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County of Tulare
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Deputy Clerk

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

ROMAN MAYO CRUZ, as an individual, and
on behalf of all others similarly situated,

Plaintiff,

v.

GRIMMIUS CATTLE COMPANY, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. VCU299968

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, 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, AND
1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 512)**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (5) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (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 Roman Mayo Cruz (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 Grimmus Cattle Company, Inc., a California corporation; and DOES 1 to 100,
4 inclusive (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff hereby brings this First Amended Class and Representative Action
7 Complaint for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226 *et. seq.*, 226.2, 226.7, 510, 512, 516, 558,
9 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2698 *et. seq.*, and Industrial Welfare Commission Wage
10 Order 14 (“Wage Order 14”), in addition to seeking declaratory relief and restitution. This
11 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
12 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
13 controversy exceeds this Court's jurisdictional 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 §§ 201-204, 226 *et. seq.*, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,
28 2802, 2698 *et. seq.* and California Business and Professions Code § 17200 *et seq.* (“Unfair

Competition Law”), and Wage Order 14, which sets employment standards for the agricultural industries.

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

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

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

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

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

all members of the Classes.

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff worked for Defendants from May 2022 until approximately August 26, 2022 when he suffered a work-related accident which has prevented him from returning back to work. Plaintiff was tasked with feeding calves with a bottle, taking care of them and keeping the calves' water bowls clean. Plaintiff generally worked Sunday through Friday from around 5:30 a.m. or 5:40 a.m. until around 4:00 p.m. or 4:30 p.m.

10. Throughout the duration of Plaintiff's employment with Defendants, Plaintiff and other non-exempt employees were not paid for all hours worked as their supervisors would not accurately keep track of their actual hours worked. Plaintiff and other non-exempt employees clocked in to work on a tablet located at Defendants' premises. Per Defendants' instructions, Plaintiff and other non-exempt employees spent at least five (5) to seven (7) minutes each day putting on their plastic work boots, gloves, hats and back support belts and waiting in line to clock in, before clocking in. Plaintiff and other non-exempt employees received the same instruction at the time of clocking out for their meal periods, clocking back in from their meal periods and clocking out at the end of the day. Overall, Plaintiff and other non-exempt employees spent at least approximately twenty (20) minutes each day putting on or taking off their plastic work boots, gloves, hats and back support belts and waiting to clock in or out immediately before clocking in or immediately after clocking out. Further, at least once per week, the tablet failed to function properly and Plaintiff and other non-exempt employees could not properly clock in and record their time. Each time, Plaintiff and other non-exempt employees complained to the manager. After the manager claimed to fix the issue, Plaintiff and other non-exempt employees reviewed the menu on the tablet for their individual clock-in histories and observed that the manager had not inserted their clock-in times. As a result, Plaintiff and other non-exempt employees were further not compensated properly for the dates on which the tablet failure rendered them unable to properly clock in.

11. Furthermore, Plaintiff and other non-exempt employees worked overtime hours, based on the requirements of Wage Order 14, but did not receive overtime compensation equal

1 to one and one-half times their regular rates of pay for all overtime hours worked. As discussed
2 above, Plaintiff and other non-exempt employees worked at least approximately twenty (20)
3 minutes per day beyond ten (10) hours in a workday without any compensation at all. As a result,
4 Defendants failed to ensure that Plaintiff and other non-exempt employees were being paid at
5 least the minimum wage for all hours actually worked, and failed to ensure that Plaintiff and other
6 non-exempt employees received proper overtime wages for all overtime hours worked, in
7 compliance with Wage Order 14.

8 12. Plaintiff and other non-exempt employees were not authorized to take all legally
9 required rest periods. Often, Plaintiff's manager asked Plaintiff and other non-exempt employees
10 to hold off on taking their second rest period and to instead complete task, with the end result that
11 Plaintiff and other non-exempt employees would not get a second rest period at all. Even though
12 Plaintiff usually worked more than ten (10) hours, Plaintiff does not recall ever receiving a third
13 rest period throughout his employment with Defendants. Despite Defendants' failure to authorize
14 and permit Plaintiff and other non-exempt employees to take all lawful paid rest periods, due to
15 their uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt
16 employees with an hour of pay at their regular rate for each rest period violation as required by
17 Labor Code § 226.7. Upon information and belief, during at least a portion of the class period,
18 Defendants maintained no payroll code or another mechanism for the payment of rest period
19 premiums in the event Plaintiff and other non-exempt employees were not authorized to take
20 lawful rest periods.

