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ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 3/20/2023 8:13 PM
By: Jackie Meraz, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

JUAN ORTEGA,

Plaintiff,

vs.

RIVERVIEW FARMS; MICHELLE
HACKETT; SMALL PROGRESS CO.;
DARIO ALCANTAR; and DOES 1 to 25,
inclusive,

Defendants.

) CASE NO.23CV000860

) **COMPLAINT FOR DAMAGES FOR:**

-) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**
) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**
) **3) FAILURE TO PAY OVERTIME;**
) **4) FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**
) **5) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**
) **6) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
) **7) FAILURE TO GIVE REST BREAKS;**
) **8) FAILURE TO GIVE MEAL**
) **BREAKS;**
) **9) FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES;**
) **10) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) **11) FAILURE TO PROVIDE**
) **PERSONNEL RECORDS;**
) **12) FAILURE TO PROVIDE PAY**
) **RECORDS;**
) **13) RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 1102.5;**
) **14) WRONGFUL TERMINATION IN**
) **VIOLATION OF PUBLIC POLICY;**

1) **15) VIOLATION OF CALIFORNIA**
 2) **BUSINESS AND PROFESSIONS**
 3) **CODE SECTION 17200.**

4) **DEMAND FOR JURY TRIAL**
 5)

6 COMES NOW Plaintiff, JUAN ORTEGA (hereinafter "Plaintiff"), and alleges as
 7 follows:

8 **PARTIES, JURISDICTION, VENUE**

9 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
 10 County of Monterey in this judicial district because Defendants RIVERVIEW FARMS,
 11 MICHELLE HACKETT, SMALL PROGRESS CO., DARIO ALCANTAR, and DOES 1 to 25,
 12 inclusive, do business in the County of Monterey and because Defendants' obligations and
 13 liabilities arise therein, and because the work that was performed by Plaintiff in the County of
 14 Monterey is the subject of this action. Moreover, Plaintiff's damages sought herein exceed
 15 \$25,000.

16 2. Plaintiff is a male resident of the city of Salinas, State of California.

17 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
 18 RIVERVIEW FARMS is and was a California corporation, doing business in Monterey County,
 19 California, and which employed Plaintiff.

20 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
 21 MICHELLE HACKETT is a female resident of the County of Monterey, State of California, and
 22 the owner, director, officer, and/or managing agent of RIVERVIEW FARMS. Plaintiff is
 23 informed and believes and thereon alleges that MICHELLE HACKETT managed and was
 24 directly involved in the day-to-day operations of RIVERVIEW FARMS and is being included
 25 in this lawsuit pursuant to Labor Code Section 558.1.

26 5. Plaintiff is informed and believes that at all times herein mentioned, Defendant SMALL
 27 PROGRESS CO is and was a California business, doing business in Monterey County,
 28 California, and which employed Plaintiff.

6. Plaintiff is informed and believes that at all times herein mentioned, Defendant DARIO

1 ALCANTAR is a male resident of the County of Monterey, State of California, and the owner,
2 director, officer, and/or managing agent of SMALL PROGRESS CO. Plaintiff is informed and
3 believes and thereon alleges that DARIO ALCANTAR managed and was directly involved in
4 the day-to-day operations of SMALL PROGRESS CO. and is being included in this lawsuit
5 pursuant to Labor Code Section 558.1.

6 7. Plaintiff is informed and believes that at all times herein mentioned, RIVERVIEW
7 FARMS and SMALL PROGRESS CO. are “joint employers” in that they controlled the wages,
8 hours, and working conditions of Plaintiffs and the aggrieved employees (defined below).
9 Defendants RIVERVIEW FARMS, MICHELLE HACKETT, SMALL PROGRESS CO,
10 DARIO ALCANTAR, and DOES 1 to 25 are hereinafter referred to as “Defendants” or
11 “RIVERVIEW.”

12 8. The “aggrieved employees” are all hourly, non-exempt employees or piece rate
13 employees who worked for RIVERVIEW at any and all of their California locations during the
14 relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code
15 Private Attorneys General Act of 2004 (“PAGA”).

