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

ADALBERTO DIAZ, as an individual, and on
behalf of all others similarly situated,

Plaintiff,

v.

DOUBLE J FARM LABOR, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: VCU295370

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

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

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Adalberto Diaz (hereinafter “Plaintiff”), as an individual, and on behalf of all
2 others similarly situated, hereby brings this First Amended Class and Representative Action
3 Complaint against DOUBLE J FARM LABOR, INC., a California corporation; and DOES 1 to
4 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff hereby brings this Class Action Complaint for recovery of unpaid wages
7 and penalties under California Business and Professions Code § 17200 *et. seq.*, Labor Code §§
8 201-205, 226 *et. Seq.*, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698
9 *et seq.*, 2802, and Industrial Welfare Commission Wage Order 14 (“Wage Order 14”), in addition
10 to seeking declaratory relief and restitution. This Complaint is brought pursuant to California
11 Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the
12 California Labor Code because the amount in controversy exceeds this Court’s jurisdictional
13 minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in the County of Tulare. Defendants own, maintain offices, transact business, have an
18 agent or agents within the County of Tulare, and/or otherwise are found within the County of
19 Tulare, and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was and is a victim of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-205, 226 *et. Seq.*, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,
28 2802 California Business and Professions Code § 17200 *et seq.* (“Unfair Competition Law”), and

1 Wage Order 14, which sets employment standards for the agricultural industries.

2 4. Plaintiff is informed and believes, and based thereon allege, that during the four
3 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
4 continue to do) business by harvesting agricultural commodities in California and the United
5 States, employed Plaintiff within Tulare County and the state of California and, therefore, were
6 (and are) doing business in Tulare County and the State of California.

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

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

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

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of, and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes towards Plaintiff and
28 all members of the Classes.

1 9. Unnamed Defendant farms are also jointly liable with Defendant DOUBLE J
2 FARM LABOR, INC. for all civil legal responsibility and civil liability for the payment of wages,
3 including all sums payable to an employee or the state of California based upon any failure to pay
4 wages, pursuant to Labor Code §2810.3.

5 **GENERAL FACTUAL ALLEGATIONS**

6 10. Plaintiff worked for Defendants seasonally, most recently until approximately
7 February 15, 2022 when he suffered a work-related injury and ceased his employment. Plaintiff
8 was tasked with pruning and cutting trees at the various farms that Defendants contracted Plaintiff
9 and other non-exempt employees to perform work at. Plaintiff generally worked Monday through
10 Saturday from around 6:30 a.m. until around 1:00-2:00 p.m. However, as discussed below,
11 Plaintiff worked considerably more hours than he was credited for by Defendants, who did not
12 properly track the hours worked by Plaintiff and other non-exempt employees whatsoever in favor
13 of paying them strictly based on their piece rate production. Defendants have not boarded or
14 lodged Plaintiff during his employment.

15 11. Throughout the duration of Plaintiff's employment with Defendants, Plaintiff and
16 other non-exempt employees were not paid for all hours worked as their supervisors would not
17 accurately keep track of their actual hours worked. Rather, Plaintiff and other non-exempt
18 employees were paid on a piece-rate basis of \$8.00 per tree they were tasked with cutting and/or
19 pruning. Plaintiff and other non-exempt employees were allegedly paid an hourly minimum
20 wage if their earned piece-rate compensation did not exceed their minimum wages earned in a
21 pay period. However, on information and belief, Plaintiff alleges that Defendants did not employ
22 accurate timekeeping practices when he performed piece work and at no point was Plaintiff made
23 to confirm or sign off on his hours worked. Instead, Defendants would for the most part simply
24 write in that he worked the same exact number of hours each day on his wage statements (6.0
25 hours per shift) despite the fact that Plaintiff generally worked more hours than scheduled.

