

STANSBURY BROWN LAW, PC
DANIEL J. BROWN (SBN 307604)
dbrown@stansburybrownlaw.com
JESSICA FLORES (SBN 282669)
jflores@stansburybrownlaw.com
2610 ½ Abbot Kinney Blvd.
Venice, California 90291
Tel: (323) 204-3124

Attorneys for Plaintiff

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Superior Court of California
County of Fresno
By: I. Herrera, Deputy

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

FIDELMAR DIAZ JR., as an individual, and
on behalf of all others similarly situated,

Plaintiff,

v.

NALE FARMS, an unknown entity; JOHN
NALE FARMS, an unknown entity; ROLAND
NALE FARMS, an unknown entity; R & D
NALE FARMS, an unknown entity; JOHN
NALE, an individual; ROLAND NALE, an
individual; DOBRA VINA, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 23CECG03930

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) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (5) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (6) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200, *et seq.*);**
- (7) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);
AND**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Fidelmar Diaz Jr. (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 Nale Farms, an unknown entity; John Nale Farms, an unknown entity; Roland
4 Nale Farms, an unknown entity; R & D Nale Farms, an unknown entity; John Nale, an individual;
5 Roland Nale, an individual; Dobra Vina, Inc., a California corporation; and DOES 1 to 100,
6 inclusive (collectively “Defendants”), and on information and belief alleges as follows:

7 **JURISDICTION**

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

16 **VENUE**

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

22 **PARTIES**

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

§§ 201-204, 226 *et seq.*, 226.2, 226.7, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*, 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 alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business by harvesting almonds and other crop farming in California and the United States, employed Plaintiff within Fresno County and the state of California and, therefore, were (and are) doing business in Fresno 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,

1 Plaintiff alleges that all Defendants were joint employers for all purposes towards Plaintiff and
2 all members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Plaintiff began working for Defendants in approximately 2008 or 2009 and
5 continued working through approximately October 2022 when he had to stop working due to a
6 severe pain in his injured leg and foot. Plaintiff returned to work in August 2023 and is presently
7 employed by Defendants. Plaintiff was tasked with picking almonds, grapes, spraying pesticides
8 and driving a shockwave machine. Plaintiff generally worked Monday through Saturday from
9 sunrise at approximately 6:30 a.m. or 7:00 a.m. through approximately 3:00 p.m. to 5:00 p.m. or
10 later during the almond season from September to November each year. During other times of
11 the year, Plaintiff worked from approximately 6:30 a.m. or 7:00 a.m. to approximately 3:00 p.m.
12 to 4:00 p.m.

13 10. Throughout the duration of Plaintiff's employment with Defendants, Plaintiff and
14 other non-exempt employees were not paid all wages earned and for all hours worked. For
15 example, sometimes Defendants paid Plaintiff at the wrong hourly rate. After Plaintiff
16 complained, Defendants sometimes responded by giving some extra money to Plaintiff on his
17 next paycheck, but not enough to cover the full unpaid amount. As a further example, for the pay
18 period between November 1 and 15, 2021, Defendants issued paystub no. 1163 to Plaintiff at a
19 rate of \$16.00 per hour. However, for the pay period between November 16 to 30, 2021,
20 Defendants issued paystub no. 1222 to Plaintiff at a lesser rate of \$13.00 per hour.

21 11. Plaintiff and other non-exempt employees worked overtime hours, based on the
22 requirements of Wage Order 14, and usually reported their hours worked in writing, but generally
23 did not receive overtime compensation equal to one and one-half times their regular rates of pay
24 for all overtime hours worked. For example, for the pay period between August 16, 2021 and
25 August 31, 2021, paystub no. 1080 reflects 140 hours worked by Plaintiff at the straight rate of
26 \$15.00 per hour even though there generally exists an average of only 80 regular hours in a 2-
27 week pay period. As a result, Defendants failed to ensure that Plaintiff and other non-exempt
28 employees received proper overtime wages for all overtime hours worked, in compliance with

