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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

MANUEL HERNANDEZ DIEGO, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

JAMES MARSHALL FARM SERVICE,
LLC, a California limited liability company;
ORANGE COVE-SANGER CITRUS
ASSOCIATION, a California agricultural
cooperative; JAMES J. MARSHALL dba
MARSHALL VINEYARDS, an individual;
and DOES 1 through 100,

Defendants.

Case No.: 23C-0124

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

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

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

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

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Manuel Hernandez Diego ("Plaintiff"), on behalf of himself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 ("Complaint") against James Marshall Farm Service, LLC, a California limited liability company;
4 Orange Cove-Sanger Citrus Association, a California agricultural cooperative; James J. Marshall
5 dba Marshall Vineyards, an individual; and DOES 1 to 100, (collectively "Defendants"), and on
6 information and belief alleges as follows:

7 **JURISDICTION**

8 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
9 First Amended Class and Representative Action Complaint for recovery of unpaid wages and
10 penalties under California Business & Professions Code § 17200 *et. seq.*, Labor Code §§ 201-
11 204, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*,
12 and Industrial Welfare Commission Wage Order 14 ("Wage Order 14"), in addition to seeking
13 declaratory relief and restitution. This Complaint is brought pursuant to California Code of Civil
14 Procedure § 382. This Court has jurisdiction over Defendants' violations of the California Labor
15 Code because the amount in controversy exceeds this Court's jurisdictional minimum.

16 **VENUE**

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

22 **PARTIES**

23 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
24 Plaintiff was and currently is, a California resident. During the four years immediately preceding
25 the filing of the Complaint in this action and within the statute of limitations periods applicable
26 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
27 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
28 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code

1 §§ 201-204, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2698 *et*
2 *seq.*, California Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”); and
3 Wage Order 14, which sets employment standards for Agricultural Occupations.

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

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

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

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

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

1 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
2 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
3 members of the Classes.

4 9. Defendants Orange Cove-Sanger Citrus Association, James J. Marshall dba
5 Marshall Vineyards, and other presently unknown entities that Plaintiff performed work for, are
6 also jointly liable with Defendant James Marshall Farm Service, LLC for all civil legal
7 responsibility and civil liability for the payment of wages, including all sums payable to an
8 employee or the state of California based upon any failure to pay wages, pursuant to Labor Code
9 §2810.3.

10 **GENERAL FACTUAL ALLEGATIONS**

11 10. Defendants are in the agricultural business and employ farm labor employees to
12 harvest agricultural goods. Plaintiff worked for Defendants as a non-exempt farm labor employee
13 from approximately 2013 until approximately May 2, 2022, when he suffered a work-related
14 injury. Plaintiff's primary job duties revolved performing general farm labor work such as
15 pruning, picking, and harvesting oranges for the benefit of Defendants.

16 11. Plaintiff and other non-exempt employees were paid on both an hourly and a piece-
17 rate basis, depending on the nature of work being performed and the seasons during which they
18 were performing work. During picking/harvesting season Plaintiff was paid piece rate, receiving
19 anywhere from \$23.00 to \$30 per bin of oranges he was able to fill, with the variations in
20 compensation being largely dependent on the size and variety of oranges picked. Conversely,
21 during pruning season, Plaintiff would be tasked with pruning vines at the farms he was contracted
22 to work at and would be paid hourly at the minimum wage. Indeed, the payment structure was
23 exceedingly and intentionally confusing in large part due to Defendants' efforts to ensure that
24 Plaintiff and other non-exempt employees would not be paid for all hours worked. Plaintiff and
25 other non-exempt were allegedly paid an hourly minimum wage if their earned piece-rate
26 compensation did not exceed their minimum wages earned in a pay period. However, on
27 information and belief, Plaintiff alleges that Defendants did not employ any actual timekeeping
28 practices when he performed piece work and at no point was Plaintiff made to confirm or sign off

1 on his hours worked. Rather, Defendants employed a systemic policy/practice of only crediting
2 Plaintiff and other non-exempt employees for work performed during their pre-scheduled hours
3 regardless of how many hours they actually worked. Defendants have not boarded or lodged
4 Plaintiff during his employment.