26 12. Furthermore, Plaintiff and other non-exempt employees worked overtime hours,
27 based on the requirements of Wage Order 14, per workweek but did not receive overtime
28 compensation equal to one and one-half times their regular rates of pay for all overtime hours

1 worked. On those occasions where Plaintiff worked overtime hours during the week, Plaintiff
2 was rarely, if ever, compensated at the requisite overtime rate of pay in favor of paying him only
3 for piece rate work. For example, Plaintiff frequently worked on Saturdays which would have
4 entitled him to statutory overtime compensation as he would exceed the hourly overtime
5 thresholds as set forth in Wage Order 14. However, Plaintiff did not receive overtime pay despite
6 this reality. Upon information and belief, Defendants systemically failed to pay overtime
7 compensation due to Plaintiff and other non-exempt employees regardless of whether they were
8 performing work on a piece rate or hourly basis. Defendants also failed to provide “Reporting
9 Time Pay” to Plaintiff and other non-exempt employees on those occasions where they were
10 required to report to Defendants’ worksite but not able to perform work due to weather conditions
11 or otherwise. Despite maintaining a policy that required its employees to report to the worksite
12 every day regardless of weather conditions, Defendants failed to provide any sort of compensation
13 to Plaintiff and the other non-exempt employees on those occasions where they reported to the
14 worksite but was unable to perform any work in violation of the “Reporting Time Pay”
15 requirements as set forth in Wage Order 14 § 5. Plaintiff never formally clocked in or clocked
16 out during his shifts and was never provided any sort of timecard reflecting the hours he worked.
17 As a result, Defendants failed to ensure that Plaintiff and other non-exempt employees were being
18 paid at least the minimum wage for all hours actually worked, and failed to ensure that Plaintiff
19 and other non-exempt employees received proper overtime wages for all overtime hours worked,
20 in compliance with Wage Order 14.

21 13. Plaintiff and other non-exempt employees were not authorized to take all legally
22 required rest periods regardless of whether they were working on a piece-rate or hourly basis.
23 Plaintiff does not recall ever receiving a rest period throughout his employment with Defendants.
24 Instead, he would be made to work throughout the entirety of his shifts without interruption.
25 Further, on those occasions where Plaintiff and other non-exempt employees performed piece
26 work for Defendants, Defendants routinely failed to pay the correct regular rate for rest and
27 recovery periods. For example, despite working approximately 6.5-8 hours per shift, Plaintiff
28 would only be compensated for 1 hour of rest and recovery time each week that he worked. For

1 example, on Plaintiff's wage statement numbered 18258 for the pay period between 2/06/2022
2 and 2/12/2022, Plaintiff's records (which as explained above are under representative of his actual
3 hours worked) indicate that he worked over six hours on six shifts (after factoring in non-
4 productive time), but was only compensated for one hour of paid rest and recovery time for the
5 entire pay period. Accordingly, even if Plaintiff's records were accurate, Defendants still failed
6 to provide compensation for all rest and recovery periods as Plaintiff should have been entitled to
7 at least two paid rest and recovery periods per shift for at least ten minutes per rest and recovery
8 period (i.e. 20 minutes per shift) meaning that at a minimum Plaintiff should have been
9 compensated for 2.0 hours per week for paid rest and recovery time (20 mins/day*6 shifts per
10 week). Despite this reality, Plaintiff and other non-exempt employees were only compensated
11 1.0 hours of rest and recovery time per week, and often even less than that. Additionally, the rate
12 at which these rest and recovery periods was paid at was often incorrect in a manner that served
13 to undercompensate Plaintiff and other non-exempt piece rate employees for statutory rest and
14 recovery time. As such, Defendants neglected to pay Plaintiff and other non-exempt employees
15 for rest and recovery periods despite their entitlement to such pay. Accordingly, Plaintiff and
16 other non-exempt employees were systematically denied paid rest period compensation every
17 shift worked that they were duly and legally entitled to. Despite Defendants' failure to authorize
18 and permit Plaintiff and other non-exempt employees to take all lawful paid rest periods, due to
19 their uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt
20 employees with an hour of pay at their regular rate for each rest period violation as required by
21 Labor Code § 226.7. Upon information and belief, during at least a portion of the class period,
22 Defendants maintained no payroll code or another mechanism for the payment of rest period
23 premiums in the event Plaintiff and other non-exempt employees were not authorized to take
24 lawful rest periods.
25

26 14. Defendants have failed to accurately record and compensate Plaintiff and other
27 non-exempt employees who are compensated on a piece-rate basis for non-productive time. *See*
28 *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-rate