16 9. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
17 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
18 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
19 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
20 for the conduct alleged herein. Upon discovering the true names and capacities of these
21 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
22 capacities of these fictitiously named defendants.

23 10. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
24 that information and belief, alleges that at all times herein mentioned, each of the remaining
25 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
26 under the authority of their agency, employment, or representative capacity, with the consent of
27 his/her codefendants.

28 **GENERAL ALLEGATIONS**

11. Plaintiff started working for RIVERVIEW in or around December 2022 as a “sprayer”

1 and was terminated on or around December 12, 2022. Plaintiff was classified as hourly, non-
2 exempt employee. Plaintiff and others were paid in cash only. Plaintiff's hourly rate was \$15 per
3 hour.

4 12. RIVERVIEW has committed numerous labor code violations against Plaintiff and other
5 similarly situated aggrieved employees, including all hourly, non-exempt employees who
6 worked for RIVERVIEW at any of their California locations during the applicable PAGA period.

7 13. RIVERVIEW did not provide Plaintiff and other similarly situated aggrieved employees
8 with the minimum wages to which they were entitled for all work performed and as such did not
9 compensate Plaintiff and others for all hours worked at the minimum wage rate pursuant to
10 California Labor Code sections 1194, 1197 and 1197.1. This is so because the company had a
11 policy and practice of rounding down work hours to the detriment of employees, resulting in
12 time shaving and minimum wage violations. As such, Plaintiff and others did not get
13 compensated for all the hours actually worked and did not receive at least the minimum wage
14 for all the hours they worked in contravention of California law.

15 14. Due to the above "off the clock" violations and as a matter of company policy and
16 practice, RIVERVIEW also violated Labor Code §510 and Industrial Welfare Commission
17 Wage Order 14 because it failed to pay Plaintiff and other similarly situated aggrieved employees
18 the correct overtime. In addition, RIVERVIEW did not include bonuses and/or incentive
19 payments in calculating employees' true regular rate of pay for purposes of deciphering their
20 correct overtime rate of pay. Additionally, the incentive and bonus payments were also not
21 factored into Plaintiff's and others' regular rate for purposes of receiving meal and rest break
22 premiums per the *Ferra v. Loews* case.

23 15. RIVERVIEW violated Labor Code § 226.7 and the applicable Industrial Welfare
24 Commission Wage Order no. 14 because it failed to provide Plaintiff and other similarly situated
25 aggrieved employees 10-minute rest periods for every four hours of work, or majority portion
26 thereof, throughout their employment. RIVERVIEW did not completely relieve Plaintiff of all
27 duty during said rest periods. RIVERVIEW did not pay to Plaintiff one additional hour of pay
28 at Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods
was not provided. It was not part of the company policy and culture for employees such as

1 Plaintiff and others to consistently take at least two rest breaks, especially due to the continuous
2 work obligations at the farm. As such, there would be a rest break violation on every single day
3 Plaintiff and others worked due to a policy and practice of not taking more than one rest period
4 per day. As such, the culture and environment at RIVERVIEW did not lend itself to the
5 employees receiving all required statutory breaks wherein they were relieved of all work duties.
6 It was the normal practice and custom of RIVERVIEW not to authorize, permit, and enforce two
7 timely, uninterrupted statutory rest periods.