5 12. Plaintiff was generally tasked with working Monday-Friday, with varied shifts
6 depending on the seasons. In the Spring/Summer, Plaintiff generally worked from approximately
7 5:00 a.m. until around 11:00 a.m. During the Winter, Plaintiff generally worked from
8 approximately 10:00 a.m. until approximately 3-4:00 p.m.

9 13. On those occasions where Plaintiff worked overtime hours during the week,
10 Plaintiff was rarely, if ever, compensated at the requisite overtime rate of pay. Upon information
11 and belief, Defendants systemically failed to pay overtime compensation due to Plaintiff and other
12 non-exempt employees regardless of whether they were performing work on a piece rate or hourly
13 basis.

14 14. Throughout Plaintiff's employment, Defendants failed to record the hours Plaintiff
15 worked. Plaintiff was not paid an hourly minimum wage if his earned piece-rate compensation
16 did not exceed his minimum wages earned in a pay period pursuant to Wage Order 14.

17 15. Plaintiff and other non-exempt employees were not authorized to take all legally
18 required rest periods regardless of whether they were working on a piece-rate or hourly basis.
19 Further, on those occasions where Plaintiff and other non-exempt employees performed piece
20 work for Defendants, Defendants routinely failed to pay the correct regular rate for rest and
21 recovery periods. Defendant also failed to compensate Plaintiff and other non-exempt employees
22 for the proper amount of rest and recovery time. For example, for the pay period of February 1,
23 2021 to February 7, 2021, on February 3, 2021 Plaintiff was credited with working 6.66 hours,
24 entitling him to at least two separate 10 minute compensated rest periods. However, Plaintiff was
25 only compensated for one 10-minute rest period. As a consequence, Plaintiff and other non-
26 exempt employees were systematically denied paid rest period compensation that they were duly
27 and legally entitled to. Despite Defendants' failure to authorize and permit Plaintiff and other
28 non-exempt employees to take all lawful paid rest periods, due to their uniform and unlawful

practices, Defendants never provided Plaintiff and other non-exempt employees with an hour of pay at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, Defendants maintained no payroll code or another mechanism for the payment of rest period premiums in the event Plaintiff and other non-exempt employees were not authorized to take lawful rest periods.

16. Defendants have failed to accurately record and compensate Plaintiff and other non-exempt employees who are compensated on a piece-rate basis for non-productive time. *See Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-rate compensation structure that does not separately compensate employees for non-productive time violates California minimum wage laws). Plaintiff and other non-exempt employees were required to perform work duties and activities that were not directly compensated on a piece-rate basis. For example, Plaintiff and other non-exempt employees were required to travel to retrieve ladders necessary for the performance of their work picking and pruning oranges before and after each shift from the foreman's truck, a task that he estimates took him at least 10-minutes per trip, but was not properly compensated for this time. Additionally, Plaintiff was required to travel to different fields throughout the workday, again an activity that would last at least 10-minutes each occasion, without proper compensation. Indeed, as Plaintiff was required to retrieve ladders and move between fields on nearly each and every shift that he worked, he should have been entitled to a minimum of 20-minutes per shift of non-productive time. However, despite this reality, Defendants only paid Plaintiff for 10-minutes of non-productive time for most shifts that he was credited with non-productive time on his wage statements, resulting in a systemic underpayment of wages. Furthermore, on those occasions where the weather conditions did not immediately permit Plaintiff and other non-exempt employees to commence work, they would have to wait for the conditions to improve before they were permitted to begin their shifts. This time spent waiting for weather to improve would cause Plaintiff and other non-exempt employee to have to wait anywhere from thirty minutes to several hours and at no point did Defendants ever provide any sort of compensation for Plaintiff and other non-exempt employees for this time. As a consequence, Plaintiff and other non-exempt employees were routinely denied "Reporting Time