1 compensation structure that does not separately compensate employees for non-productive time
2 violates California minimum wage laws). Plaintiff and other non-exempt employees were
3 required to perform work duties and activities that were not directly compensated on a piece-rate
4 basis such as retrieving ladders at the beginning of their shifts from Defendants trucks and
5 returning them to Defendants trucks at the end of their shifts. Plaintiff estimates that each trip to
6 and from Defendants trucks to retrieve and return the ladders would take anywhere between 5-10
7 minutes, all time that was wholly uncompensated by Defendants. Additionally, Plaintiff was
8 required to utilize his personal vehicle to travel between different fields to perform work
9 throughout his shift, all time that Defendants failed to compensate he and other non-exempt
10 employees for. Despite this non-productive time being worked on a daily basis, Plaintiff and
11 other non-exempt employees were vastly undercompensated for non-productive time, if they were
12 compensated at all. Defendants' wage statements issued to Plaintiff do not contain any item or
13 code indicating that they pay any non-productive time. Additionally, employees were not
14 compensated for bathroom and water breaks, waiting in lines, and/or other mandatory duties that
15 were not directly compensated on a piece-rate basis. Plaintiff alleges that all this time constitutes
16 unproductive worktime which must be compensated under California law. Accordingly, Plaintiff
17 estimates that he and other non-exempt employees worked at least an additional 1-3 hours per
18 week of non-productive time that was uncompensated. As such, Plaintiff alleges that Defendants
19 have not accurately tracked and compensated employees' non-productive time in compliance with
20 Labor Code § 226.2.
21

22 15. Defendants also did not provide Plaintiff and other non-exempt employees with a
23 legally complaint first meal period when they worked shifts in excess of 6.0 hours. Plaintiff and
24 other non-exempt employees rarely, if ever, were entitled to exercise the use of a thirty-minute
25 uninterrupted meal period despite almost always working at least 6.0 hours in a day. Rather,
26 Plaintiff and other non-exempt employees would generally work through their shifts outside of
27 the occasional 15 minute break that Plaintiff and other non-exempt employees would be permitted
28 to exercise for the purpose of eating lunch before immediately returning back to work. Plaintiff

1 does not recall ever permitted more than 15-minutes to exercise the use of a meal period. Plaintiff
2 and other non-exempt employees were not only unable to exercise the use of compliant meal
3 periods, they were unaware of their right to do so. Plaintiff and the other non-exempt employees
4 were not informed by Defendants of their legal right to take duty-free uninterrupted meal periods
5 before the conclusion of their fifth hour of work pursuant to Labor Code Section 512. Defendants
6 were not only aware of, but actively encouraged this practice. Upon information and belief,
7 Defendants did not accurately record meal periods in any manner. Despite Defendants' failure to
8 provide Plaintiff and other non-exempt employees with all lawful meal periods due to their
9 uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt
10 employees with an hour of pay at their regular rate for each meal period violation as required by
11 Labor Code § 226.7.

12
13 16. Furthermore, Defendants failed to adequately reimburse Plaintiff for all reasonable
14 and necessary work expenditures, including but not limited to, requiring Plaintiff to purchase his
15 own gasoline powered saw, gasoline, oil, pruning shears, gloves, and safety glasses. Furthermore,
16 Plaintiff was required to utilize his personal vehicle to travel between fields in the performance
17 of his work duties and was not ever provided any reimbursement for its necessary use.

18 17. As a result of Defendants' failure to accurately compensate Plaintiff and other
19 non-exempt employees for non-productive time, failure to pay all minimum and overtime wages,
20 and failure to provide all required meal periods and authorize all rest periods or pay premium pay
21 in lieu thereof, Defendants have maintained inaccurate payroll records, failed to timely pay all
22 wages owed to employees, failed to timely pay wages to seasonal employees at the end of the
23 season, failed to timely pay separating employees at the time of their separation, and issued
24 inaccurate wage statements.

25 18. As a further result of Defendants' failure to pay all minimum, overtime, and meal
26 and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff and the other
27 non-exempt employees upon their separation of employment from Defendants. Furthermore,
28 Defendants violated Labor Code § 204 by failing to pay Plaintiff and other non-exempt employees

1 at least twice during each calendar month.

2 19. Additionally, Defendant DOUBLE J FARM LABOR, INC. is a farm labor
3 contractor subject to the requirements of Labor Code § 205, which requires that employees be
4 paid weekly, on a business day designated in advance, for all wages earned up to and including
5 the fourth day before the scheduled payday. However, Defendants pay their employees on a delay
6 of five days or more, in violation of the “fourth day” requirement found in Labor Code § 205.

7 20. Further, at the end of each season, employees were laid off (i.e., terminated), but
8 were not provided their paycheck until the next regular scheduled pay day, in violation of Labor
9 Code § 201 (“(a) If an employer discharges an employee, the wages earned and unpaid at the time
10 of discharge are due and payable immediately.”).

