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

JOSE REFUGIO MARTINEZ, as an
individual, and on behalf of all others similarly
situated,

Plaintiff,

v.

ROLLAND PACHECO dba PACHECO &
FAGUNDES DAIRY, an individual; ALICE
M. FAGUNDES dba PACHECO &
FAGUNDES DAIRY, an individual; and
DOES 1 through 100, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of Tulare
01/09/2024

By: Vanessa Minguella,
Deputy Clerk

Case No. VCU302973

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

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

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, AND
1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 512)**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (5) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200, *et seq.*);**
- (8) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);**
- (9) **UNLAWFUL DEDUCTIONS FROM
EARNED WAGES (LABOR CODE
§§ 221 AND 227.3); AND**

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

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Jose Refugio Martinez (hereinafter “Plaintiff”), as an individual, and on behalf
2 of all others similarly situated, hereby brings this First Amended Class and Representative Action
3 Complaint against Rolland Pacheco dba Pacheco & Fagundes Dairy and Alice M. Fagundes dba
4 Pacheco & Fagundes Dairy; and DOES 1 to 100, inclusive (collectively “Defendants”), and on
5 information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff hereby brings this First Amended Class and Representative Action
8 Complaint for recovery of unpaid wages and penalties under California Business and Professions
9 Code § 17200 *et seq.*, Labor Code §§ 201-204, 221, 226 *et seq.*, 226.2, 226.7, 227.3, 510, 512,
10 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.* and Industrial Welfare
11 Commission Wage Order 14 (“Wage Order 14”), in addition to seeking declaratory relief and
12 restitution. This Complaint is brought pursuant to California Code of Civil Procedure § 382. This
13 Court has jurisdiction over Defendants’ violations of the California Labor Code because the
14 amount in controversy exceeds this Court's jurisdictional minimum.

15 **VENUE**

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

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is a California resident. During the four years immediately preceding
24 the filing of the Complaint in this action and within the statute of limitations periods applicable
25 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
26 employee. Plaintiff was and is a victim of Defendants’ policies and/or practices complained of
27 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
28 §§ 201-204, 221, 226 *et seq.*, 226.2, 226.7, 227.3 510, 512, 516, 558, 1182.12, 1194, 1194.2,

1 1197, 1198, 2802, 2698 *et seq.* California Business and Professions Code § 17200 *et seq.* (“Unfair
2 Competition Law”), and Wage Order 14, which sets employment standards for the agricultural
3 industries.

4 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
5 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
6 continue to do) business in the dairy industry, employed Plaintiff within Tulare County and the
7 state of California and, therefore, were (and are) doing business in Tulare County and the State
8 of California.

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

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

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

26 8. At all times mentioned herein, Defendants, and each of them, were members of
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
28 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 worked for Defendants from approximately mid-October 2021 to
5 approximately November 2022 when his work-related injury prevented him from continuing to
6 perform his work. Plaintiff was tasked with milking cows, cleaning the floors and cleaning
7 machines. Plaintiff was generally scheduled to work for four (4) days straight in six-day periods
8 instead of seven-day workweeks from around 5:00 a.m. until 3:00 p.m. or later or from around
9 4:00 a.m. until 2:00 p.m. or later. After two months on this schedule, Defendants switched the
10 scheduled start time for Plaintiff and other non-exempt employees who milked cows to
11 approximately 4:00 p.m. with a scheduled end time at approximately 2:00 a.m. Approximately
12 every couple of months, Plaintiff and other non-exempt employees who milked cows switched
13 between the two schedules.

14 10. Throughout the duration of Plaintiff's employment with Defendants, Plaintiff and
15 other non-exempt employees were not paid for all hours worked as Defendants would not
16 accurately keep track of their actual hours worked. Upon information and belief, the time records
17 maintained by Defendants were not reflective of the actual number of hours that Plaintiff and
18 other non-exempt employees actually worked. Plaintiff and other non-exempt employees clocked
19 in to work on a machine located at Defendants' premises. The time on the machine was usually
20 off and approximately 15 minutes ahead. Plaintiff had no way to confirm that the machine for
21 clocking in could differentiate between different employees because after he pressed his
22 fingerprint on the machine, the screen on the machine merely displayed "thank you" and
23 displayed no identifying information for Plaintiff. Sometimes the clock-in machine did not work
24 at all. After observing that several of his paychecks were missing hours worked, Plaintiff began
25 to keep track of his clocked hours by writing his clocked hours down. Pursuant to their
26 supervisor's instructions, Plaintiff and other non-exempt employees spent at least approximately
27 seven (7) minutes each day putting on their work boots, aprons and sleeves before clocking in.
28 After clocking out at the end of each day, Plaintiff and other non-exempt employees spent

1 approximately 15 to 20 minutes removing their work boots, aprons and sleeves and also cleaning
2 them and leaving them to dry for the following work day. Overall, Plaintiff and other non-exempt
3 employees spent at least approximately 22 minutes each day working off the clock by putting on
4 or taking off their work boots, aprons and sleeves and cleaning the same.

