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

OSEAS HERNANDEZ AQUINO, an
individual, on behalf of himself, others
similarly situated,

PLAINTIFF,

v.

LOS ARBOLES HARVESTING, INC., a
California Corporation, and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO.: 2023CUOE012954

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

1. Failure to Pay Overtime Wages In Violation of Labor Code § 510
2. Penalties Pursuant to Labor Code § 226(e)
3. Waiting Time Penalties Pursuant to Labor Code § 203
4. Violation of Business & Professions Code § 17200
5. Penalties Pursuant to LABOR CODE § 2698, et seq. ("PAGA") for Violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 246, 256, 510, 558, 1197, 1197.1, 1198, and IWC Wage Order Nos. 13-2001 and 14-2001

1 Plaintiff OSEAS HERNANDEZ AQUINO, an individual, on behalf of himself and others
2 similarly situated, and as a private attorney general on behalf of the State of California complains
3 of Defendant LOS ARBOLES HARVESTING, INC. ("Los Arboles") and the Doe Defendants
4 (collectively "Defendants") and each of them, as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of
8 Plaintiff and the following classes and subclasses:

- 9 (1) all individuals who were employed by LOS ARBOLES HARVESTING, INC.,
10 INC. or its predecessor, merged or related entities in California as a non-exempt
11 employee (whether paid hourly, piece rate only, and/or piece rate/hourly) or
12 other similar position at any point from February 27, 2019 and continuing into
the present (Non-Exempt Class);¹
- 13 (2) all individuals who were employed by LOS ARBOLES HARVESTING, INC.
14 or its predecessor, merged or related entities in California as a non-exempt,
15 hourly employee at any point from February 27, 2019 and continuing into the
16 present (the "Non-Exempt Hourly Subclass");
- 17 (3) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its
18 predecessor, merged or related entities in California as a non-exempt employee or
19 other similar position and who worked a shift of 9.5 hours in any one workday and/or
20 more than 55 hours in a workweek during a pay period from February 27, 2019 to
December 31, 2019. ("2019 General Overtime Subclass");
- 21 (4) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its
22 predecessor, merged or related entities for one or more pay periods in California as a
23 non-exempt, employee (whether paid hourly, piece rate only, and/or piece
24 rate/hourly) and who worked a shift of more than 9.5 hours in a day and/or 55 hours
25 in a week during a period where they also received an incentive payment, piece rate
26 compensation, non-discretionary bonus, production bonus, efficiency bonus, or
attendance bonus from February 27, 2019 to December 31, 2019; ("2019 Incentive
Pay Overtime Subclass");

27 ¹ Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and
28 25 days or from April 6, 2020 to October 1, 2020. "Notwithstanding any other law, the statutes of limitations and
repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020."

- (5) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities in California as a non-exempt employee or other similar position and who worked a shift of 9 hours in any one workday and/or more than 50 hours in a workweek during a pay period from January 1, 2020 to December 31, 2020. ("2020 General Overtime Subclass");
- (6) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, employee (whether paid hourly, piece rate only, and/or piece rate/hourly) and who worked a shift of more than 9 hours in a day and/or 50 hours in a week during a period where they also received an incentive payment, piece rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or attendance bonus from January 1, 2020 to December 31, 2020; ("2020 Incentive Pay Overtime Subclass");
- (7) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities in California as a non-exempt employee or other similar position and who worked a shift of 8.5 hours in any one workday and/or more than 45 hours in a workweek during a pay period from January 1, 2021 to December 31, 2021. ("2021 General Overtime Subclass");
- (8) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, employee (whether paid hourly, piece rate only, and/or piece rate/hourly) and who worked a shift of more than 8.5 hours in a day and/or 45 hours in a week during a period where they also received an incentive payment, piece rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or attendance bonus from January 1, 2021 to December 31, 2021; ("2021 Incentive Pay Overtime Subclass");
- (9) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities in California as a non-exempt employee or other similar position and who worked a shift of eight (8) hours in any one workday and/or more than forty (40) hours in a workweek during a pay period from January 1, 2022 and continuing into the present. ("General Overtime Subclass");
- (10) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, employee (whether paid hourly, piece rate only, and/or piece rate/hourly) and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received an incentive payment, piece rate compensation, non-discretionary bonus, production bonus, efficiency

1 bonus, or attendance bonus from January 1, 2022 and continuing into the present;
2 (“Incentive Pay Overtime Subclass”);

3 Collectively, subclasses three (3), four (4), five (5), six (6), seven (7), eight (8), nine
4 (9), and ten (10) may be referred to as the “Overtime Subclasses.”

5 (11) all individuals who were employed by LOS ARBOLES HARVESTING, INC.
6 or its predecessor, merged or related entities for one or more pay periods in
7 California as a non-exempt, employee (whether paid hourly, piece rate only,
8 and/or piece rate/hourly) and who worked a shift of more than eight (8) hours in
9 a day and/or forty (40) hours in a week during a period where they also received
10 an incentive payment, piece rate compensation, non-discretionary bonus,
11 production bonus, efficiency bonus, or attendance bonus from August 22, 2022
12 and continuing into the present; (Non-Exempt Wage Statement Subclass)

13 (12) all individuals who were employed by LOS ARBOLES HARVESTING, INC.
14 or its predecessor, merged or related entities for one or more pay periods in
15 California as a non-exempt, hourly employee and who worked a shift of more
16 than eight (8) hours in a day and/or forty (40) hours in a week during a period
17 where they also received an incentive payment, piece rate compensation, non-
18 discretionary bonus, production bonus, efficiency bonus, or attendance bonus
19 from July 21, 2022 and continuing into the present; (Non-Exempt Hourly Wage
20 Statement Subclass)

21 (13) all individuals who were employed by LOS ARBOLES HARVESTING, INC.
22 or its predecessor, merged or related entities for one or more pay periods in
23 California as a non-exempt, employee and whose employment ended at any
24 point between August 21, 2022 and continuing into the present; (Final Wage
25 Statement Subclass)

26 Collectively, subclasses eleven (11), twelve (12), and Thirteen may be referred to as
27 the “Wage Statement Subclass.”

28 (14) all individuals who were employed by LOS ARBOLES HARVESTING, INC.
or its predecessor, merged or related entities for one or more pay periods in
California as a non-exempt, hourly employee and whose employment concluded
at any time between February 27, 2020 and continuing into the present.
 (“Former Employee Class”);²

² Employees who were laid off seasonally and had multiple periods of employment with Defendants qualify as members of the Former Employee Class.

1 These Classes and Subclasses may all collectively be referred to herein as the “Class” or
2 the “Classes” where appropriate and for ease of reference.

