paid an hourly minimum wage if her earned piece-rate compensation
14 did not exceed her minimum wages earned in a pay period pursuant to Wage Order 14, nor was
15 she provided proper overtime compensation despite working the requisite amount of hours to be
16 entitled to overtime wages. For example, on Plaintiff's wage statement numbered 17774
17 representing the pay period between 5/30/2022-6/5/2022, Plaintiff worked approximately 7.66
18 hours on May 30, 2022, meaning that she should have been paid at least \$114.90 at the minimum
19 wage (7.66 hours x \$15.00 min. wage). However, despite her entitlement to at least the minimum
20 wage for this shift, Plaintiff was only paid her piece rate compensation which was less than she
21 would have received had she been working minimum wage (\$7 per bucket x 12 buckets=\$84.00).
22 Additionally, on June 2, 2022, Plaintiff was credited with having worked 6.66 hours meaning she
23 should have been paid at least \$99.90 (6.66 hours x \$15.00 min. wage). However, as she was
24 only able to do 11 pieces during this shift, she was paid \$77.55, over \$20 less than the minimum
25 wage she should have been entitled to. Plaintiff alleges that this was a systemic practice that
26 affected all employees subject to Defendants' payment structures, causing Plaintiff and other non-
27 exempt employees to be denied all minimum and/or overtime wages.

28 15. Plaintiff and other non-exempt employees were not authorized to take all legally

1 required rest periods regardless of whether they were working on a piece-rate or hourly basis. On
2 those occasions where Plaintiff and other non-exempt employees performed piece work for
3 Defendants, Defendants routinely failed to pay the correct regular rate for rest and recovery
4 periods. For example, on Plaintiff's wage statement numbered 17774, she worked six shifts,
5 however, was only paid rest and recovery time on two of them and further was paid at an incorrect
6 rate. As such, Defendants neglected to pay Plaintiff and other non-exempt employees for rest
7 and recovery periods despite their entitlement to such pay. As a consequence, Plaintiff and other
8 non-exempt employees were systematically denied paid rest period compensation every shift
9 worked that they were duly and legally entitled to. Despite Defendants' failure to authorize and
10 permit Plaintiff and other non-exempt employees to take all lawful paid rest periods, due to their
11 uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt
12 employees with an hour of pay at their regular rate for each rest period violation as required by
13 Labor Code § 226.7. Upon information and belief, during at least a portion of the class period,
14 Defendants maintained no payroll code or another mechanism for the payment of rest period
15 premiums in the event Plaintiff and other non-exempt employees were not authorized to take
16 lawful rest periods.

17 16. Defendants have failed to accurately record and compensate Plaintiff and other
18 non-exempt employees who are compensated on a piece-rate basis for non-productive time. *See*
19 *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-rate
20 compensation structure that does not separately compensate employees for non-productive time
21 violates California minimum wage laws). Plaintiff and other non-exempt employees were
22 required to perform work duties and activities that were not directly compensated on a piece-rate
23 basis such as transporting buckets of blueberries from the farms to the trucks, and waiting in lines
24 so they could drop off their filled buckets throughout their shifts. Plaintiff and other non-exempt
25 employees would take at least 3-5 trips to and from the lines in the fields to the trucks to drop off
26 their buckets, which would take anywhere from 15-20 minutes each trip, but were vastly
27 undercompensated for this non-productive time. For example, while on an average shift, Plaintiff
28 and other non-exempt employees would incur between 1.0-1.5 hours of non-productive time

performing the duties as explained above, they would only be compensated approximately 10 minutes for non-productive time per shift on their wage statements. Additionally, employees were not compensated for bathroom and water breaks, waiting in lines, and/or other mandatory duties that were not directly compensated on a piece-rate basis. Plaintiff alleges that all this wait time constitutes unproductive worktime which must be compensated under California law. Accordingly, Plaintiff estimates that she and other non-exempt employees worked at least an additional 5-8 hours per week of non-productive time. Plaintiff alleges that Defendants have not accurately tracked and compensated employees' non-productive time in compliance with Labor Code § 226.2.

17. Defendants have also failed to record employees' total hours worked each workday accurately. Specifically, Defendants did not record the hours worked in any fashion apparent to Plaintiff and the other non-exempt employees regardless of if they were performing piece rate work or hourly work. Plaintiff never formally clocked in or clocked out during her shifts and was never provided any sort of timecard reflecting the hours she worked. Instead, she was provided with a punch card that tracked the number of buckets of blueberries she filled during her shift, but did not serve to track her hours. As a result, Defendants failed to ensure that Plaintiff and other non-exempt employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Plaintiff and other non-exempt employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 14.