Pay” to which they were entitled as set forth in Wage Order 14 § 5 (A). Additionally, employees were not compensated for bathroom and water breaks, waiting in lines, and/or other mandatory duties that were not directly compensated on a piece-rate basis. Plaintiff alleges that all this wait time constitutes unproductive worktime which must be compensated under California law. Accordingly, Plaintiff estimates that he and other non-exempt employees worked at least an additional hour per week of non-productive time than what they were actually compensated for. As such, Plaintiff alleges that Defendants have not accurately tracked and compensated employees’ non-productive time in compliance with Labor Code § 226.2.

17. Defendants have also failed to record employees’ total hours worked each workday accurately. Specifically, Defendants did not accurately record the hours worked in any fashion apparent to Plaintiff and the other non-exempt employees regardless of if they were performing piece rate work or hourly work. Plaintiff never formally clocked in or clocked out during his shifts and was never provided any sort of timecard reflecting the hours he worked. Rather, Defendants forepersons would informally handwrite employees’ time in a notepad that employees were not permitted to inspect. Furthermore, when he worked as an hourly employee, Plaintiff was required to perform many of the same non-productive tasks as when he worked as a piece-rate employee, but was not compensated for this time whatsoever. Indeed, Plaintiff and other non-exempt employees would be made to travel between fields and retrieve ladders when they worked on an hourly basis without pay. Rather, Defendants would only credit Plaintiff and other non-exempt employees for the time spent performing work in the fields, and not time spent traveling between them or retrieving ladders, resulting in a further systemic underpayment of wages. As a result, Defendants failed to ensure that Plaintiff and other non-exempt employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Plaintiff and other non-exempt employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 14.

18. Defendants also did not provide Plaintiff and other non-exempt employees with a legally complaint first meal period when they worked shifts in excess of 6.0 hours. Plaintiff and other non-exempt employees rarely, if ever, were entitled to exercise the use of a thirty-minute

uninterrupted meal period despite almost always working at least 6.0 hours in a day. Rather, Plaintiff and other non-exempt employees would generally work through their shifts without taking any time for a compliant meal period when working piece-rate, and would be permitted to exercise no more than 20 minutes for meal periods when working on an hourly basis, if at all. Defendants were not only aware of, but actively encouraged this practice. Upon information and belief, Defendants did not accurately record meal periods in any manner. Despite Defendants' failure to provide Plaintiff and other non-exempt employees with all lawful meal periods due to their uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

19. Furthermore, Defendants failed to adequately reimburse Plaintiff for all reasonable and necessary work expenditures, including but not limited to, requiring Plaintiff to purchase heavy duty safety boots, canvas sacks for oranges, gloves, pruning shears, and file sharpeners all without reimbursement.

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

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

22. Further, at the end of each season, employees were laid off (i.e., terminated), but were not provided their paycheck until the next regular scheduled pay day, in violation of Labor

Code § 201 (“(a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”).

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

CLASS ACTION ALLEGATIONS

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

- a. The Rest Period Class consists of all current and former non-exempt employees of James Marshall Farm Service, LLC who performed work for: i) Orange Cove-Sanger Citrus Association; and/or ii) James J. Marshall dba Marshall Vineyards in California who worked at least one shift in excess of 3.5 hours during the four years immediately preceding the filing of this lawsuit through the present.
- b. The Minimum Wage Class consists of all current and former non-exempt employees of James Marshall Farm Service, LLC who performed work for: i) Orange Cove-Sanger Citrus Association; and/or ii) James J. Marshall dba Marshall Vineyards in California that were compensated on a piece-rate or hourly basis during the four years immediately preceding the filing of this lawsuit through the present.
- c. The Overtime Wage Class consists of all current and former non-exempt employees of James Marshall Farm Service, LLC who performed work for: i)