3 2. This is also a representative action brought pursuant to Labor Code § 2698, *et seq.*,
4 on behalf of the State of California and several groups of aggrieved employees defined as
5 follows:

- 6 (1) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its
7 predecessor, merged or related entities in California as a non-exempt employee
8 (whether paid hourly, piece rate only, and/or piece rate/hourly) or other similar
9 position at any point from August 21, 2022 and continuing into the present. (“Non-
10 Exempt Aggrieved Employees”);
- 11 (2) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its
12 predecessor, merged or related entities in California as a non-exempt, hourly
13 employee at any point from August 21, 2022 and continuing into the present. (“Non-
14 Exempt Hourly Aggrieved Employees”);
- 15 (3) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its
16 predecessor, merged or related entities in California as a non-exempt employee or
17 other similar position and who worked a shift of eight (8) hours in any one workday
18 and/or more than forty (40) hours in a workweek during a pay period from August 21,
19 2022 and continuing into the present. (“Overtime Aggrieved Employees”);
- 20 (4) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its
21 predecessor, merged or related entities for one or more pay periods in California as a
22 non-exempt, employee (whether paid hourly, piece rate only, and/or piece
23 rate/hourly) and who worked a shift of more than eight (8) hours in a day and/or forty
24 (40) hours in a week during a period where they also received an incentive payment,
25 piece rate compensation, non-discretionary bonus, production bonus, efficiency
26 bonuses, or attendance bonuses from August 21, 2022 and continuing into the
27 present; (“Incentive Pay Overtime Aggrieved Employees”);

28 Collectively, aggrieved employee groups three (3) and four (4) may be referred to as the
“Overtime Aggrieved Employees.”

- (5) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its
predecessor, merged or related entities for one or more pay periods in California as a
non-exempt, employee (whether paid hourly, piece rate only, and/or piece
rate/hourly) and whose employment concluded at any time between July 21, 2022 and
continuing into the present. (“Late Payment Aggrieved Employees”).

1 These groups may all collectively be referred to herein as aggrieved employees and/or all
2 aggrieved employees where appropriate.

3 3. Plaintiff, the Classes, and the aggrieved employees were employed by Defendant
4 LOS ARBOLES HARVESTING, INC. and any subsidiaries or affiliated companies and Does 1
5 through 50 (who include individuals acting on behalf an employer within the meaning of Labor
6 Code § 558.1) within the State of California as a non-exempt employees at some point between
7 February 27, 2019 and continuing into the present. Plaintiff is a former employee of Defendants
8 who worked for Defendants in Ventura County.

9 4. At times throughout their employment with Defendants from February 27, 2019
10 and continuing into the present and within the past year, Plaintiff, the Class, and the aggrieved
11 employees worked shifts in excess of six (6) hours in a day, worked shifts in excess of eight (8)
12 hours in a day, ten (10) hours in a day, twelve (12) hours in a day and/or worked in excess of
13 forty (40) hours in a week or more. Plaintiff, the Classes, and the aggrieved employees worked
14 enough hours either during the workday and/or the workweek to be entitled to overtime wages
15 within the same pay period where they also received an incentive payment, piece rate
16 compensation, non-discretionary bonus, production bonus, efficiency bonus, or attendance bonus.

17 5. At times throughout their employment with Defendants from February 27, 2019
18 and continuing into the present and within the past year, Plaintiff, the Classes, and the aggrieved
19 employees worked enough hours to be eligible to receive overtime wages under IWC Wage Order
20 Nos. 13-2001 and 14-2001 and/or Labor Code section 510.

21 6. Defendants hire employees to work within the state of California who are covered
22 by California Industrial Welfare Commission Occupational Wage Order Nos. 13-2001 and 14-
23 2001. Based upon information and belief, Defendants classified Plaintiff, the Class, and the
24 aggrieved employees as non-exempt for the purposes of overtime.

25 7. Plaintiff, the Wage Statement Subclass, and the aggrieved employees received at
26 least one wage statement between August 21, 2022 and continuing into the present.

27 8. Labor Code § 1197 states the California requirement that employees must be paid
28 at least the minimum wage fixed by the Commission or by any applicable state or local law, and

any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order Nos. 13-2001 and 14-2001 obligate employers to pay each employee minimum wages for all hours worked.

9. Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff, the other Class Members, and the aggrieved employees could not agree to work for a lesser wage.

IWC Wage Order Nos. 13-2001 and 14-2001 provide:

(a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee’s regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.

(b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee’s regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

(c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee’s regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

(d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

1 10. In addition, Labor Code § 1198 provides that “the maximum hours of work and the
2 standard conditions of labor fixed by the commission shall be the maximum hours of work and
3 the standard conditions of labor for employees. The employment of any employee for longer
4 hours than those fixed by the order or under conditions of labor prohibited by the order is
5 unlawful.”

6 11. At times between February 27, 2019 and continuing into the present including
7 within the past year, Defendants failed to pay Plaintiff, the other Class Members, and the
8 aggrieved employees’ overtime wages at the proper rate. Specifically, Defendants failed to
9 include piece rate compensation, incentive payments, and other non-discretionary bonuses (such
10 as, but not limited to, attendance bonuses, efficiency bonuses and/or production bonuses) when
11 calculating and paying Plaintiff, the other Class Members, and the aggrieved employees’
12 overtime wages. This includes, but is not limited to, due to its common policy and practice of
13 failing to include compensation listed at the top of the wage statement when calculating and
14 paying both the daily and weekly overtime rates. For instance, for the pay period of July 3, 2023
15 to July 9, 2023, Plaintiff earned \$91.25 that should have been included when calculating and
16 paying his overtime wages, but failed to include this piece rate compensation, incentive
17 payments, flat sum bonuses, and other non-discretionary bonuses (such as, but not limited to,
18 attendance bonuses, efficiency bonuses and/or production bonuses) when calculating and paying
19 overtime. Instead, Defendants incorrectly paid Plaintiff’s overtime wages at one and-one-half
20 times (1.5x) his hourly base rate of \$20.00 per hour. As a result Defendants incorrectly paid
21 Plaintiff’s overtime pay at the rate of one and one-half (1.5x) times his hourly base rate instead of
22 his regular rate. Plaintiff alleges that Defendants engaged in the same conduct with respect to all
23 of the Class Members at times between February 27, 2019 and the present.