8 16. RIVERVIEW violated Labor Code §§ 512 and 226.7 and the applicable Industrial
9 Welfare Commission Wage Order no. 14 because it failed to provide Plaintiff and other similarly
10 situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five
11 (5) hours of work (and before the fifth hour) throughout their employment, and Plaintiff did not
12 validly waive said meal periods. RIVERVIEW did not completely relieve Plaintiff of all duties
13 during said meal periods. RIVERVIEW did not pay to Plaintiff one additional hour of pay at
14 Plaintiff's regular rate of compensation for each workday that one or more statutory meal periods
15 was not provided. Plaintiff and others was absolutely not allowed to leave the farm during any
16 meal break and was not even allowed to go to his car during any meal break. If the employees
17 got a lunch, they were required to eat their lunch in a designated lunchroom. If RIVERVIEW
18 had Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and
19 others generally worked more than a 6-hour shift. If RIVERVIEW had Plaintiff sign an on-duty
20 meal period agreement wherein Plaintiff agreed to work through the meal periods or stay on the
21 premises during meal periods, it would be invalid and unenforceable because the nature of
22 Plaintiff's jobs as a sprayer does not prevent him from taking a meal period. Moreover, any such
23 "on duty" meal period agreement did not allow for Plaintiff to revoke such an agreement even if
24 it was signed. As such, Plaintiff and others never received statutory, timely meal periods during
25 their employment wherein they were allowed to leave the premises and do as they pleased. To
26 the extent that RIVERVIEW argues that employees receive meal break premium pay for missed
27 meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA
28 penalties are for the violations themselves, irrespective of whether an employee received the
premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire*

1 *Protection, Inc.*, the Court stated, “section 226.7 does not give employers a lawful choice
2 between providing either meal and rest breaks or an additional hour of pay.” See *Kirby v. Immoos*
3 *Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour
4 of pay does not excuse the violation; the employer has still committed a violation even if the
5 remedy for the violation has been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016
6 WL 1110302 at *4). As such, the work environment and culture at RIVERVIEW was not
7 conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover,
8 any meal or rest break premiums paid were not compensated at the weighted average regular
9 rate, inclusive of bonuses and/or incentive payments.

10 17. Furthermore, during the relevant time period, and due to the above labor code violations,
11 RIVERVIEW failed to pay Plaintiff and other similarly situated aggrieved employees all wages
12 due to them within any time period specified by California Labor Code section 204.
13 RIVERVIEW was also in violation of California Labor Code section 226(a) by failing to include
14 pertinent information on the wage statements, including but not limited to, the correct hourly
15 rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net
16 wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and
17 end of the pay period, all employee identifying information, the correct name and address of the
18 legal employer, and reimbursement for business expenses, among others. As such, RIVERVIEW
19 did not provide Plaintiff and other similarly situated aggrieved employees with complete,
20 accurate itemized wage statements.

21 18. RIVERVIEW violated Labor Code § 203 because it willfully failed to pay Plaintiff and
22 other similarly situated aggrieved employees earned and due wages upon separation of
23 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
24 These earned but unpaid wages include the unpaid minimum wages/compensation for all hours
25 worked, overtime, premium pay for missed meal and rest breaks, and business expense
26 reimbursement, among others.

27 19. During the relevant time period, RIVERVIEW also failed to keep accurate and complete
28 payroll records showing the correct wages paid to Plaintiff and other aggrieved employees
pursuant to California Labor Code sections 1174(d).

1 20. Additionally, during the relevant time period, Plaintiff and other aggrieved employees
2 incurred necessary, business-related expenses and costs that were not reimbursed by
3 RIVERVIEW. These costs include, but are not limited to, uniforms. Accordingly, RIVERVIEW
4 was in violation of California Labor Code sections 2800 and 2802.

5 21. Moreover, RIVERVIEW failed to provide Worker's Compensation coverage for Plaintiff
6 and other aggrieved employees in violation of Labor Code Section 3700.5 and also failed to
7 provide sick pay in violation of Labor Code Sections 233 and 246.

8 22. During his employment, Plaintiff complained to management, specifically to "Cecilia"
9 that he was being harassed by one of the supervisors, "Artemio". RIVERVIEW retaliated against
10 Plaintiff and terminated his employment on or around December 12, 2022 after complaining
11 about the mistreatment from Artemio to Cecilia. Plaintiff was informed there was no more work
12 for him. It is Plaintiff's position that any justification offered by RIVERVIEW was and is
13 pretextual as REVIERVIEW unequivocally had the required retaliatory animus.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

16 **(California Industrial Welfare Commission Order 14-2001, California Code of
17 Regulations Title 8 Section 11140, and California Labor Code Section 1198)**

18 **(Plaintiff against all named defendants and all DOE defendants)**

19 23. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
20 alleged herein.