5 11. Furthermore, Plaintiff and other non-exempt employees worked overtime hours,
6 based on the requirements of Wage Order 14, but did not receive overtime compensation equal
7 to one and one-half times their regular rates of pay for all overtime hours worked. Upon
8 information and belief, Defendants systematically failed to pay overtime compensation due to
9 Plaintiff and other non-exempt employees when they worked the requisite number of hours to be
10 entitled to such pay. Instead, Plaintiff and other non-exempt employees would either be paid their
11 normal hourly rate for overtime hours worked, or simply not paid for these hours worked at all.
12 As an example, check 9506 for the pay period between June 1, 2022 and June 15, 2022 shows
13 that Plaintiff worked 123.5 hours during the pay period at the rate of \$15.00 per hour without any
14 additional compensation for overtime worked even though Plaintiff usually worked at least 9.5
15 hours per day. Further, as discussed above, Plaintiff and other non-exempt employees worked at
16 least approximately twenty (22) minutes per day beyond 9.5 hours in a workday without any
17 compensation at all. As a result, Defendants failed to ensure that Plaintiff and other non-exempt
18 employees were being paid at least the minimum wage for all hours actually worked, and failed
19 to ensure that Plaintiff and other non-exempt employees received proper overtime wages for all
20 overtime hours worked, in compliance with Wage Order 14.

21 12. Plaintiff and other non-exempt employees were not authorized to take all legally
22 required rest periods. This practice was pervasive throughout Plaintiff's employment. Plaintiff
23 and other non-exempt employees were not only unable to exercise the right to a rest period, but
24 they were never told of their right to do so. Plaintiff and other non-exempt employees almost
25 never received a rest period because they were required to work continuously throughout the day
26 except for a break for a meal period. Even though Plaintiff often worked more than ten (10) hours
27 at least two (2) days out of every six-day period worked, Plaintiff almost never received a first,
28 second or third rest period throughout his employment with Defendants. Despite Defendants'

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

8 13. Even though Plaintiff and other non-exempt employees worked a shift in excess
9 of ten (10) hours at least two (2) days out of every six-day period worked, Plaintiff and other non-
10 exempt employees were almost never permitted to exercise their right to a second meal period.
11 Plaintiff and other non-exempt employees were not only unable to exercise the right to a second
12 meal period, but they were never told of their right to do so. Also, at least three (3) times in a 6-
13 day period, Plaintiff and other non-exempt employees began their first meal period after the fifth
14 hour when they worked shifts over 5.0 hours. For example, Plaintiff and other non-exempt
15 employees often clocked in at 5:00 a.m. despite beginning their work at least seven (7) minutes
16 prior to clocking in, but did not start their meal period until 10:00 a.m. or later, thus causing them
17 to begin their meal period beyond the fifth hour of the work day. Plaintiff and the other non-
18 exempt employees were not informed by Defendants of their legal right to take duty-free
19 uninterrupted meal periods before the conclusion of their fifth hour of work pursuant to Labor
20 Code Section 512. Despite Defendants' failure to provide Plaintiff and other non-exempt
21 employees with all lawful meal periods due to their uniform and unlawful practices, Defendants
22 never provided Plaintiff and other non-exempt employees with an hour of pay at their regular rate
23 for each meal period violation as required by Labor Code § 226.7.

24
25 14. Furthermore, Defendants failed to adequately reimburse Plaintiff and other non-
26 exempt employees for all reasonable and necessary work expenditures, including but not limited
27 to, requiring Plaintiff to purchase his own work boots, apron and sleeves. Plaintiff was not ever
28 provided any reimbursement for these necessary uses.

1 15. Additionally, Defendants forced Plaintiff to wait more than one week until the next
2 regular scheduled pay day for his final paycheck, in violation of Labor Code 201.

3 16. Defendants maintain a policy of requiring unlawful forfeitures by Plaintiff and
4 other non-exempt employees of vested vacation benefits. Plaintiff and other non-exempt
5 employees' earned wages. Specifically, Defendants paid Plaintiff \$10.50 per hour for 60 hours
6 of accrued vacation time instead of paying Plaintiff at his final rate of \$15.40 per hour in violation
7 of California law which holds accrued and unused vacation time is earned wages not subject to
8 forfeiture.

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

15 18. Defendants failed to issue to Plaintiff and other non-exempt employees accurate
16 itemized statements in writing showing (1) gross wages earned, (2) total hours worked by the
17 employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee
18 is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written
19 orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
20 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
21 only the last four digits of his or her social security number or an employee identification number
22 other than a social security number, (8) the name and address of the legal entity that is the
23 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
24 number of hours worked at each hourly rate by the employee.