24 12. As to Plaintiff, the Wage Statement Subclass, and at least some of the aggrieved
25 employees from at least August 21, 2022 and continuing into the present, Defendants also failed
26 to provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5,
27 and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to
28 furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Similarly, Labor Code § 226(e) provides:

(e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

13. Due to Defendants' failure to pay Plaintiff, the Wage Statement Subclass members, and at least some of the aggrieved employees all overtime wages (including at the correct rates), the wage statements issued by Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

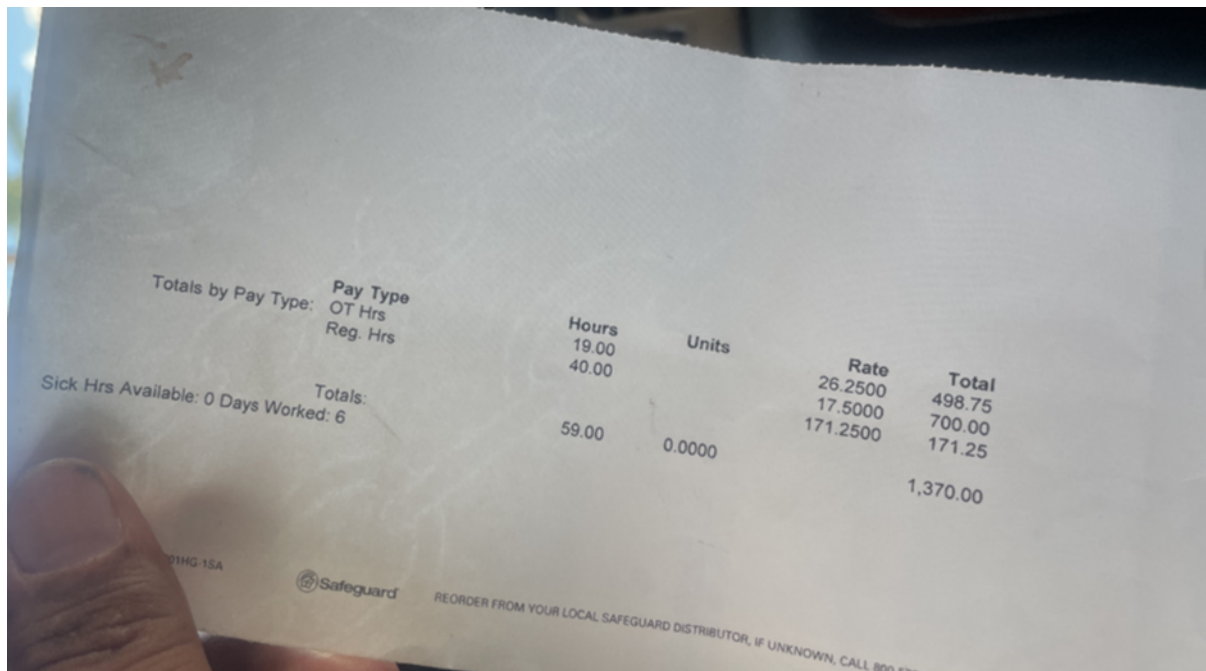
Thus, Defendants have violated Labor Code §226(a)(1), (2), (3), (5), and (9) with respect to Plaintiff, the Class/Wage Statement Subclass, and the aggrieved employees.

14. To the extent that Defendants contend and/or can prove that the amounts listed at the top of the wage statement represent expense reimbursement, Plaintiff alleges that Defendant improperly classified expense reimbursements as a wage resulting in the gross wages earned being reportedly inaccurately, excess taxes to have been paid due to Defendants' misclassification of expense reimbursement as a wage, the amount of the deductions are inaccurate as they are not made on the written orders of the employees, but due to Defendants' misclassification of expense reimbursement as a wage instead of a reimbursement, and the net wages earned would also be inaccurate because Defendants' both included expense reimbursement within the wage calculations and then miscalculated the deductions resulting in the listing of the incorrect amount of net wages earned. Such conduct would violate Labor Code §§ 226(a)(1), (4), and (5) as well as 2802.

15. For instance, for the pay period of July 3, 2023 to July 9, 2023, Defendants identified Plaintiff's "Gross Wages" as being \$730.00, but that amount would require the inclusion of the additional \$91.25 at the top of the wage statement within the wages otherwise the amount of the gross wages listed would be incorrect. To the extent that Defendants can establish that the \$91.25 was expense reimbursement, Plaintiff alleges that Defendants applied the same common policies and practices to the Class, and specifically the Wage Statement Subclass, as well as the aggrieved employees from August 21, 2022 and continuing into the present.

16. Plaintiff also alleges that, from at least August 21, 2022 and continuing into the present, Defendants failed to include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate. While Plaintiff cannot presently fully understand his wage statements due to Defendants' violations of California's Labor Code, Defendants may have either omitted these amounts and/or identified hourly or piece rate compensation at the rate of \$0 without providing the number of piece rate units earned or the hourly rate in effect.

1 17. Separate and independent from the foregoing, Plaintiff alleges that Defendants
2 engaged in a common pattern and practice from at least August 21, 2022 and continuing into the
3 present of failing to provide accurate final wage statements that contained all of the information
4 required by Labor Code § 226(a)(1-9). For instance, Plaintiff's final wage statement does not
5 contain his name and either his employee identification number or only the last four digits of a
6 social security number in violation of Code § 226(a)(7), the name or address of the legal entity
7 that is the employer in violation of Labor Code § 226(a)(8) also does not include the name and
8 address of the legal entity that secured the services of the employer since Defendant Los Arboles
9 is a Farm Labor Contractor, does not include the inclusive dates of the period for which the
10 employee is paid in violation of Labor Code § 226(a)(6), and does not contain information about
11 deductions in violation of Labor Code § 226(a)(4). The final wage statements also did not include
12 the required information. Indeed, this is the only information that appeared on Plaintiff's final
13 wage statement:



18. In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to pay Plaintiff, the Class, the Wage Statement Subclass, and the aggrieved employees all overtime wages including at the proper rates and to include the information required by Labor Code section 226(a)(1), (3), (4), (5), (6), (7), (8), and (9).

1 19. Moreover, Plaintiff and the Wage Statement Subclass, also suffered legal “injury”
2 for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily
3 determine from the wage statements themselves the information required to be set forth by
4 Section 226(a), the information provided by Defendants were confusing and inaccurate. In
5 addition, Plaintiff and the Wage Statement Subclass were unable to determine and/or accurately
6 from at least some of the wage statements issued between August 21, 2022 and continuing into
7 the present, the gross wages earned, the net wages earned, and all applicable hourly rates in effect
8 during the pay period and the corresponding number of hours worked at each hourly rate by the
9 employee, the number of piece-rate units earned and any applicable piece rate if the employee is
10 paid on a piece rate, all deductions, the net wages earned, his name and employee identification
11 number, the name and address of the legal entity that is the employer, the name and address of the
12 entity that secured the services of the employer and all applicable hourly rates in effect during the
13 pay period and the corresponding number of hours worked at each hourly rate by the employee
14 from the wage statement alone for the reasons discussed above. Some of these issues were limited
15 to the final wage statements that Defendants regularly and consistently issued either when an
16 employee was terminated and/or quit.

17 20. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
18 any employment are due and payable twice during each calendar month, on days designated in
19 advance by the employer as the regular paydays.” Defendant pays Plaintiff and all aggrieved
20 employees on a weekly basis.