11 21. Defendants failed to conform to the requirements of Labor Code § 2810.5 by
12 failing to provide Plaintiff and other non-exempt employees written notices, in the language
13 normally used to communicate employment related information to the employees, containing
14 information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part
15 of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the
16 employer; v) the address of the legal entity that is the employer; vi) the telephone number of the
17 employer; vii) identifying information for the employer’s workers’ compensation insurance
18 carrier; and viii) information informing the employee of their right to accrue and use paid sick
19 leave. Despite maintaining an obligation to provide these disclosures to Plaintiff and other non-
20 exempt employees, Defendants failed to do so, in violation of Labor Code § 2810.5.

21 22. Defendants also failed to meet their obligations to provide paid sick leave to
22 Plaintiff and other aggrieved employees under Labor Code § 245.5(b) which requires that
23 employers authorize and permit its employees who worked 30 or more days within a year to
24 accrue paid sick leave, and to allow them to exercise paid sick leave on or after their 90th day of
25 employment. Despite meeting all of the statutory requirements for being able to accrue and utilize
26 paid sick leave, Plaintiff and other aggrieved employees were not provided paid sick leave on
27 those occasions where they needed to take a “sick day” in violation of Labor Code § 245.5(b).

28 ///

1 **CLASS ACTION ALLEGATIONS**

2 23. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
3 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 4 a. The Minimum Wage Class consists of all current and former non-exempt
5 employees of Defendants who performed work Defendants in California that were
6 compensated on a piece-rate or hourly basis during the four years immediately
7 preceding the filing of this lawsuit through the present.
- 8 b. The Overtime Wage Class consists of all current and former non-exempt
9 employees of Defendants who performed work for Defendants in California who
10 worked overtime hours during the four years immediately preceding the filing of
11 this lawsuit through the present.
- 12 c. The Rest Period Class consists of all current and former non-exempt employees of
13 Defendants who performed work for Defendants in California who worked at least
14 one shift in excess of 3.5 hours during the four years immediately preceding the
15 filing of this lawsuit through the present.
- 16 d. The Meal Period Class consists of all current and former non-exempt employees
17 of Defendants who performed work for Defendants in California who worked at
18 least one shift in excess of 5.0 hours without a meal period of at least 30 minutes
19 in duration commencing prior to the conclusion of the fifth hour of work, and who
20 do not have a corresponding meal period premium payment made for such shifts
21 during the four years preceding the filing of this lawsuit through the present.
- 22 e. The Employee Expense Class consists of all of Defendants in California who were
23 not reimbursed for expenses in the performance of their job duties, including, but
24 not limited to: i) gasoline powered saws; and/or ii) gasoline; and/or iii)
25 shears/scissors; and/or iv) oil; and/or v) safety glasses; and/or vi) personal vehicle
26 expenses (including gas & mileage) during the four years immediately preceding
27 the filing of this lawsuit to the present
28

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

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

9 24. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
10 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
11 unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number
12 greater than one hundred (100) individuals. The identity of such membership is readily
13 ascertainable via inspection of Defendants' employment records.
14

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

19 i. Whether Defendants paid all minimum wages owed for all hours worked to
20 members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194,
21 1194.2, and 1197;

22 ii. Whether Defendants violated the applicable Labor Code provisions, including, but
23 not limited to, §§ 510 and 1194 and Wage Order 14 by requiring members of the
24 Overtime Wage Class to perform overtime work and not paying for said work in
25 accordance with the overtime laws of the State of California;

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

28 iv. Whether Defendants provided all legally compliant meal periods to members of

the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

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

vi. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;

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

viii. 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.

26. **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 timekeeping policies and practices, meal and rest period policies and practices, non-reimbursement policies and practices, wage statement policies and practices, and the policies and practices regarding the timely payment of final wages. 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.

27. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was subject to Defendants' meal/rest period and timekeeping policies and practices, was subjected to Defendants' unlawful failure to reimburse business expenses, was provided inaccurate wage statements, and was not paid all wages earned at the time of his separation of employment.

28. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps

1 to represent fairly and adequately the interests of the members of the Classes. Moreover,
2 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
3 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
4 and-hour class actions in state and federal courts in the past and are committed to vigorously
5 prosecuting this action on behalf of the members of the Classes.