18. Defendants also did not provide Plaintiff and other non-exempt employees with a legally compliant first meal period when they worked shifts in excess of 6.0 hours. Plaintiff and other non-exempt employees rarely, if ever, were entitled to exercise the use of a thirty-minute uninterrupted meal period despite almost always working at least 6.0 hours in a day. Rather, Plaintiff and other non-exempt employees would generally work through their shifts without taking any time for a compliant meal period, instead opting to eat while working, if at all. Plaintiff and other non-exempt employees were not only unable to exercise the use of compliant meal periods, they were unaware of their right to do so. Plaintiff and the other non-exempt employees were not informed by Defendants of their legal right to take duty-free uninterrupted meal periods

1 before the conclusion of their fifth hour of work pursuant to Labor Code Section 512. Defendants
2 were not only aware of, but actively encouraged this practice. Upon information and belief,
3 Defendants did not accurately record meal periods in any manner. Despite Defendants' failure to
4 provide Plaintiff and other non-exempt employees with all lawful meal periods due to their
5 uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt
6 employees with an hour of pay at their regular rate for each meal period violation as required by
7 Labor Code § 226.7.

8 19. Furthermore, Defendants failed to adequately reimburse Plaintiff for all reasonable
9 and necessary work expenditures, including but not limited to, requiring Plaintiff to utilize her
10 personal cellular phone for work purposes without reimbursement.

11 20. As a result of Defendants' failure to accurately compensate Plaintiff and other
12 non-exempt employees for non-productive time, failure to pay all minimum and overtime wages,
13 and failure to provide all required meal periods and authorize all rest periods or pay premium pay
14 in lieu thereof, Defendants have maintained inaccurate payroll records, failed to timely pay all
15 wages owed to employees, including keeping employees' first week of wages for two weeks,
16 failing to timely pay wages to seasonal employees at the end of the season and timely pay
17 separating employees at the time of their separation, and issued inaccurate wage statements.

18 21. As a further result of Defendants' failure to pay all minimum and overtime wages,
19 and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff and the other
20 non-exempt employees upon their separation of employment from Defendants. Furthermore,
21 Defendants violated Labor Code § 204 by failing to pay Plaintiff and other non-exempt employees
22 at least twice during each calendar month.

23 22. Additionally, Defendant Flores AG Services, Inc. is a farm labor contractor subject
24 to the requirements of Labor Code § 205, which requires that employees be paid weekly, on a
25 business day designated in advance, for all wages earned up to and including the fourth day before
26 the scheduled payday. However, Defendants pay their employees on a delay of five days or more,
27 in violation of the "fourth day" requirement found in Labor Code § 205.

28 23. Lastly, at the end of each season, employees were laid off (i.e., terminated), but

1 were not provided their paycheck until the next regular scheduled pay day, in violation of Labor
2 Code § 201 (“(a) If an employer discharges an employee, the wages earned and unpaid at the time
3 of discharge are due and payable immediately.”).

4 **CLASS ACTION ALLEGATIONS**

5 24. **Class Definitions:** Plaintiff brings this action on behalf of herself and the
6 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 7 a. The Minimum Wage Class consists of all current and former non-exempt
8 employees of Flores AG Services, Inc. who performed work for S.C. Critchley,
9 Inc., dba Critchley Family Farms in California that were compensated on a piece-
10 rate or hourly basis during the four years immediately preceding the filing of this
11 lawsuit through the present.
- 12 b. The Overtime Wage Class consists of all current and former non-exempt
13 employees of Flores AG Services, Inc. who performed work for S.C. Critchley,
14 Inc., dba Critchley Family Farms in California who worked overtime hours (based
15 on criteria set forth in Wage Order 14) during the four years immediately
16 preceding the filing of this lawsuit through the present.
- 17 c. The Rest Period Class consists of all current and former non-exempt employees of
18 Flores AG Services, Inc. who performed work for S.C. Critchley, Inc., dba
19 Critchley Family Farms, in California who worked at least one shift in excess of
20 3.5 hours during the four years immediately preceding the filing of this lawsuit
21 through the present.
- 22 d. The Meal Period Class consists of all current and former non-exempt employees
23 of Flores AG Services, Inc. who performed work for S.C. Critchley, Inc., dba
24 Critchley Family Farms in California who worked at least one shift in excess of
25 5.0 hours without a meal period of at least 30 minutes in duration commencing
26 prior to the conclusion of the fifth hour of work, and who do not have a
27 corresponding meal period premium payment made for such shifts during the four
28 years preceding the filing of this lawsuit through the present.