21 21. Due to Defendant’s failure to pay Plaintiff and all aggrieved employees all
22 overtime wages for the reasons discussed above, Defendant failed to timely pay Plaintiff and all
23 aggrieved employees all wages owed within seven (7) days of the close of the payroll period in
24 accordance with Labor Code § 204(d) on a regular and consistent basis.

25 22. In addition, Labor Code § 246 requires employer to calculate sick leave pay based
26 upon one of the following formulas:

27 (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the
28 regular rate of pay for the workweek in which the employee uses paid sick time, whether
or not the employee actually works overtime in that workweek.

1 (2) Paid sick time for nonexempt employees shall be calculated by dividing the
2 employee's total wages, not including overtime premium pay, by the employee's total
3 hours worked in the full pay periods of the prior 90 days of employment.

4 (3) Paid sick time for exempt employees shall be calculated in the same manner as the
5 employer calculates wages for other forms of paid leave time.

6 Lab. Code § 246.

7 23. Since at least August 21, 2022, Defendants failed to include piece rate
8 compensation, incentive payments, and other non-discretionary bonuses (such as, but not limited
9 to, attendance bonuses, efficiency bonuses and/or production bonuses) when calculating and
10 paying Plaintiff and the other aggrieved employees' overtime wages. This includes, but is not
11 limited to, due to its common policy and practice of failing to include compensation listed at the
12 top of the wage statement when calculating and paying sick pay in violation of Labor Code § 246.
13 *See Wood v. Kaiser Found. Hosps.*, 88 Cal. App. 5th 742, 764 (2023), as modified (Mar. 23,
14 2023).

15 24. Labor Code § 210 provides that "in addition to, an entirely independent and apart
16 from, any other penalty provided in this article, every person who fails to pay the wages of each
17 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
18 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
19 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
20 each failure to pay each employee, plus 25% of the amount unlawfully withheld." As a result of
21 the faulty compensation policies and practices described in detail above, Plaintiff and the other
22 aggrieved employees are entitled to recover penalties under Labor Code § 210 through PAGA.
23 *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of
24 Labor Code section 210 penalties under PAGA due to the employer's failure to timely pay wages
25 at the proper rate in accordance with a local wage ordinance).

1
2 25. Under Labor Code §§ 201-202, an employer must provide an employee wages at
3 the time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code §
4 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is
5 discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30
6 days. Lab. Code § 203; *Mamika v. Barca*, 68 Cal.App.4th 487, 492 (1998).

7 26. Defendants terminated Plaintiff in or around July 2023.

8 27. As described in detail above, Defendant failed to pay Plaintiff, the Former
9 Employee Subclass Members, and all aggrieved employees all wages owed, including but not
10 limited to all overtime wages owed within the time constraints proscribed in Labor Code §§ 201-
11 202 at the time of their termination/separation as well as sick wages at the correct rate. Thus, as
12 result of Defendants’ faulty policies described above, Plaintiff, the Former Employee Subclass,
13 and some of the aggrieved employees left their employment with Defendants without being
14 compensated for each and every hour worked at the appropriate rate in violation of Labor Code
15 §§ 201, 202, and 203.

16 28. In addition, Labor Code § 256 provides that the Labor Commissioner “shall
17 impose a civil penalty in an amount not exceeding 30 days’ pay as waiting time under the terms
18 of Section 203. The California Supreme Court and California Court of Appeal have both
19 specifically recognized the ability of an aggrieved employee to recover civil penalties under
20 Labor Code § 256 for a defendant’s willful violation of Labor Code § 201 and 202 under PAGA.
21 In *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 381 (2014), the California
22 Supreme Court acknowledged that PAGA penalties for the untimely payment of wages included
23 the 30 days of pay as waiting time pursuant to Labor Code § 256. *See also Esparza v. KS*
24 *Industries, L.P.* 13 Cal.App.5th 1228, 1242 (2017) (explaining that the Labor Code § 256
25 penalties only exist if the employer’s failure to timely pay wages upon separation was willful is a
26 “civil penalty” “recovered or imposed by the Labor Commissioner.”).

27 29. As result of Defendants’ faulty policies described above, Plaintiff and all the Late
28 Payment Aggrieved Employees left their employment with Defendants without being

1 compensated for each and every hour worked at the appropriate rate in violation of Labor Code
2 §§ 201, 202, 203, 246, and 256.

3 30. Plaintiff filed his PAGA Notice online with the Labor Workforce Development
4 Agency (“LWDA”) and sent a letter by certified mail to Defendants setting forth the facts and
5 theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.*
6 As required by PAGA, Plaintiff submitted the \$75.00 filing fee to the LWDA. Pursuant to Labor
7 Code § 2699.3(a)(2)(A), no notice was received and/or will have been received by Plaintiff from
8 the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the
9 postmark date of the PAGA notice. Plaintiff is therefore, entitled to proceed with a civil action
10 pursuant to Labor Code § 2699.

11 II.

12 JURISDICTION AND VENUE

13 31. This Court has subject matter jurisdiction over all causes of action asserted herein
14 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
15 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
16 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
17 laws of the State of California or is subject to adjudication in the courts of the State of California.

18 32. This Court has personal jurisdiction over Defendant LOS ARBOLES
19 HARVESTING, INC. because Defendant has caused injuries in the County of Ventura and State
20 of California through their acts, and by their violation of the California Labor Code and
21 California law in Ventura County.

22 33. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
23 Civil Procedure §395. Defendants operates within California and do business within Ventura
24 County. The unlawful acts alleged herein have a direct effect on Plaintiff, the Classes, and the
25 aggrieved employees within the State of California and the County of Ventura.

26 34. This case should be classified as complex according to Rule 3.400 of the
27 California Rules of Court, and assigned to a complex litigation judge and department, as it will
28 involve substantial documentary evidence, and is likely to involve extensive motion practice

1 raising difficult or novel issues that will be time-consuming to resolve and would require
2 substantial post judgment judicial supervision.

3 **III.**

4 **PARTIES**

5 **A. PLAINTIFF**

6 35. Plaintiff OSEAS HERNANDEZ AQUINO is a former employee of Defendants
7 who worked for Defendants in Ventura County.