6 29. **Superiority:** The California Labor Code is broadly remedial in nature and serves
7 an important public interest in establishing minimum working conditions and standards in
8 California. These laws and labor standards protect the average working employee from
9 exploitation by employers who have the responsibility to follow the laws and who may seek to
10 take advantage of superior economic and bargaining power in setting onerous terms and
11 conditions of employment. The nature of this action and the format of laws available to Plaintiff
12 and members of the Classes make the class action format a particularly efficient and appropriate
13 procedure to redress the violations alleged herein. If each employee were required to file an
14 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
15 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
16 their vastly superior financial and legal resources. Moreover, requiring each member of the
17 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
18 employees who would be disinclined to file an action against their former and/or current employer
19 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
20 employment. Further, the prosecution of separate actions by the individual class members, even
21 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
22 with respect to the individual class members against Defendants herein; and which would
23 establish potentially incompatible standards of conduct for Defendants; and/or legal
24 determinations with respect to individual class members which would, as a practical matter, be
25 dispositive of the interest of the other class members not parties to adjudications or which would
26 substantially impair or impede the ability of the class members to protect their interests. Further,
27 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
28

individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

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

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

33. Wage Order 14 § 5 (A) requires that "Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two hours nor more than four hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." By requiring Plaintiff and the Minimum Wage Class to routinely report to the worksite on days that weather

1 conditions did not permit for the commencement of work, and not paying Reporting Time Pay as
2 mandated by Wage Order 14 § 5 (A), Defendants have failed to pay Plaintiff and the Minimum
3 Wage Class all minimum wages.

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

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

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY ALL OVERTIME WAGES**

17 **(AGAINST ALL DEFENDANTS)**

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

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

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

28 39. Wage Order 14 § 5 (A) requires that "Each workday an employee is required to

report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two hours nor more than four hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." By requiring Plaintiff and the Overtime Class to routinely report to the worksite on days that weather conditions did not permit for the commencement of work, and not paying Plaintiff Reporting Time Pay as mandated by Wage Order 14 § 5 (A), Defendants have failed to pay Plaintiff and the Overtime Class all overtime wages.

40. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 14, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

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

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

FOURTH CAUSE OF ACTION

WAITING TIME PENALTIES
(AGAINST ALL DEFENDANTS)

45. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

46. 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.

47. 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 and/or underpaid overtime and minimum wages owed, and meal & 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.

48. Defendants' willful failure to timely pay Plaintiff and 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 the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(AGAINST ALL DEFENDANTS)

49. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

50. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff

1 and the Wage Statement Class with complete and accurate wage statements reflecting the accurate
2 number of hours worked, and meal & rest period premiums in violation of Labor Code § 226 *et*
3 *seq.*

4 51. Defendants' failures in furnishing Plaintiff and the Wage Statement Class with
5 complete and accurate itemized wage statements resulted in actual injury, as said failures led to,
6 among other things, the non-payment of all minimum wages, overtime wages, meal and rest
7 period premium wages, and deprived them of the information necessary to identify the
8 discrepancies in Defendants' reported data.

9 52. Defendants' failures create an entitlement to recovery by Plaintiff and the Wage
10 Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226
11 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit
12 according to California Labor Code § 226 *et seq.*

13 **SIXTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

15 **(AGAINST ALL DEFENDANTS)**

16 53. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

17 54. Defendants have engaged and continue to engage in unfair and/or unlawful
18 business practices in California in violation of California Business and Professions Code § 17200
19 *et seq.*, by failing to pay Plaintiff and the Classes all minimum and overtime wages, provide all
20 required meal and rest periods, or pay premium payments in lieu thereof, failing to furnish
21 accurate, itemized wage statements, failing to reimburse for necessary business expenses, and
22 willfully failing to timely pay Plaintiff and members of the Waiting Time class all final wages
23 due upon separation of employment.

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

1 56. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
2 herein, Plaintiff for himself and on behalf of the members of the Classes, seek full restitution of
3 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
4 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

5 57. The acts complained of herein occurred within the last four years immediately
6 preceding the filing of the Complaint in this action.

7 58. Plaintiff is compelled to retain the services of counsel to file this court action to
8 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
9 of Defendants' current non-exempt employees, and to enforce important rights affecting the
10 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
11 which he is entitled to recover under Code of Civil Procedure § 1021.5.