21 24. At all times relevant herein, Defendants were required to compensate their employees for
22 all hours worked upon reporting for work at the appointed time stated by the employer pursuant
23 to Industrial Welfare Commission Order 14-2001, California Code of Regulations, Title 8,
24 Section 11140.

25 25. For the three (3) years preceding filing of this action, Defendants failed to compensate
26 Plaintiff for all hours worked.

27 26. Under the aforementioned wage order and regulations, Plaintiff is to recover
28 compensation for all hours worked but not paid by Defendants for the three (3) years preceding
the filing of this Complaint.

1 27. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
2 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
3 this Court.

4 28. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
5 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled
6 to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable
7 attorney's fees and costs of suit.

8 29. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
9 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
10 amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY MINIMUM WAGES**

13 **(California Labor Code Sections 1194, 1194.2, 1197)**

14 **(Plaintiff against all named defendants and all DOE defendants)**

15 30. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
16 alleged herein.

17 31. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
18 to suffer or permit a California employee to work without paying wages at the minimum wage
19 rate for all hours worked as required by the applicable Industrial Welfare Commission
20 (hereinafter "IWC") Wage Order No. 14-2001, codified at California Code of Regulations, Title
21 8, Section 11140, subdivision 4.

22 32. Pursuant to IWC Wage Order no. 14-2001, subdivision 2(G), at all relevant times,
23 "hours worked" included "the time during which an employee is subject to the control of an
24 employer, and includes all the time the employee is suffered or permitted to work, whether or
25 not required to do so..."

26 33. During his employment, Plaintiff was regularly required as a matter of uniform policy
27 and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid
28 less than the minimum wage rate by Defendants for hours worked in violation of California
Labor Code Section 1197 and the applicable California Industrial Wage Commission wage

1 order(s).

2 34. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
3 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
4 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
5 to believe that their acts or omissions were not contrary to California law.

6 35. For all hours worked by Plaintiff for which he was paid less than the minimum wage rate
7 by Defendants, Plaintiff is entitled to not less than the applicable California minimum wage rate
8 and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount equal to unpaid
9 minimum wages and interests thereon. Pursuant to Labor Code Section 1194, Plaintiff is also
10 entitled to attorney's fees, costs and interests according to proof.

11 36. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
12 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
13 trial.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME**

16 **(California Industrial Welfare Commission Order 14-2001, California Code of**
17 **Regulations Title 8 Section 11140; California Labor Code Section 510)**
18 **(Plaintiff against all named defendants and all DOE defendants)**

19 37. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
20 fully alleged herein.

21 38. Pursuant to Industrial Welfare Commission Order No. 14-2001, Cal. Code of Regs., Title
22 8, Section 11140, for the period of Plaintiff's employment, Defendants were required to
23 compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the
24 regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week,
25 and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a
26 day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

27 39. Plaintiff was a non-exempt employee entitled to the protections of the California
28 Industrial Welfare Commission Order No. 14-2001, California Code of Regulations, Title 8,
Section 11140.

1 40. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in
2 a single workweek on numerous occasions.

3 41. Plaintiff was entitled to the above overtime premiums.

4 42. Defendants did not pay Plaintiff premium wages of at least one and one-half times
5 Plaintiff's regular rate of pay for hours worked past eight (8) in a day.

6 43. Defendants did not pay Plaintiff premium wages of at least one and one-half times
7 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

8 44. Plaintiff worked at least one pay period in which he was not properly paid overtime
9 within the three (3) years prior to the initiation of this lawsuit.

10 45. Defendants know or should know the actual dates of overtime worked, the amount of
11 overtime worked, and the amount of unpaid overtime due.

12 46. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
13 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
14 Court.