8 36. Plaintiff and the Class were regularly required to:

9 a. Work overtime hours without receiving the proper amount of
10 compensation;

11 b. Work without being provided an accurate itemized wage statement that
12 accurately indicate the gross wages earned, the total hours worked by the employee, the number
13 of piece-rate units earned and any applicable piece rate, all deductions, the net wages earned, the
14 name of the employee and only the last four digits of his or her social security number or an
15 employee identification number, the name and address of the legal entity that is the employer, the
16 name and address of the legal entity that secured the services of the employer since Defendant
17 Los Arboles is a Farm Labor Contractor, as well as all applicable hourly rates in effect during the
18 pay period and the corresponding number of hours worked at each hourly rate by the employee;

19 c. Were deprived of wages that Defendants knew were due and owing, yet
20 failed to pay at the time of termination and/or within 72 hours of resignation for those former
21 employees who did not provide advance notice; and

22 **B. DEFENDANTS**

23 37. Defendant LOS ARBOLES HARVESTING, INC. is a California corporation.
24 Defendant's principal place of business is believed to be 523 N Rice Ave, Oxnard, CA 93030.
25 Upon information and belief, Defendant employed Plaintiff, the Classes, and the aggrieved
26 employees within California and in Ventura County. Defendant has done and does business
27 throughout the State of California and in Ventura County.
28

38. Defendant LOS ARBOLES HARVESTING, INC. was and is a farm labor contractor.

39. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

40. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff, the Class, and the aggrieved employees and/or as alter egos of each other.

IV.

CLASS ACTION ALLEGATIONS

41. Plaintiff brings this action on behalf of herself and all others similarly situated as a Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent a Class and Subclasses composed of and defined as follows:

- (1) all individuals who were employed by LOS ARBOLES HARVESTING, INC., INC. or its predecessor, merged or related entities in California as a non-exempt employee (whether paid hourly, piece rate only, and/or piece rate/hourly) or other similar position at any point from February 27, 2019 and continuing into the present (Non-Exempt Class);³

³ Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and 25 days or from April 6, 2020 to October 1, 2020. "Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020."

- (2) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities in California as a non-exempt, hourly employee at any point from February 27, 2019 and continuing into the present (the “Non-Exempt Hourly Subclass”);
- (3) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities in California as a non-exempt employee or other similar position and who worked a shift of 9.5 hours in any one workday and/or more than 55 hours in a workweek during a pay period from February 27, 2019 to December 31, 2019. (“2019 General Overtime Subclass”);
- (4) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, employee (whether paid hourly, piece rate only, and/or piece rate/hourly) and who worked a shift of more than 9.5 hours in a day and/or 55 hours in a week during a period where they also received an incentive payment, piece rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or attendance bonus from February 27, 2019 to December 31, 2019; (“2019 Incentive Pay Overtime Subclass”);
- (5) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities in California as a non-exempt employee or other similar position and who worked a shift of 9 hours in any one workday and/or more than 50 hours in a workweek during a pay period from January 1, 2020 to December 31, 2020. (“2020 General Overtime Subclass”);
- (6) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, employee (whether paid hourly, piece rate only, and/or piece rate/hourly) and who worked a shift of more than 9 hours in a day and/or 50 hours in a week during a period where they also received an incentive payment, piece rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or attendance bonus from January 1, 2020 to December 31, 2020; (“2020 Incentive Pay Overtime Subclass”);
- (7) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities in California as a non-exempt employee or other similar position and who worked a shift of 8.5 hours in any one workday and/or more than 45 hours in a workweek during a pay period from January 1, 2021 to December 31, 2021. (“2021 General Overtime Subclass”);

(8) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, employee (whether paid hourly, piece rate only, and/or piece rate/hourly) and who worked a shift of more than 8.5 hours in a day and/or 45 hours in a week during a period where they also received an incentive payment, piece rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or attendance bonus from January 1, 2021 to December 31, 2021; (“2021 Incentive Pay Overtime Subclass”);

(9) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities in California as a non-exempt employee or other similar position and who worked a shift of eight (8) hours in any one workday and/or more than forty (40) hours in a workweek during a pay period from January 1, 2022 and continuing into the present. (“General Overtime Subclass”);

(10) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, employee (whether paid hourly, piece rate only, and/or piece rate/hourly) and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received an incentive payment, piece rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or attendance bonus from January 1, 2022 and continuing into the present; (“Incentive Pay Overtime Subclass”);

Collectively, subclasses three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), and ten (10) may be referred to as the “Overtime Subclasses.”

(11) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, employee (whether paid hourly, piece rate only, and/or piece rate/hourly) and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received an incentive payment, piece rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or attendance bonus from August 22, 2022 and continuing into the present; (Non-Exempt Wage Statement Subclass)

(12) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received an incentive payment, piece rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or attendance bonus

from July 21, 2022 and continuing into the present; (Non-Exempt Hourly Wage Statement Subclass)

(13) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, employee and whose employment ended at any point between August 21, 2022 and continuing into the present; (Final Wage Statement Subclass)

Collectively, subclasses eleven (11), twelve (12), and thirteen (13) may be referred to as the “Wage Statement Subclass.”

(14) all individuals who were employed by LOS ARBOLES HARVESTING, INC. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between February 27, 2020 and continuing into the present. (“Former Employee Class”);⁴

These Classes and Subclasses may all collectively be referred to herein as the “Class” where appropriate and for ease of reference.

42. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

43. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Classes are easily ascertainable.

A. Numerosity

44. The potential members of the Proposed Classes as defined are each so numerous that joinder of all the members of the Proposed Classes is impracticable. While the precise number of proposed Class Members in each Class has not been determined at this time, Plaintiff is informed and believes that Defendants currently employ, and during the relevant time periods employed to be more than 200 members or more of the Proposed Class and Subclasses at any given time.

⁴ Employees who were laid off seasonally and had multiple periods of employment with Defendants qualify as members of the Former Employee Class.

45. Plaintiff alleges that Defendants' employment records would provide information as to the number and location of all Proposed Class members. Joinder of all members of the Proposed Class and Subclasses is not practicable.

B. Commonality

46. There are questions of law and fact common to the Proposed Classes⁵ that predominate over any questions affecting only individual Proposed Class Members. These common questions of law and fact include, without limitation:

a. Whether Defendants failed to pay wages and/or overtime compensation and at the correct rate as required by Labor Code § 510 to the Class;

b. Whether Defendants violated Labor Code § 226(a) and (e) by failing to provide an accurate itemized wage statements that accurately indicate, the gross wages earned, the total hours worked by the employee, the number of piece-rate units earned and any applicable piece rate, all deductions, the net wages earned, the name of the employee and only the last four digits of his or her social security number or an employee identification number, the name and address of the legal entity that is the employer, the name and address of the legal entity that secured the services of the employer since Defendant Los Arboles is a Farm Labor Contractor, as well as all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee to the Wage Statement Subclass;

c. Whether Defendants violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that the Former Employee Class' employment with Defendants concluded;

d. Whether Defendants violated § 17200 et seq. of the Business & Professions Code by engaging in the acts previously alleged against the Unfair Competition Class;

C. Typicality

47. The claims of Plaintiff are typical of the claims of the Proposed Class and Subclasses. Plaintiff and all members of the Proposed Class and Subclasses sustained injuries and

⁵ Plaintiff reserves his right to designate subclasses within the Classes including designating an Unfair Competition subclass for each class.