12 **SEVENTH CAUSE OF ACTION**

13 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

14 **(AGAINST ALL DEFENDANTS)**

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

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

20 61. Due to Defendants' unlawful policy and practice of requiring employees to
21 purchase their gasoline powered saw, gasoline, oil, pruning shears, gloves, and safety glasses in
22 addition to requiring them to utilize their personal vehicles to travel between fields in the
23 performance of their work duties, Defendants have violated Labor Code § 2802.

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

26 63. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
27 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
28 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue

1 from the date on which they incurred the initial necessary expenditure.

2 **EIGHTH CAUSE OF ACTION**

3 **MEAL PERIOD VIOLATIONS**

4 **(AGAINST ALL DEFENDANTS)**

5 64. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

6 65. Plaintiff is informed and believe, and based thereon allege, that Defendants failed
7 in their affirmative obligation to provide all of their non-exempt employees in California,
8 including Plaintiff and members of the Meal Period Class with all legally compliant meal periods
9 in accordance with the mandates of the California Labor Code and Wage Order 14, § 11. Despite
10 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and the Meal
11 Period Class at their respective regular rate of pay, in accordance with California Labor Code §§
12 204, 210, 226.7, and 512.

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

17 **NINTH CAUSE OF ACTION**

18 **PRIVATE ATTORNEYS GENERAL ACT**

19 **(AGAINST ALL DEFENDANTS)**

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

21 68. Defendants have committed several Labor Code violations against Plaintiff,
22 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
23 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
24 employees, brings this representative action against Defendants to recover the civil penalties due
25 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
26 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
27 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
28 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each

1 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
2 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
3 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
4 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
5 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
6 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
7 subsequent violation per employee per pay period for those violations of the Labor Code for which
8 no civil penalty is specifically provided, based on the following Labor Code:

- 9 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
10 Wage Class, and other aggrieved employees in violation of Labor Code §§
11 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 12 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
13 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
14 1194, and 1198;
- 15 c. Failing to provide all legally required meal periods, and failure to pay meal
16 period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
17 employees at the regular rate of compensation in violation of Labor Code §§
18 226.7, 512, 558, and 1198;
- 19 d. Failing to authorize and permit all legally required rest periods, and failure to
20 pay rest period premium wages, to Plaintiff, the Rest Period Class, and other
21 aggrieved employees at the regular rate of compensation in violation of Labor
22 Code §§ 226.7, 516, 558, and 1198;
- 23 e. Failing to reimburse Plaintiff, the Employee Expense Class, and other
24 aggrieved employees for all work-related expenses incurred in violated Labor
25 Code §§ 2802 and 2804 by;
- 26 f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
27 employees with complete, accurate, itemized wage statements in violation of
28 Labor Code § 226;

- g. 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;
- h. Failing to pay Plaintiff and other aggrieved all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- i. Failing to pay Plaintiff and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday in violation Labor Code § 205;
- j. Failing to permit and authorize Plaintiff and other aggrieved employees to exercise the use of their accrued paid sick leave days in violated Labor Code § 245.5;
- k. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198; and
- l. Failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Plaintiff and other aggrieved employees in violated Labor Code § 2810.5.

69. On January 18, 2023, 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)-(l). 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 himself and for all others on whose behalf this suit 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, 1198 and Wage Order 14 § 5(A);
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, 1198 and Wage Order 14 § 5(A);
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.2, 226.7, 516, and 558;
7. Upon the Forth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226;
9. Upon the Sixth Cause of Action, for restitution to Plaintiff 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.*;
10. Upon the Seventh Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code § 2802;
11. Upon the Eighth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
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

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

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

11 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
12 §226, and Code of Civil Procedure § 1021.5; and

13 15. For such other and further relief the Court may deem just and proper.
14

15 Dated: March 27, 2023

Respectfully submitted,
STANSBURY BROWN LAW, PC

17 By: 
18

Daniel J. Brown
Ethan C. Surls
Attorneys for Plaintiff

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.
23

24 Dated: March 27, 2023

Respectfully submitted,
STANSBURY BROWN LAW, PC

25 By: 
26

Daniel J. Brown
Ethan C. Surls
Attorneys for Plaintiff

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On March 27, 2023, I served the document listed below on the parties in this action as follows:

- FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

- ☐ (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, pursuant to SB 1146 effective 9/18/20, which codifies parts of Emergency Rules 11 and 12, as amended, and CRC 2.251, I transmitted said document(s) by electronic mail to the e-mail addresses indicated below
- 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 March 27, 2013 at Venice, California.



Daniel J. Brown

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SERVICE LIST

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