1 Wage Order 14.

2 12. Even though Plaintiff and other non-exempt employees sometimes worked a shift
3 in excess of 10 hours, Plaintiff and other non-exempt employees were almost never permitted to
4 exercise their right to a second meal period. Plaintiff and other non-exempt employees were not
5 only unable to exercise the right to a second meal period, but they were never told of their right
6 to do so. Also, Plaintiff and other non-exempt employees usually started their meal periods at
7 noon, including on days when the work day began before 7:00 a.m., causing them to begin their
8 meal period beyond the fifth hour of the work day. Plaintiff and the other non-exempt employees
9 were not informed by Defendants of their legal right to take duty-free uninterrupted meal periods
10 before the conclusion of their fifth hour of work pursuant to Labor Code Section 512. Upon
11 information and belief, Defendants did not keep records regarding the times at which Plaintiff
12 and other non-exempt employees began and ended their meal periods. Despite Defendants'
13 failure to provide Plaintiff and other non-exempt employees with all lawful meal periods due to
14 their uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt
15 employees with an hour of pay at their regular rate for each meal period violation as required by
16 Labor Code § 226.7.
17

18 13. Furthermore, Defendants failed to adequately reimburse Plaintiff and other non-
19 exempt employees for all reasonable and necessary work expenditures, including but not limited
20 to, requiring Plaintiff to purchase his own heavy duty boots and gloves. Plaintiff also had to
21 purchase safety glasses because the work-issued safety glasses did not provide adequate
22 protection. Plaintiff was not ever provided any reimbursement for these necessary uses. Plaintiff
23 was also not compensated for the mileage on his personal vehicle for the days when he had to
24 drive his personal vehicle to the fields.

25 14. Defendants have maintained inaccurate payroll records, failed to timely pay all
26 wages owed to employees, and failed to timely pay separating employees at the time of their
27 separation, and issued inaccurate wage statements. This is in part a result of Defendants' failure
28 to accurately compensate Plaintiff and other non-exempt employees for all minimum and

overtime wages, and failure to pay premium pay for failing to provide all required meal periods.

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

CLASS ACTION ALLEGATIONS

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

- a. The Minimum Wage Class consists of all current and former non-exempt employees of Defendants who performed for work Defendants in California during the four years immediately preceding the filing of this lawsuit through the present.
- b. The Overtime Wage Class consists of all current and former non-exempt employees of Defendants who performed work for Defendants in California who worked overtime hours during the four years immediately preceding the filing of this lawsuit through the present.
- c. The Meal Period Class consists of all current and former non-exempt employees of Defendants who performed work for Defendants in California who: (i) worked at least one shift in excess of 5.0 hours without a meal period of at least 30 minutes in duration commencing prior to the conclusion of the fifth hour of work, and who do not have a corresponding meal period premium payment made for such shifts

and/or (ii) worked at least one shift in excess of 10.0 hours without a second meal period of at least 30 minutes in duration commencing prior to the conclusion of the tenth hour of work, and who do not have a corresponding meal period premium for such shifts during the four years preceding the filing of this lawsuit through the present.

d. The Employee Expense Class consists of all of Defendants in California who were not reimbursed for expenses in the performance of their job duties, including, but not limited to heavy duty boots, gloves, safety glasses and mileage during the four years immediately preceding the filing of this lawsuit to the present.

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

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

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

i. Whether Defendants paid all minimum wages owed for all hours worked to

members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;

- 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 failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;
- vi. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and
- vii. 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.

19. **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 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.

20. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because

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

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

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

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

11
12 **FIRST CAUSE OF ACTION**
13 **MINIMUM WAGE VIOLATIONS**
14 **(AGAINST ALL DEFENDANTS)**

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

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

26 25. California Labor Code § 1198 makes unlawful the employment of an employee
27 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
28 that an employer who has failed to pay its employees the legal minimum wage is liable to pay

1 those employees the balance of the unpaid wages as well as liquidated damages in an amount
2 equal to the wages due and interest thereon.

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

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

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY ALL OVERTIME WAGES**

16 **(AGAINST ALL DEFENDANTS)**

17 28. Plaintiff re-allege and incorporates by reference all previous paragraphs.

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

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

27 31. The foregoing policies and practices are unlawful and create entitlement to
28 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime

1 premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of
2 suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 14, and
3 Code of Civil Procedure § 1021.5.