1 damages arising out of and caused by Defendants' common course of conduct in violation of
2 laws, regulations that have the force and effect of law, and statutes as alleged herein.

3 **D. Adequacy of Representation**

4 48. Plaintiff will fairly and adequately represent and protect the interests of the
5 members of the proposed Classes. Counsel who represents Plaintiff and the Proposed Classes is
6 competent and experienced in litigating large employment class actions, and have the financial
7 resources to litigate the claims at issue.

8 **E. Superiority of Class Action**

9 49. A class action is superior to other available means for the fair and efficient
10 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
11 practicable, and questions of law and fact common to the Proposed Class predominate over any
12 questions affecting only individual members of the Proposed Class. Each member of the
13 Proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal
14 policy and/or practice of failing to pay all wages due, failing to provide accurate itemized wage
15 statements, and failing to pay all wages owed upon separation.

16 50. Class action treatment will allow those similarly situated persons to litigate their
17 claims in the manner that is most efficient and economical for the parties and the judicial system.
18 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
19 action that would preclude its maintenance as a class action.

20 **V.**

21 **FIRST CAUSE OF ACTION**
22 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**
23 **LABOR CODE § 510**
24 **[Against All Defendants]**

25 51. Plaintiff, on behalf of himself, the Non-Exempt Class, the Non-Exempt Hourly
26 Subclass, the 2019 General Overtime Subclass, the 2019 Incentive Pay Overtime Subclass, the
27 2020 General Overtime Subclass, the 2020 Incentive Pay Overtime Subclass, 2021 General
28 Overtime Subclass, the 2021 Incentive Pay Overtime Subclass, the General Overtime Subclass,
and the Incentive Pay Overtime Subclass realleges and incorporates by reference all previous
paragraphs.

52. Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff and the Class could not agree to work for a lesser wage.

53. IWC Wage Order Nos. 13-2001 and 14-2001 provide:

(a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.

(b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

(c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

(d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

54. In addition, Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful.

55. Similarly, Labor Code § 1198 provides that "the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and

1 the standard conditions of labor for employees. The employment of any employee for longer
2 hours than those fixed by the order or under conditions of labor prohibited by the order is
3 unlawful.”

4 56. As discussed in detail above, at times from January 27, 2019 and continuing into
5 the present, Defendants failed to pay Non-Exempt Class, the Non-Exempt Hourly Subclass, the
6 2019 General Overtime Subclass, the 2019 Incentive Pay Overtime Subclass, the 2020 General
7 Overtime Subclass, the 2020 Incentive Pay Overtime Subclass, 2021 General Overtime Subclass,
8 the 2021 Incentive Pay Overtime Subclass, the General Overtime Subclass, and the Incentive Pay
9 Overtime Subclass overtime wages at the proper rate.

10 57. Based upon information and belief, at times from January 27, 2019 and continuing
11 into the present, Defendants failed to pay Plaintiff, the Non-Exempt Class, the Non-Exempt
12 Hourly Subclass, the 2019 General Overtime Subclass, the 2019 Incentive Pay Overtime
13 Subclass, the 2020 General Overtime Subclass, the 2020 Incentive Pay Overtime Subclass, 2021
14 General Overtime Subclass, the 2021 Incentive Pay Overtime Subclass, the General Overtime
15 Subclass, and the Incentive Pay Overtime Subclass members at one and one-half times their
16 regular rate and instead underpaid their overtime wages.

17 58. Defendants’ conduct, as described above was willful.

18 59. As a result of the unlawful acts of Defendants, Plaintiff, the Class, the Non-
19 Exempt Class, the Non-Exempt Hourly Subclass, the 2019 General Overtime Subclass, the 2019
20 Incentive Pay Overtime Subclass, the 2020 General Overtime Subclass, the 2020 Incentive Pay
21 Overtime Subclass, 2021 General Overtime Subclass, the 2021 Incentive Pay Overtime Subclass,
22 the General Overtime Subclass, and the Incentive Pay Overtime Subclass been deprived of wages
23 and/or overtime in amounts to be determined at trial, and are entitled to recovery of such
24 amounts, plus interest and penalties thereon, attorneys’ fees, and costs.

25 **VI.**
SECOND CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 226(e)
[Against all Defendants]

27 60. Plaintiff, on behalf of himself and the Wage Statement Subclass, the Non-Exempt
28 Wage Statement Subclass, and the Non-Exempt Hourly Wage Statement Subclass, and the Final

1 Wage Statement Class, realleges and incorporates by reference all previous paragraphs and all
2 subsequent paragraphs.

3 61. From at least August 21, 2022 and continuing into the present, Defendants
4 knowing and intentionally failed to provide accurate itemized wage statements to Plaintiff and the
5 Wage Statement Subclass in accordance with Labor Code § 226(a)(1, 2, 3, 4, 5, 6, 7, 8, and 9).
6 Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an
7 itemized wage statement in writing showing:

- 8 (1) gross wages earned;
- 9 (2) total hours worked by the employee;
- 10 (3) the number of piece-rate units earned and any applicable piece rate if the
11 employee is paid on a piece rate;
- 12 (4) all deductions, provided that all deductions made on written orders of the employee
13 may be aggregated and shown as one item;
- 14 (5) net wages earned;
- 15 (6) the inclusive dates of the period for which the employee is paid;
- 16 (7) the name of the employee and only the last four digits of his or her social security
17 number or an employee identification number other than a social security number;
- 18 (8) the name and address of the legal entity that is the employer...;
- 19 (9) all applicable hourly rates in effect during the pay period and the corresponding
20 number of hours worked at each hourly rate by the employee...

21 Similarly, Labor Code § 226(e) provides:

22 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
23 employer to comply with subdivision (a) is entitled to recover the greater of all actual
24 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
25 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
26 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
27 award of costs and reasonable attorney's fees.

28 (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide accurate and complete information as required by any one or
more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the
pay period or any of the other information required to be provided on the itemized
wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
(a).

(ii) Which deductions the employer made from gross wages to determine the net
wages paid to the employee during the pay period. Nothing in this subdivision
alters the ability of the employer to aggregate deductions consistent with the
requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682, the name and address of
the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

62. Due to Defendants' failure to pay Plaintiff an Wage Statement Subclass, the Non-Exempt Wage Statement Subclass, and the Non-Exempt Hourly Wage Statement Subclass, and the Final Wage Statement Class all overtime wages (including at the correct rates), the wage statements issued by Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor Code §226(a)(1), (2), (3), (5), and (9) with respect to Plaintiff and all Class Members.