15 47. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
16 Regulations, Title 8, Sections 11140, Plaintiff is entitled to recover damages for the nonpayment
17 of overtime premiums for all overtime hours worked, penalties, interest, plus reasonable
18 attorney's fees and costs of suit.

19 48. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
20 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
21 trial.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

24 **(California Labor Code Section 226)**

25 **(Plaintiff against all named defendants and all DOE defendants)**

26 49. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
27 alleged herein.

28 50. Pursuant to California Labor Code Section 226, every employer must furnish each
employee an itemized statement of wages and deductions at the time of payment of wages.

1 51. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
2 accurately reflected all information required by Labor Code Section 226, including but not
3 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
4 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
5 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed to
6 maintain and provide accurate itemized wage statements to Plaintiff in accordance with
7 California Labor Code Section 226(a).

8 52. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
9 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
10 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
11 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
12 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
13 the 3-year period immediately preceding the date this lawsuit was filed.

14 53. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained
15 damages, including loss of earnings, in an amount to be established at trial. As a further direct
16 and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff is entitled to
17 recover penalties, in an amount to be established at trial, as well as costs and attorney's fees
18 pursuant to statute.

19 54. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
20 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
21 trial.

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

24 **(California Labor Code Sections 201, 203)**

25 **(Plaintiff against all named defendants and all DOE defendants)**

26 55. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
27 fully alleged herein.

28 56. Pursuant to California Labor Code Section 201(a), an employer who discharges an
employee must immediately pay for all compensation due and owing.

1 57. Pursuant to California Labor Code Section 202, when an employee resigns, the employer
2 must pay all compensation due and owing within 72 hours of resignation, or on the employee's
3 last day of work, if the employee gives more than 72 hours notice of resignation.

4 58. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
5 without abatement or reduction, any wages of an employee whose employment ends, the wages
6 of the employee shall continue as a penalty from the due date at the same rate until paid or until
7 an action is commenced; however, the wages shall not continue for more than 30 days for failure
8 to pay an employee owed wages.

9 59. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated
10 from his employment, Defendants willfully refused and continue to refuse to pay his unpaid
11 wages as required by Labor Code Section 203.

12 60. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
13 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.
14 Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
15 preceding the filing of this lawsuit.

16 61. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
17 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
18 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

19 62. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
20 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
21 trial.

22 **SIXTH CAUSE OF ACTION**

23 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

24 **(California Labor Code Section 204)**

25 **(Plaintiff against all named defendants and all DOE defendants)**

26 63. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
27 alleged herein.

28 64. California Labor Code Section 204 establishes the fundamental right of all employees
in the State of California to be paid wages in a timely fashion for their work.

65. At all times relevant during the liability period, Defendants failed to pay Plaintiff the full amount of all owed wages when due as required by California Labor Code Section 204.

66. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is informed, believes, and thereon alleges, that all times relevant during the liability period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked, including overtime hours, the minimum wage, and premium pay for missed meal and rest breaks.

67. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount, subject to proof, to the extent he was not paid all wages each pay period. The precise amount of unpaid wages is not presently known to Plaintiff but can be determined directly from Defendants' records or indirectly based on information from Defendants' records.

68. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

SEVENTH CAUSE OF ACTION

FAILURE TO GIVE REST BREAKS

(Plaintiff against all named defendants and all DOE defendants)

69. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully alleged herein.

70. Plaintiff brings this cause of action under the following laws, for the following reasons:

- a. Title 8 of the California Code of Regulations Sections 11140(12), which provides that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- b. Title 8 of the California Code of Regulations sections 11140(18)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- c. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the

1 Industrial Welfare Commission, and (b) if an employer fails to provide an employee
2 a rest period in accordance with an applicable order of the Industrial Welfare
3 Commission, the employer shall pay the employee one (1) additional hour of pay at
4 employee's regular rate of compensation for each work day that the rest period is not
5 provided.

6 71. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest
7 break after every four (4) hours of work or major fraction thereof, as required by California law.

8 72. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
9 regulations, and wage orders alleged in this cause of action along with any allowable interest,
10 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the
11 foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

12 73. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees
13 as well as interest under Labor Code section 218.6.