21
22 13. Even though Plaintiff and other non-exempt employees usually worked a shift in
23 excess of 10 hours, Plaintiff and other non-exempt employees were almost never permitted to
24 exercise their right to a second meal period. Plaintiff and other non-exempt employees were not
25 only unable to exercise the right to a second meal period, but they were never told of their right
26 to do so. Also, Plaintiff and other non-exempt employees were rarely provided a full timely first
27 meal period when they worked shifts over 5.0 hours. For example, Plaintiff and other non-exempt
28 employees often clocked in at 5:30 a.m. but began their work five (5) to seven (7) minutes earlier

1 and sometimes received instructions to begin their meal period at 10:30 a.m. by clocking out prior
2 to removing work attire, thus causing them to begin their meal period beyond the fifth hour of the
3 work day. Defendants were not only aware of, but actively encouraged this practice. Plaintiff and
4 the other non-exempt employees were not informed by Defendants of their legal right to take
5 duty-free uninterrupted meal periods before the conclusion of their fifth hour of work pursuant to
6 Labor Code Section 512. Despite Defendants' failure to provide Plaintiff and other non-exempt
7 employees with all lawful meal periods due to their uniform and unlawful practices, Defendants
8 never provided Plaintiff and other non-exempt employees with an hour of pay at their regular rate
9 for each meal period violation as required by Labor Code § 226.7.

10
11 14. Furthermore, Defendants failed to adequately reimburse Plaintiff and other non-
12 exempt employees for all reasonable and necessary work expenditures, including but not limited
13 to, requiring Plaintiff to purchase his own plastic boots, raincoats for his work in the rain, safety
14 glasses to protect against dust and hair in the air, and hats to protect against the sun and dust.
15 Plaintiff was not ever provided any reimbursement for these necessary uses.

16 15. Defendants have maintained inaccurate payroll records, failed to timely pay all
17 wages owed to employees, and failed to timely pay separating employees at the time of their
18 separation, and issued inaccurate wage statements. This is in part a result of Defendants' failure
19 to accurately compensate Plaintiff and other non-exempt employees for all minimum and
20 overtime wages, and failure to pay premium pay for failing to provide all required meal periods
21 and authorize all rest periods.

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

1 and did not provide sick pay at the correct regular rate.

2 17. Finally, Defendants failed to conform to the requirements of Labor Code § 2810.5
3 by failing to provide Plaintiff and other non-exempt employees written notices, in the language
4 normally used to communicate employment related information to the employees, containing
5 information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part
6 of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the
7 employer; v) the address of the legal entity that is the employer; vi) the telephone number of the
8 employer; vii) identifying information for the employer's workers' compensation insurance
9 carrier; and viii) information informing the employee of their right to accrue and use paid sick
10 leave.

11 **CLASS ACTION ALLEGATIONS**

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

- 14 a. The Minimum Wage Class consists of all current and former non-exempt
15 employees of Defendants who performed for work Defendants in California
16 during the four years immediately preceding the filing of this lawsuit through the
17 present.
- 18 b. The Overtime Wage Class consists of all current and former non-exempt
19 employees of Defendants who performed work for Defendants in California who
20 worked overtime hours during the four years immediately preceding the filing of
21 this lawsuit through the present.
- 22 c. The Rest Period Class consists of all current and former non-exempt employees of
23 Defendants who performed work for Defendants in California who worked at least
24 one shift in excess of 3.5 hours during the four years immediately preceding the
25 filing of this lawsuit through the present.
- 26 d. The Meal Period Class consists of all current and former non-exempt employees
27 of Defendants who performed work for Defendants in California who worked at
28

1 least one shift in excess of 5.0 hours without a meal period of at least 30 minutes
2 in duration commencing prior to the conclusion of the fifth hour of work, and who
3 do not have a corresponding meal period premium payment made for such shifts
4 during the four years preceding the filing of this lawsuit through the present.

5 e. The Employee Expense Class consists of all of Defendants in California who were
6 not reimbursed for expenses in the performance of their job duties, including, but
7 not limited to plastic boots, safety glasses, raincoats and hats during the four years
8 immediately preceding the filing of this lawsuit to the present.

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

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

17
18 19. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
19 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
20 unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number
21 greater than two hundred (200) individuals. The identity of such membership is readily
22 ascertainable via inspection of Defendants' employment records.

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

27 i. Whether Defendants paid all minimum wages owed for all hours worked to
28 members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194,

1194.2, and 1197;

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

21. **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.