63. To the extent that Defendants contend and/or can prove that the amounts listed at the top of the wage statement represent expense reimbursement, Plaintiff alleges that Defendant improperly classified expense reimbursements as a wage resulting in the gross wages earned being reportedly inaccurately, excess taxes to have been paid due to Defendants' misclassification of expense reimbursement as a wage, the amount of the deductions are inaccurate as they are not made on the written orders of the employees, but due to Defendants' misclassification of expense reimbursement as a wage instead of a reimbursement, and the net wages earned would also be inaccurate because Defendants' both included expense reimbursement within the wage calculations and then miscalculated the deductions resulting in the listing of the incorrect amount of net wages earned. Such conduct violated Labor Code §§ 226(a)(1), (4), and (5) with respect to Plaintiff, the Wage Statement Subclass, the Non-Exempt Wage Statement Subclass, and the Non-Exempt Hourly Wage Statement Subclass, and the Final Wage Statement Class

64. For instance, for the pay period of July 3, 2023 to July 9, 2023, Defendants identified Plaintiff's "Gross Wages" as being \$730.00, but that amount would require the inclusion of the additional \$91.25 at the top of the wage statement within the wages otherwise the amount of the gross wages listed would be incorrect. To the extent that Defendants can establish that the \$91.25 was expense reimbursement, Plaintiff alleges that Defendants applied the same common policies and practices to the Class, and specifically the Wage Statement Subclass, the

Non-Exempt Wage Statement Subclass, and the Non-Exempt Hourly Wage Statement Subclass, and the Final Wage Statement Class from August 21, 2022 and continuing into the present.

65. Plaintiff also alleges that, from at least August 21, 2022 and continuing into the present, Defendants failed to include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate. While Plaintiff cannot presently fully understand his wage statements due to Defendants' violations of California's Labor Code, Defendants may have either omitted these amounts and/or identified hourly or piece rate compensation at the rate of \$0 without providing the number of piece rate units earned or the hourly rate in effect

66. Separate and independent from the foregoing, Plaintiff alleges that Defendants engaged in a common pattern and practice from at least August 21, 2022 and continuing into the present of failing to provide accurate final wage statements that contained all of the information required by Labor Code § 226(a)(1-9). For instance, Plaintiff's final wage statement does not contain his name and either his employee identification number or only the last four digits of a social security number in violation of Code § 226(a)(7), the name or address of the legal entity that is the employer in violation of Labor Code § 226(a)(8) also does not include the name and address of the legal entity that secured the services of the employer since Defendant Los Arboles is a Farm Labor Contractor, does not include the inclusive dates of the period for which the employee is paid in violation of Labor Code § 226(a)(6), and does not contain information about deductions in violation of Labor Code § 226(a)(4).

67. In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to pay Plaintiff, the Wage Statement Subclass, the Non-Exempt Wage Statement Subclass, and the Non-Exempt Hourly Wage Statement Subclass, and the Final Wage Statement Class all overtime wages, including at the proper rates.

68. Moreover, Plaintiff and the Wage Statement Subclass also suffered legal "injury" for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily determine from the wage statements themselves the information required to be set forth by

1 Section 226(a), the information provided by Defendants were confusing and inaccurate. In
2 addition, Plaintiff and the Wage Statement Subclass were unable to determine from the wage
3 statements alone the information required by Labor Code § 226.

4 69. Defendants also failed to both comply with and create a policy that complied with
5 Labor Code § 226 prior to the filing of this lawsuit. Labor Code § 226(e)(3) provides that when
6 determining whether or not an employer's violation of Labor Code § 226(a) was knowing and
7 intentional, "the relevant factor [is] whether the employer, prior to an alleged violation, has
8 adopted and is in compliance with a set of policies, procedures, and practices that fully comply
9 with this section." Defendant also was previously sued for violating Labor Code section 226
10 before the statutory period applicable to the claims in this Action commenced, but still failed to
11 create a policy that ensured compliance with Labor Code section 226. Accordingly, Defendants'
12 conduct was knowing and intentional within the meaning of Labor Code § 226(e).

13 70. An employee suffering injury as a result of a knowing and intentional failure by an
14 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
15 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
16 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
17 an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
18 reasonable attorneys' fees. See Lab. Code § 226(e). Plaintiff, the Wage Statement Subclass, the
19 Non-Exempt Wage Statement Subclass, and the Non-Exempt Hourly Wage Statement Subclass,
20 and the Final Wage Statement Class seek penalties under Labor Code § 226(e) in amounts to be
21 determined at trial, and are entitled to recovery of such amounts, attorneys' fees, and costs.

22 **VII.**

23 **THIRD CAUSE OF ACTION**

24 **WAITING TIME PENALTIES PURSUANT TO LABOR CODE §§201-203**

25 **[Against all Defendants]**

26 71. Plaintiff on behalf of himself and the Former Employee Class re-alleges and
27 incorporates by reference each and every allegation set forth in the preceding paragraphs.

28 72. Sections 201 and 202 of the California Labor Code requires Defendants to pay all
compensation due and owing to former employees in the Class during the actionable period for
this cause of action, at or around the time that their employment is terminated.

74. As described in detail above, Defendants failed to pay Plaintiff and the other Class Members whose employment concluded all overtime wages owed within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Defendants also failed to pay sick pay at the proper rate due to their common policy and practice of failing to include incentive payment, piece rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or attendance bonuses when calculating and paying sick pay. Thus, as result of Defendants' faulty policies described above, Plaintiff and all Class Members' left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

75. At the time of Plaintiff, the other members of the Former Employee Class' separation from Defendants, the sums were certain and known to Defendants.

76. As a result, Defendants are liable to Plaintiff and the Former Employee Class who are no longer employed by Defendants for waiting time penalties amounting to thirty (30) days wages for Plaintiff and each Class Member pursuant to California Labor Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

XII.
FOURTH CAUSE OF ACTION
UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200
[Against all Defendants]

24 77. Plaintiff, on behalf of himself and the Class realleges and incorporates by reference all previous paragraphs.

78. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of
himself, on behalf of the general public, and on behalf of the Proposed Classes, bring this claim
pursuant to Business & Professions Code § 17200, et seq. The conduct of Defendants as alleged

1 in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the
2 general public, and the Proposed Classes. Plaintiff seeks to enforce important rights affecting the
3 public interest within the meaning of Code of Civil Procedure § 1021.5. Plaintiff is a “person”
4 within the meaning of Business & Professions Code § 17204, and therefore has standing to bring
5 this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

6 79. Defendants have engaged in unlawful and unfair business practices that violate
7 fundamental public policies of the state of California and the United States of America. As a
8 result of its unlawful and unfair business practices, Defendants have forced employees to work
9 under substandard and unlawful conditions in an effort to gain a competitive advantage over law-
10 abiding employers who comply with California’s Labor Code.

11 80. Defendants have violated statutes and public policies as alleged herein. Through
12 the conduct alleged in this Complaint, Defendants have acted contrary to these public policies,
13 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
14 unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving
15 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
16 privileges guaranteed to all employees under law.