14 74. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
15 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
16 trial.

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO GIVE MEAL BREAKS**

19 **(Plaintiff against all named defendants and all DOE defendants)**

20 75. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
21 alleged herein.

22 76. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 23 a. California Labor Code section 512(a), which requires that employees be given a 30-
24 minute uninterrupted meal break after five (5) hours of work, and a second
25 uninterrupted meal break after ten (10) hours of work;
- 26 b. California Labor Code section 226.7, which states that (a) no employer shall require
27 any employee to work during any meal period mandated by an applicable order of
28 the Industrial Welfare Commission, and (b) if any employer fails to provide an
employee a meal period in accordance with an applicable order of the Industrial

Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;

- c. California Industrial Welfare Commission Order No. 14 section 11(A), as codified under Title 8 of the California Code of Regulations Section 11140, which states that an employer may not employ an employee for a work period of more than five (5) hours without providing the employee with a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of employer and employee.
- d. California Industrial Welfare Commission Wage Order No. 14 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11140, which requires an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission Wage Order No. 14 Section 18(A), as codified under California Code of Regulations Section 11140, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 14) as enforceable law.

77. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 14, as codified under California Code of Regulations Sections 11140 et. seq. requires that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty. California Labor Code section 226.7 provides that employers may not require their employees to work through their meal periods. California Labor Code section 226.7 and California Code of Regulations section 11140 requires that if the employer fails to provide the employee with an

1 uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each
2 work day that the meal period is not given.

3 78. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
4 regulations, and wage orders alleged in this cause of action along with any allowable interest,
5 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
6 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

7 79. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
8 fees as well as interest under Labor Code section 218.6.

9 80. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
10 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
11 trial.

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

14 **(Plaintiff against all named Defendants and DOE Defendants)**

15 81. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
16 alleged herein.

17 82. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
18 employee for all necessary expenditures or losses incurred by the employee in direct
19 consequence of the discharge of his or her duties."

20 83. Beginning at least 3 years prior to the filing of this complaint, in order to discharge her
21 duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of
22 completing his job duties, which were not reimbursed by Defendants. These costs include, but
23 are not limited to, uniforms. Plaintiff is entitled to reimbursement for these necessary
24 expenditures, plus interest and attorney's fees and costs, under Labor Code section 2802.

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1 under California Labor Code sections 2698 and 2699 because of Defendants' violations of
2 numerous provisions of the California Labor Code as alleged in this Complaint.

3 91. Plaintiff therefore has exhausted all administrative remedies required of him under
4 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
5 cause of action and pursue penalties in a representative action for Defendants' violations of the
6 Labor Code.

7 92. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants
8 for violating the Labor Code.

9 93. California Labor Code section 558 establishes a civil penalty as follows: Any employer
10 or other person action on behalf of an employer who violates, or causes to be violated, a section
11 of this chapter or any provision regulating hours and days of work in any order of the Industrial
12 Welfare Commission (including the "Hours and Days of Work" section of the Wage Order) shall
13 be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each underpaid
14 employee for each pay period for which the employee was underpaid ...; (2) for each subsequent
15 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which
16 the employee was underpaid ...;

17 94. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
18 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
19 seeking individual/victim specific relief or underpaid wages under this particular cause of action.

20 95. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
21 law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the
22 following:

23 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
24 226.3, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5,
25 via 2698 and 2699, and any other Labor Codes and Industrial Welfare Commission Wage
26 Orders (No. 14) violated based on the facts alleged in this Complaint.

27 96. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
28 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees
as alleged herein in an amount to be shown according to proof at trial and within the

jurisdictional limits of this Court.

ELEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE PERSONNEL RECORDS

(Plaintiff against all named Defendants and all DOE defendants)

97. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully alleged herein.