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

8 23. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
9 to represent fairly and adequately the interests of the members of the Classes. Moreover,
10 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
11 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
12 and-hour class actions in state and federal courts in the past and are committed to vigorously
13 prosecuting this action on behalf of the members of the Classes.
14

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

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

12
13 **FIRST CAUSE OF ACTION**
14 **MINIMUM WAGE VIOLATIONS**
15 **(AGAINST ALL DEFENDANTS)**

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

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

27 27. California Labor Code § 1198 makes unlawful the employment of an employee
28 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide

1 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
2 those employees the balance of the unpaid wages as well as liquidated damages in an amount
3 equal to the wages due and interest thereon.

4 28. 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 29. 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 30. Plaintiff re-allege and incorporates by reference all previous paragraphs.

19 31. 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 32. 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 33. The foregoing policies and practices are unlawful and create entitlement to

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

5 **THIRD CAUSE OF ACTION**

6 **MEAL PERIOD VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

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

9 35. Plaintiff is informed and believe, and based thereon allege, that Defendants failed
10 in their affirmative obligation to provide all of their non-exempt employees in California,
11 including Plaintiff and members of the Meal Period Class with all legally compliant meal periods
12 in accordance with the mandates of the California Labor Code and Wage Order 14, § 11. Despite
13 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and the Meal
14 Period Class at their respective regular rate of pay, in accordance with California Labor Code §§
15 204, 210, 226.7, and 512.

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

20 **FOURTH CAUSE OF ACTION**

21 **REST PERIOD VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

6 **FIFTH CAUSE OF ACTION**
7 **WAITING TIME PENALTIES**
8 **(AGAINST ALL DEFENDANTS)**

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

10 42. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
11 an employer to pay all wages immediately at the time of termination of employment in the event
12 the employer discharges the employee or the employee provides at least 72 hours of notice of
13 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
14 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
15 employee's last date of employment.

16 43. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class
17 all final wages due to them at the time of their separation including, among other things, unpaid
18 and/or underpaid overtime and minimum wages owed, and meal & rest period premium wages.
19 Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform
20 policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all
21 earned wages at the end of employment in a timely manner pursuant to the requirements of Labor
22 Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of
23 Labor Code § 203.

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

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

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

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

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

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

SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

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

50. 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 minimum and overtime wages, provide all required meal and rest periods, or pay premium payments in lieu thereof, failing to furnish accurate, itemized wage statements, failing to reimburse for necessary business expenses, and willfully failing to timely pay Plaintiff and members of the Waiting Time class all final wages

1 due upon separation of employment.

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

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

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

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

18 **EIGHTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

20 **(AGAINST ALL DEFENDANTS)**

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

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

26 57. Due to Defendants' unlawful policy and practice of requiring employees to
27 purchase their own plastic boots, raincoats, safety glasses and hats in the performance of their
28 work duties, Defendants have violated Labor Code § 2802.

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

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

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

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

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

- a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§ 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 aggrieved employees for necessary business expenditures incurred by Plaintiff, and other aggrieved employees in violation of Labor Code §§ 2800, 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 pay Plaintiff and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday in violation of Labor Code § 205;

- j. Failing to permit and authorize Plaintiff and other non-exempt to exercise the use of their accrued paid sick leave days in violation of Labor Code § 245.5;
- k. 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
- l. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174 and 1198.

62. On July 13, 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 61 (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.

63. 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);

1 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
2 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, 1198 and
3 Wage Order 14 § 5(A);

4 6. Upon the Third Cause of Action, for compensatory, consequential, general and
5 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

6 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
7 special damages according to proof pursuant to Labor Code §§ 226.2, 226.7, 516, and 558;

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

10 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
11 226;

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

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

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

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

1 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
2 §226, and Code of Civil Procedure § 1021.5; and

3 15. For such other and further relief the Court may deem just and proper.
4

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6 Dated: September 18, 2023

Respectfully submitted,
STANSBURY BROWN LAW, PC

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8 By:



Daniel J. Brown
Jessica Flores
Attorneys for Plaintiff

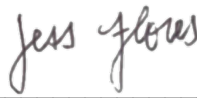
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13 **DEMAND FOR JURY TRIAL**

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

15
16 Dated: September 18, 2023

Respectfully submitted,
STANSBURY BROWN LAW, PC

17
18
19 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 90212

On September 18, 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.
- X (BY EMAIL) I transmitted said document(s) by 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 September 18, 2023, at Frazier Park, California.

Isabella C. Aguinaga

Isabella C. Aguinaga

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SERVICE LIST

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