17 81. Defendants’ conduct, as alleged hereinabove, constitutes unfair competition in
18 violation of § 17200 et seq. of the Business & Professions Code.

19 82. Defendants, by engaging in the conduct herein alleged, either knew or in the
20 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
21 violation of § 17200 et seq. of the Business & Professions Code.

22 83. As a proximate result of the above-mentioned acts of Defendants, Plaintiff, the
23 Class, others similarly situated, other businesses, and the general public have been damaged in a
24 sum as may be proven.

25 84. As part of their claims against Defendant, Plaintiffs seek not only the unpaid
26 wages, but also the market value of the loss of the statutory protections and the cost to other
27 employers of providing proper pay, breaks, and complying with the California Labor Code
28

provisions identified herein. *See e.g. Safeway, Inc. v. Sup. Ct.*, 238 Cal.App.4th 1138, 1162 (2015).

85. Unless restrained, Defendants will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendants, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and members of the Proposed Classes the money Defendants have unlawfully failed to pay.

XIII.

FIFTH CAUSE OF ACTION

**PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.3, 246, 256, 510, 558, 1197, 1197.1, 1198,
and IWC Wage Order Nos. 13-2001 and 14-2001**

86. Plaintiff, on behalf of the State of California, realleges and incorporates by reference all previous paragraphs.

87. Plaintiff filed his PAGA Notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee to the LWDA. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received and/or will have been received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiff is therefore, entitled to commence and proceed with a civil action pursuant to Labor Code § 2699.

88. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2698, *et seq.* because of Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 246, 256, 510, 558, 1197, 1197.1, 1198, and IWC Wage Order Nos. 13-2001 and 14-2001.

89. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of

trial subject to the following formula unless a civil penalty is already proscribed under the Labor Code:

\$100 for the initial violation per employee per pay period; and

\$200 for each subsequent violation per employee per pay period.

90. These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees. These penalties may be stacked separately for each of Defendants violations of the California Labor Code. *See e.g. Kaanaana v. Barrett Business Services, Inc.*, 29 Cal.App.5th 778, 808 (2018) (acknowledging that the employees could get separate PAGA penalties for interrupted meal periods because interrupted meal periods violated Labor Code sections 1194 and 512 and remanding to the trial court to determine the amount of PAGA penalties to award); *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1) and acknowledging that a Plaintiff could recover separately under PAGA for violations of Labor Code §§ 226(a) and 226(e)); *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S.Dist. LEXIS 86975, at *59, fn. 77 (C.D.Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked PAGA penalties, that “PAGA penalties can be ‘stacked,’ i.e., multiple PAGA penalties can be assessed for the same pay period for different Labor Code violations.”); *accord Schiller v. David’s Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at * 2-3 (E.D. Cal. Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

91. There is currently a split of authority regarding which PAGA penalties apply to violations of Labor Code § 226(a). *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355 (2021) (holding that such violations give rise to a 2699.3 penalty) *cf.*; *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to a Labor Code § 226.3 penalty). Labor Code § 226.3 provides that “[a]ny employer who violates

subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendants failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, to the extent it applies, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 or 2699 penalties for Defendant’s violations of Labor Code § 226(a).

92. Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.”

93. As a result of the faulty compensation policies and practices described in detail above, the State of California is entitled to recover penalties under Labor Code § 210 through PAGA.

94. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid...” Based upon the above factual allegations related to overtime violations, Plaintiff and the aggrieved employees are entitled to recover civil penalties under Labor Code § 558 and not any underpaid wages under PAGA. *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

1 95. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
2 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
3 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
4 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
5 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
6 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
7 period for which the employee is underpaid regardless of whether the initial violation is
8 intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all
9 aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and
10 to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil
11 penalties for violations of Labor Code § 1197.1.

12 96. Labor Code § 256 serves as the civil default penalty for a violation of Labor Code
13 section 203 under PAGA and provides for “a civil penalty in an amount not exceeding 30 days’
14 pay as waiting time under the terms of Section 203. *See Iskanian v. CLS Transportation Los*
15 *Angeles, LLC*, 59 Cal.4th 348, 381 (2014); *see also Esparza v. KS Industries, L.P.* 13 Cal.App.5th
16 1228, 1242 (2017) (explaining that the Labor Code § 256 penalties only exist if the employer’s
17 failure to timely pay wages upon separation was willful is a “civil penalty”). To the extent
18 permitted by law Plaintiff seeks Labor Code § 2699.3 penalties at either the default amount or the
19 amount proscribed by Labor Code § 256 for Defendant’s violations of Labor Code §§ 201 and
20 202.

21 97. As described in detail above, Defendants willfully failed to pay Plaintiff and other
22 aggrieved employees whose employment concluded all wages owed, including but not limited to
23 overtime wages and/or all sick wages within the time constraints proscribed in Labor Code §§
24 201-202 at the time of their termination/separation. Thus, as result of Defendants’ faulty policies
25 described above, Plaintiff and all aggrieved employees left their employment with Defendants
26 without being compensated for each and every hour worked at the appropriate rate in violation of
27 Labor Code §§ 201, 202, 203, and 256.

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RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. An Order that this action may proceed and be maintained as a Class Action on behalf of the Classes;
2. For compensatory damages in the amount of unpaid overtime wages not paid to Plaintiff, each Class Member from February 27, 2019 and continuing into the present as may be proven;
3. For penalties pursuant to Labor Code § 226(e) for violations of Labor Code § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) for the inaccurate itemized wage statements issued to Plaintiff and the Wage Statement Subclass from August 21, 2022 and continuing into the present as may be proven;
4. An award to Plaintiff and the Former Employee Class of waiting time penalties in the amount of up to 30 days' wages;
5. For restitution for unfair competition pursuant to Business & Professions Code § 17200 to Plaintiff and the Class for actions, including disgorgement of profits, in an amount as may be proven;
6. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class Members proper compensation for overtime hours worked and/or at the incorrect rate;
7. For penalties under Labor Code § 2698, *et seq.* for Plaintiff and all aggrieved employees because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 246, 256, 510, 558, 1197, 1197.1, 1198, and IWC Wage Order Nos. 13-2001 and 14-2001;
8. An award of pre-judgment and post judgment interest as applicable;
9. An award providing for payment of costs of suit;
10. An award of attorneys' fee, including but not limited to, pursuant to Labor Code §§ 218.5 and 2699 and Code of Civil Procedure § 1021.5; and

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11. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury for causes of action 1-3, but not claim 4 (unfair competition) or claim 5 (PAGA) for which a bench trial is required.

DATED: October 26, 2023 WINSTON LAW GROUP, P.C.

By: 
DAVID S. WINSTON
Attorneys for Plaintiff, the Proposed
Class, and the aggrieved employees