98. Labor Code section 1198.5 dictates “every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.”

99. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times...” On information and belief, Defendants intentionally failed to provide Plaintiff with personnel records when requested by Plaintiff via letter on December 21, 2022, as required by law. Plaintiff requested his personnel records in accordance with California Labor Code section 1198.5(k) on December 21, 2022 via certified U.S. mail.

100. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his records within 30 days. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants’ failure to provide personnel records.

101. Plaintiff seeks all available remedies for Defendants’ violations including, but not limited to penalties, and costs to the extent permitted by law and according to proof at trial. Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the amount of \$750.00, along with costs and attorney’s fees.

TWELFTH CAUSE OF ACTION

FAILURE TO PROVIDE PAY RECORDS

(Plaintiff against all named Defendants and all DOE defendants)

102. Plaintiff incorporates by reference each and every paragraph of this Complaint as

1 if fully alleged herein.

2 103. Labor Code section 226 sub-section (b) dictates “an employer...shall afford
3 current and former employees the right to inspect or copy records pertaining to their
4 employment, upon reasonable request to the employer...”

5 104. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer
6 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
7 pertaining to a current or former employee shall comply with the request as soon as practicable,
8 but no later than 21 calendar days from the date of the request.” On information and belief,
9 Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff
10 via letter, on December 21, 2022, and as required by law. Plaintiff requested his pay records in
11 accordance with California Labor Code section 226 on December 21, 2022, via U.S. certified
12 mail. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his pay records
13 within 21 days.

14 105. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered
15 and continues to suffer substantial losses related to Defendants’ failure to provide pay records.
16 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
17 amount of \$750.00, along with costs and attorney’s fees.

18 106. Plaintiff seeks all available remedies for Defendants’ violations including, but not
19 limited to, penalties and costs to the extent permitted by law and according to proof at trial.

20 **THIRTEENTH CAUSE OF ACTION**

21 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

22 **(Plaintiff against Defendants RIVERVIEW FARMS and SMALL PROGRESS CO.)**

23 107. Plaintiff incorporates by reference each and every paragraph of this Complaint
24 as if fully alleged herein.

25 108. At all times material to this Complaint, California Labor Code § 1102.5 was in
26 effect and binding on Defendants. This section requires Defendant to refrain from retaliating
27 against an employee for refusing to participate in an activity that he/she reasonably believes
28 would result in a violation of state or federal statute, or a violation or noncompliance with a state
or federal rule or regulation. California Labor Code section 1102.5 also requires Defendant to

1 refrain from retaliating against an employee for disclosing information to a person with authority
2 over the employee if the employee has reasonable cause to believe that the information discloses
3 a violation of state or federal statute, or a violation of or noncompliance with a local, state, or
4 federal rule or regulation, regardless of whether disclosing the information is part of the
5 employee's job duties.

6 109. Defendants retaliated against Plaintiff for his complaints to management about
7 being harassed at the workplace by one of the supervisors and terminated his employment in
8 violation of Labor Code § 1102.5.

9 110. As a direct and proximate result of the aforementioned acts and omissions of
10 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
11 loss of income (past and future), loss of employment benefits (past and future), general and
12 compensatory damages (past and future), mental pain and anguish and emotional distress (past
13 and future), and will continue to suffer in the future, in an amount to be proved at trial.

14 111. Plaintiff requests all available relief under Labor Code § 1102.5 including
15 damages, attorney's fees, and the imposition of civil penalties of \$10,000 for each violation.

16 **FOURTEENTH CAUSE OF ACTION**

17 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

18 **(Plaintiff against Defendants RIVERVIEW FARMS and SMALL PROGRESS CO.)**

19 112. Plaintiff incorporates by reference each and every paragraph of this Complaint
20 as if fully alleged herein.

21 113. At all times during his employment with Defendants, Plaintiff performed his
22 duties with the utmost diligence and competence.

23 114. Defendants retaliated against Plaintiff and terminated his employment, as alleged
24 herein, shortly after Plaintiff complaints about being harassed at the workplace.