e. The Employee Expense Class consists of all of Defendants in California who were not reimbursed for expenses associated with the use of their personal cellular phones in the performance of their job duties, during the four years immediately preceding the filing of this lawsuit to the present

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

g. The Waiting Time Class consists of all Defendants' formerly employed non-exempt employees in California who were subject to Defendants' timekeeping systems and/or practices, during the three years immediately preceding the filing of this lawsuit through the present.

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

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

i. Whether Defendants correctly compensated employees for rest periods pursuant to Labor Code § 226.2;

ii. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;

iii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and Wage Order 14 by requiring members of the

Overtime Wage Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;

iv. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Minimum Wage Class;

v. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

vi. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

vii. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties pursuant to Labor Code § 2802;

viii. Whether Defendants failed to compensate Plaintiff and other non-exempt 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.

ix. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and

x. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful.

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

1 28. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
2 Plaintiff was employed by Defendants as a non-exempt employee in California during the
3 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
4 herein, Plaintiff, like the members of the Classes, was paid on a piece-rate and hourly basis, was
5 subject to Defendants' meal and rest period and timekeeping policies and practices, and was not
6 paid all wages earned at the time of her separation of employment.

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

13 30. **Superiority:** The California Labor Code is broadly remedial in nature and serves
14 an important public interest in establishing minimum working conditions and standards in
15 California. These laws and labor standards protect the average working employee from
16 exploitation by employers who have the responsibility to follow the laws and who may seek to
17 take advantage of superior economic and bargaining power in setting onerous terms and
18 conditions of employment. The nature of this action and the format of laws available to Plaintiff
19 and members of the Classes make the class action format a particularly efficient and appropriate
20 procedure to redress the violations alleged herein. If each employee were required to file an
21 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
22 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
23 their vastly superior financial and legal resources. Moreover, requiring each member of the
24 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
25 employees who would be disinclined to file an action against their former and/or current employer
26 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
27 employment. Further, the prosecution of separate actions by the individual class members, even
28 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications

1 with respect to the individual class members against Defendants herein; and which would
2 establish potentially incompatible standards of conduct for Defendants; and/or legal
3 determinations with respect to individual class members which would, as a practical matter, be
4 dispositive of the interest of the other class members not parties to adjudications or which would
5 substantially impair or impede the ability of the class members to protect their interests. Further,
6 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
7 individual prosecution considering all of the concomitant costs and expenses attending thereto.
8 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
9 Civil Procedure.

10 **FIRST CAUSE OF ACTION**

11 **MINIMUM WAGE VIOLATIONS**

12 **(AGAINST ALL DEFENDANTS)**

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

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

24 33. California Labor Code § 1198 makes unlawful the employment of an employee
25 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
26 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
27 those employees the balance of the unpaid wages as well as liquidated damages in an amount
28 equal to the wages due and interest thereon.

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST AL DEFENDANTS)

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

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

38. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 14. Wage Order 14, § 3 requires an employer to pay overtime wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth in the Wage Order.

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

40. The foregoing policies and practices are unlawful and create entitlement to

1 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
2 premiums owing, including interest thereon, statutory and civil penalties, and attorneys' fees and
3 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
4 14, and Code of Civil Procedure § 1021.5.

5 **THIRD CAUSE OF ACTION**

6 **MEAL PERIOD VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

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

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

16 43. As a result, Defendants are responsible for paying premium compensation for meal
17 period violations including interest thereon, as well as statutory penalties, civil penalties, and
18 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 14, and Civil Code §§
19 3287(b) and 3289.

20 **FOURTH CAUSE OF ACTION**

21 **REST PERIOD VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

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

24 45. Wage Order 14, § 12 and California Labor Code §§ 226.2, 226.7 and 516 establish
25 the right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
26 minutes net rest time for each four (4) hour period worked, or major fraction thereof.