4 **THIRD CAUSE OF ACTION**

5 **MEAL PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

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

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

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

19 **FOURTH CAUSE OF ACTION**

20 **WAITING TIME PENALTIES**

21 **(AGAINST ALL DEFENDANTS)**

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

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

1 37. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class
2 all final wages due to them at the time of their separation including, among other things, unpaid
3 and/or underpaid overtime and minimum wages owed, and meal period premium wages. Further,
4 Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy
5 and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned
6 wages at the end of employment in a timely manner pursuant to the requirements of Labor Code
7 §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor
8 Code § 203.

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

14 **FIFTH CAUSE OF ACTION**
15 **WAGE STATEMENT VIOLATIONS**
16 **(AGAINST ALL DEFENDANTS)**

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

18 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
20 and the Wage Statement Class with complete and accurate wage statements reflecting the accurate
21 number of hours worked, and meal period premiums in violation of Labor Code § 226 et seq.

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

27 42. Defendants' failures create an entitlement to recovery by Plaintiff and the Wage
28 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.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

44. 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 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 due upon separation of employment.

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

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

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

48. Plaintiff is compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,

1 which he is entitled to recover under Code of Civil Procedure § 1021.5.

2 **SEVENTH CAUSE OF ACTION**

3 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

4 **(AGAINST ALL DEFENDANTS)**

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

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

10 51. Due to Defendants’ unlawful policy and practice of requiring employees to
11 purchase their own heavy duty boots, gloves and safety glasses in the performance of their work
12 duties and failing to reimburse employees for personal vehicle mileage, Defendants have violated
13 Labor Code § 2802.

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

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

20 **EIGHTH CAUSE OF ACTION**

21 **PRIVATE ATTORNEYS GENERAL ACT**

22 **(AGAINST ALL DEFENDANTS)**

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

25 55. Defendants have committed several Labor Code violations against Plaintiff,
26 members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee”
27 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
28

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 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;
- d. 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;

- e. Failing to reimburse Plaintiff, the Employee Expense Class, and other aggrieved employees for necessary business expenditures incurred by Plaintiff, the Employee Expense Class, 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 Plaintiff and other aggrieved 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 aggrieved 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.

56. On September 26, 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 55 (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.

57. 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 she is entitled to receive under California Labor Code § 2699(g).

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1198 and Wage Order 14 § 5(A);
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, 1198 and Wage Order 14 § 5(A);
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226;
9. Upon the Sixth Cause of Action, for restitution to Plaintiff of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

1 10. Upon the Seventh Cause of Action, for compensatory, consequential, general, and
2 special damages according to proof pursuant to Labor Code § 2802;

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

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

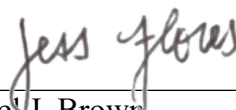
15 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
16 §226, and Code of Civil Procedure § 1021.5; and

17 14. For such other and further relief the Court may deem just and proper.
18
19

20 Dated: December 8, 2023

Respectfully submitted,
STANSBURY BROWN LAW, PC

21
22 By:



Daniel J. Brown
Jessica Flores
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

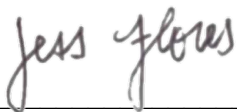
Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Respectfully submitted,

Dated: December 8, 2023

STANSBURY BROWN LAW, PC

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 December 8, 2023 I served the document listed below on the parties in this action as follows:

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

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- X (BY EMAIL) In accordance with California Code of Civil Procedure section 1010.6 in compliance with the Judicial Council's Appendix I, Emergency Rules Related to Covid-19, Emergency Rule 12, I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- 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 December 8, 2023 at Frazier Park, California.

Isabella C. Aguinaga

Isabella C. Aguinaga

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SERVICE LIST

Mark D. Kruthers, Esq.
FENNEMORE DOWLING AARON
8080 N Palm Ave, 3FL
Fresno, CA 93711
559.432.4500
Email: mkruthers@fennemorelaw.com
dstein@fennemorelaw.com
njacques@fennemorelaw.com
calexander@fennemorelaw.com

Attorneys for Defendants Dobra Vina, Inc., John Nale, Roland Nale, Roland Nale Farms, R &
D NALE FARMS, Nale Farms and John Nale Farms