Orange Cove-Sanger Citrus Association; and/or ii) James J. Marshall dba Marshall Vineyards in California who worked overtime hours (based on criteria set forth in Wage Order 14) during the four years immediately preceding the filing of this lawsuit through the present.

d. The Meal Period Class consists of all current and former non-exempt employees of James Marshall Farm Service, LLC who performed work for: i) Orange Cove-Sanger Citrus Association; and/or ii) James J. Marshall dba Marshall Vineyards in California who: worked at least one shift in excess of 5.0 hours without a meal period of at least 30 minutes in duration commencing prior to the conclusion of the fifth hour of work, and who do not have a corresponding meal period premium payment made for such shifts during the four years preceding the filing of this lawsuit through the present.

e. The Employee Expense Class consists of all of Defendants' employees in California who were not reimbursed for: i) heavy duty safety boots; and/or ii) canvas sacks; and/or iii) gloves; and/or iv) pruning shears; and/or v) file sharpeners incurred in the performance of their job duties, during the four years immediately preceding the filing of this lawsuit to the present

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

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

25. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes

number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

- i. Whether Defendants correctly compensated employees for rest periods pursuant to Labor Code § 226.2;
- ii. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;
- iii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and Wage Order 14 by requiring members of the Overtime Wage Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- iv. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Minimum Wage Class;
- v. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- vi. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- vii. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties pursuant to Labor Code § 2802;
- viii. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and
- ix. 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

1 separation from employment were lawful.

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

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

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

22 30. **Superiority:** The California Labor Code is broadly remedial in nature and serves
23 an important public interest in establishing minimum working conditions and standards in
24 California. These laws and labor standards protect the average working employee from
25 exploitation by employers who have the responsibility to follow the laws and who may seek to
26 take advantage of superior economic and bargaining power in setting onerous terms and
27 conditions of employment. The nature of this action and the format of laws available to Plaintiff
28 and members of the Classes make the class action format a particularly efficient and appropriate

1 procedure to redress the violations alleged herein. If each employee were required to file an
2 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
3 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
4 their vastly superior financial and legal resources. Moreover, requiring each member of the
5 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
6 employees who would be disinclined to file an action against their former and/or current employer
7 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
8 employment. Further, the prosecution of separate actions by the individual class members, even
9 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
10 with respect to the individual class members against Defendants herein; and which would
11 establish potentially incompatible standards of conduct for Defendants; and/or legal
12 determinations with respect to individual class members which would, as a practical matter, be
13 dispositive of the interest of the other class members not parties to adjudications or which would
14 substantially impair or impede the ability of the class members to protect their interests. Further,
15 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
16 individual prosecution considering all of the concomitant costs and expenses attending thereto.
17 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
18 Civil Procedure.

19 **FIRST CAUSE OF ACTION**

20 **MINIMUM WAGE VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

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

23 32. Wage Order 14, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
24 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
25 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
26 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
27 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
28 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform

1 their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum
2 Wage Class for all hours actually worked including, but not limited to, all hours they were subject
3 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
4 and Wage Order 14.

5 33. Wage Order 14 § 5 (A) requires that “Each workday an employee is required to
6 report for work and does report, but is not put to work or is furnished less than half said
7 employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or
8 scheduled day’s work, but in no event for less than two hours nor more than four hours, at the
9 employee’s regular rate of pay, which shall not be less than the minimum wage.” By requiring
10 Plaintiff and the Minimum Wage Class to routinely report to the worksite on days that weather
11 conditions did not permit for the commencement of work, and not paying Reporting Time Pay as
12 mandated by Wage Order 14 § 5 (A), Defendants have failed to pay Plaintiff and the Minimum
13 Wage Class all minimum wages.

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

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

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

Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

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

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

40. 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.

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

42. 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 and civil 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

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

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

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

47. 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.