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

1 47. The foregoing violations create an entitlement to recovery by Plaintiff and
2 members of the Rest Period Class in a civil action for the unpaid rest period wages and the amount
3 of rest period premiums owing, including interest thereon, as well as statutory penalties, civil
4 penalties, and costs of suit according to California Labor Code §§226.2, 226.7, 516, 558, and
5 Civil Code §§ 3287(b) and 3289.

6 **FIFTH CAUSE OF ACTION**

7 **WAGE STATEMENT VIOLATIONS**

8 **(AGAINST ALL DEFENDANTS)**

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

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

15 50. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
16 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
17 failures led to, among other things, the non-payment of all of their minimum and overtime wages,
18 as well as meal and rest period premiums, and deprived them of the information necessary to
19 identify discrepancies in Defendants' reported data.

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

24 **SIXTH CAUSE OF ACTION**

25 **WAITING TIME PENALTIES**

26 **(AGAINST ALL DEFENDANTS)**

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

28 53. This cause of action is brought pursuant to Labor Code §§ 201-203, which require

an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

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

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

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

57. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay Plaintiff and the Classes all overtime and minimum wages, failing to provide all required meal periods, failing to authorize and permit all required rest periods, failing to pay meal and rest period premium wage payments, failing to compensate employees for non-productive time, failing to furnish accurate wage statements, and willfully failing to timely pay

1 Plaintiff and members of the Waiting Time Class all final wages upon separation of employment.

2 58. Defendants' utilization of these unfair and/or unlawful business practices deprived
3 Plaintiff and continues to deprive members of the Classes of compensation to which they are
4 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
5 over Defendants' competitors who have been and/or are currently employing workers and
6 attempting to do so in honest compliance with applicable wage and hour laws.

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

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

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

18 **EIGHTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

20 **(AGAINST ALL DEFENDANTS)**

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

22 63. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
23 states that "an employer shall indemnify his or her employees for all necessary expenditures or
24 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
25 his or her obedience to the directions of the employer..."

26 64. Due to Defendants' unlawful policy and practice of requiring employees to
27 requiring them to utilize their own personal cellular phones for business purposes at their own
28 expense, Defendants have violated Labor Code § 2802.

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

66. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

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

68. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code:

- a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§

558, 1182.12, 1194, 1194.2, 1197, and 1198;

- b. Failing to pay Plaintiff, the Overtime Class, 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, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to reimburse Plaintiff, the Employee Expense Class, and other aggrieved employees for all necessary work expenses incurred in violation of Labor Code §§ 2802 and 2804;
- e. Failing to furnish Plaintiff, the Wage Statement Class, 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, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- g. Failing to pay all due wages and compensation to Plaintiff, and other aggrieved employees on those occasions where they were required to report to work but unable to perform work in violation of Labor Code §§ 203, 226, 1198 and Wage Order 14 §§ 5 (A) & 20 (A);
- h. 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;
- i. Failing to pay non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- j. 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;

- k. Failing to pay Plaintiff and other non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- l. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198; and
- m. Failing to conform to the requirements of Labor Code § 2810.5 by failing to provide Plaintiff and other aggrieved employees written notices, in the language normally used to communicate employment related information to the employees, containing information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the 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 carrier; and ix) information informing the employee of their right to accrue and use paid sick leave. Despite maintaining an obligation to provide these disclosures to Ms. Cervantes and other aggrieved employees, FAS failed to do so in violation of Labor Code § 2810.5.

69. On November 9, 2022, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 68 (a)-(m). Now that sixty-five days have passed from Plaintiff's notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

70. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and

costs, which he is entitled to receive under California Labor Code § 2699(g).

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 201-203;
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
11. Upon the Eighth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code § 2802;
12. Upon the Ninth Cause of Action, (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional

violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for the violations of the Labor Code Sections cited in Labor Code § 2699.5;

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

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

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

Dated: January 20, 2023

Respectfully submitted,
STANBURY BROWN LAW, PC

By:



Daniel J. Brown
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: January 20, 2023

Respectfully submitted,
STANBURY BROWN LAW, PC

By:



Daniel J. Brown
Attorney for Plaintiff

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PROOF OF SERVICE

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

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

On January 20, 2023 I served the document listed below on the parties in this action as follows:

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

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- X (BY EMAIL) In accordance with California Code of Civil Procedure section 1010.6 in compliance with the Judicial Council's Appendix I, Emergency Rules Related to Covid-19, Emergency Rule 12, I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 20, 2023 at Venice, California.



Daniel J. Brown

SERVICE LIST

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