25 115. Plaintiff's employment was wrongfully terminated on or around December 12,
26 2022 in violation of the fundamental public policy of the State of California with respect to
27 retaliating against an employee for making complaints about harassment and mistreatment at the
28 workplace.

1 116. Moreover, Plaintiff was forced to hire an attorney to assist him to end these illegal
2 activities.

3 117. Said conduct violated statutory and constitutional expressions of public policy
4 including, but not limited to, California Labor Code, and the California Constitution, Article 1
5 section 8.

6 118. As set forth above, said actions by Defendants were wrongful and in violation of
7 the fundamental principles of the public policy of the State of California as reflected in its laws,
8 objectives and policies. Said statutes and constitutional expressions of public policy include,
9 but are not limited to, California Labor Code, and the California Constitution, Article 1 section
10 8. These laws inure to the benefit of the public at large, and not just the private interests of the
11 employers and employees whom they govern or protect.

12 119. As a direct and proximate result of the aforementioned acts and omissions of
13 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
14 loss of income (past and future), loss of employment benefits (past and future), general and
15 compensatory damages (past and future), mental pain and anguish and emotional distress (past
16 and future), and will continue to suffer in the future, in an amount to be proved at trial.

17 120. The foregoing conduct engaged in by Defendants and each of their directors,
18 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
19 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
20 an environment free of retaliation, so as to justify the imposition of punitive damages to punish
21 and set an example of said Defendants.

22 **FIFTEENTH CAUSE OF ACTION**

23 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

24 **(California Business and Professions Code Section 17200)**

25 **(Plaintiff against Defendants RIVERVIEW FARMS and SMALL PROGRESS CO.)**

26 121. Plaintiff incorporates by reference each and every paragraph of this Complaint
27 as if fully alleged herein.

28 122. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants

1 constitute unfair and unlawful business practices under California Business and Professions
2 Code Section 17200, et seq.

3 123. Defendants' violations of the California labor laws and the Labor Code
4 constitutes a business practice because it was done repeatedly over a significant period of time
5 in a systematic manner that was detrimental to Plaintiff.

6 124. For the four years preceding the filing of this action, Plaintiff has suffered
7 damages and request damages and/or restitution of all monies and profits to be disgorged from
8 Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of
9 this Court.

10 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
11 follows:

- 12 1. For compensatory damages including lost past and future wages, regular wages,
13 overtime, and all other sums of money, including employment benefits, together with
14 interest on said amounts, and any other economic injury to Plaintiff, according to proof;
- 15 2. For general damages according to proof;
- 16 3. For special and consequential damages to the extent allowed by law;
- 17 4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
18 at trial;
- 19 5. For an award of punitive damages against Defendants RIVERVIEW FARMS and
20 SMALL PROGRESS Co. according to proof;
- 21 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
22 subject to proof at trial;
- 23 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
24 proof at trial;
- 25 8. For restitution and disgorgement for all unfair business practices by Defendants
26 RIVERVIEW FARMS and SMALL PROGRESS CO. against Plaintiff in an amount
27 subject to proof at trial;
- 28 9. For an order enjoining Defendants RIVERVIEW FARMS and SMALL PROGRESS
CO. from further unfair and unlawful business practices in violation of Business and

Professions Code Sections 17200, et seq.;

10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;

11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;

12. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claim;

13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;

14. For the imposition of civil penalties and/or statutory penalties;

15. For all interest as allowed by law;

16. For all costs and disbursements incurred in this suit;

17. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the California Labor Code and/or other applicable laws; and

18. For such other and further relief as this Court may deem proper.

DATED: March 20, 2023

MESSRELIAN LAW INC.

By Maralle Messrelian
Harout Messrelian, Esq.
Maralle Messrelian, Esq., Of Counsel
Attorneys for Plaintiff JUAN ORTEGA

DEMAND FOR JURY TRIAL

Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

DATED: March 20, 2023

MESSRELIAN LAW INC.

By Maralle Messrelian
Harout Messrelian, Esq.
Maralle Messrelian, Esq., Of Counsel
Attorneys for Plaintiff JUAN ORTEGA