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

49. The foregoing violations create an entitlement to recovery by Plaintiff and

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

5 **FIFTH CAUSE OF ACTION**

6 **WAGE STATEMENT VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

23 **SIXTH CAUSE OF ACTION**

24 **WAITING TIME PENALTIES**

25 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

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

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

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

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

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

EIGHTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

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

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

66. Due to Defendants' unlawful policy and practice of requiring employees to requiring them to purchase their own necessary tools and equipment for business purposes at their own expense, Defendants have violated Labor Code § 2802.

67. Plaintiff and the members of the Employee Expense Class are entitled to attorneys'

1 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

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

6 **NINTH CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**
8 **(AGAINST ALL DEFENDANTS)**

9 69. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
10 fully set forth herein.

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

- 27 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
28 Wage Class, and other aggrieved employees in violation of Labor Code §§ 551-

552, 558, 1182.12, 1194, 1194.2, 1197, and 1198;

- b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- d. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- e. Failing to reimburse Plaintiff, the Employee Expense Class, and other aggrieved employees for all work-related expenses incurred in violation of Labor Code § 2802 and 2804;
- f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of 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 non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- i. Failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Plaintiff and other non-exempt employees in violation of Labor Code § 2810.5; and
- j. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198.

71. On April 6, 2023, Plaintiff notified Defendants via certified mail, and notified the

1 California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’
2 violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties
3 under California Labor Code § 2698 et seq. with respect to violations of the California Labor
4 Code identified in Paragraph 70 (a)-(j). Now that sixty-five days have passed from Plaintiff’s
5 notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice
6 that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements
7 for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

12 **PRAYER**

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

- 15 1. For an order certifying the proposed Classes;
- 16 2. For an order appointing Plaintiff as representative of the Classes;
- 17 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 18 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
19 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
20 1197;
- 21 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
22 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 23 6. Upon the Third Cause of Action, for compensatory, consequential, general and
24 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 25 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
26 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 27 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
28 226, *et seq.*;

1 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
2 Labor Code § 201-203;

3 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
4 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
5 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
6 *seq.*;

7 11. Upon the Eighth Cause of Action, for compensatory, consequential, general, and
8 special damages according to proof pursuant to Labor Code § 2802;

9 12. Upon the Ninth Cause of Action, for (1) \$100.00 for each initial violation for each
10 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
11 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
12 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
13 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
14 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
15 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
16 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
17 each initial violation and \$200 for each subsequent violation per employee per pay period for the
18 violations of the Labor Code Sections cited in Labor Code § 2699.5;

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

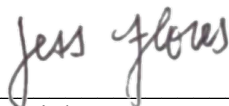
21 14. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
22 Procedure § 1021.5 and all other applicable statutes; and

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

24
25 Dated: July 24, 2023

Respectfully submitted,
STANBURY BROWN LAW, PC

26
27 By:



Daniel J. Brown
Jessica Flores
Attorneys for Plaintiff

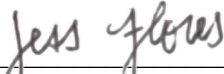
1
2 **DEMAND FOR JURY TRIAL**

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

4
5 Dated: July 24, 2023

Respectfully submitted,
STANBURY BROWN LAW, PC

6
7 By:


Daniel J. Brown

Jessica Flores

Attorneys for Plaintiff
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PROOF OF SERVICE

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

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd., Venice, CA 90291

On July 24, 2023, I served the document listed below on the parties in this action as follows:

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

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- X (BY EMAIL) I transmitted said document(s) be electronic mail to the e-mail addresses indicated below pursuant to SB 1146 effective 9/18/20, which codifies parts of Emergency Rules 11 and 12, as amended, and CRC 2.251
- 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 July 24, 2023 at Frazier Park, California.

Isabella C. Aguinaga

Isabella C. Aguinaga

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Citrus Association; and iii) James J. Marshall dba Marshall Vineyards*