25 19. Finally, Defendants failed to conform to the requirements of Labor Code § 2810.5
26 by failing to provide Plaintiff and other aggrieved employees written notices, in the language
27 normally used to communicate employment related information to the employees, containing
28

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

20. **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 in California and were subject to Defendants' timekeeping systems and/or practices 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 in California and who worked overtime hours during the four years immediately preceding the filing of this lawsuit through the present.
- c. The Rest Period Class consists of all current and former non-exempt employees of Defendants who performed work in California and who worked at least one shift in excess of 3.5 hours during the four years immediately preceding the filing of this lawsuit through the present.
- d. The Meal Period Class consists of all current and former non-exempt employees of Defendants who performed work in California and: (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)

1 worked at least one shift in excess of 10.0 hours while performing work for
2 Defendants in California without a second meal period of at least 30 minutes in
3 duration commencing prior to the conclusion of the tenth hour of work, and who
4 do not have a corresponding meal period premium payment made for such shifts
5 during the four years preceding the filing of this lawsuit through the present.

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

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

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

18 h. The Vacation Pay Class consists of all of Defendants' formerly employed non-
19 exempt employees who performed work in California and who accrued vacation
20 benefits during the four years immediately preceding the filing of this lawsuit to
21 the present.

22
23 21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
24 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
25 unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number
26 greater than thirty (30) individuals. The identity of such membership is readily ascertainable via
27 inspection of Defendants' employment records.

28 ///

22. **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 §§ 1182.12, 1194, 1194.2, and 1197;
- ii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and Wage Order 14 by requiring members of the Overtime Wage Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- iii. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Minimum Wage Class;
- iv. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- v. Whether Defendants provided all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- vi. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;
- vii. Whether Defendants' policies and/or practices resulted in the forfeiture of vested vacation benefits for members of the Vacation Pay Class;
- viii. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and
- ix. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful.

23. **Predominance of Common Questions:** Common questions of law and fact

predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping policies and practices, meal and rest period policies and practices, non-reimbursement policies and practices, wage statement policies and practices, and the policies and practices regarding the timely payment of final wages. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

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

25. **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.

26. **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

1 and members of the Classes make the class action format a particularly efficient and appropriate
2 procedure to redress the violations alleged herein. If each employee were required to file an
3 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
4 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
5 their vastly superior financial and legal resources. Moreover, requiring each member of the
6 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
7 employees who would be disinclined to file an action against their former and/or current employer
8 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
9 employment. Further, the prosecution of separate actions by the individual class members, even
10 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
11 with respect to the individual class members against Defendants herein; and which would
12 establish potentially incompatible standards of conduct for Defendants; and/or legal
13 determinations with respect to individual class members which would, as a practical matter, be
14 dispositive of the interest of the other class members not parties to adjudications or which would
15 substantially impair or impede the ability of the class members to protect their interests. Further,
16 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
17 individual prosecution considering all of the concomitant costs and expenses attending thereto.
18 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
19 Civil Procedure.
20

21 **FIRST CAUSE OF ACTION**

22 **MINIMUM WAGE VIOLATIONS**

23 **(AGAINST ALL DEFENDANTS)**

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

25 28. Wage Order 14, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
26 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
27 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
28 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with

attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours actually worked including, but not limited to, all hours he was subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 14.

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

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

33. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all

overtime hours worked, and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

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

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

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

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

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FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

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

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

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

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

45. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation including, among other things, unpaid and/or underpaid overtime and minimum wages owed, and meal & rest period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform

1 policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all
2 earned wages at the end of employment in a timely manner pursuant to the requirements of Labor
3 Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of
4 Labor Code § 203.

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

10 **SIXTH CAUSE OF ACTION**

11 **WAGE STATEMENT VIOLATIONS**

12 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 52. Defendants have engaged and continue to engage in unfair and/or unlawful
6 business practices in California in violation of California Business and Professions Code § 17200
7 et seq., by failing to pay Plaintiff and the Classes all minimum and overtime wages, provide all
8 required meal and rest periods, or pay premium payments in lieu thereof, failing to furnish
9 accurate, itemized wage statements, failing to reimburse for necessary business expenses, and
10 willfully failing to timely pay Plaintiff and members of the Waiting Time class all final wages
11 due upon separation of employment.

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

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

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

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

28 ///

1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

9 59. Due to Defendants’ unlawful policy and practice of requiring employees to
10 purchase their own work boots, aprons and sleeves in the performance of their work duties,
11 Defendants have violated Labor Code § 2802.

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

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

18 **NINTH CAUSE OF ACTION**

19 **UNLAWFUL DEDUCTIONS FROM EARNED WAGES**

20 **(AGAINST ALL DEFENDANTS)**

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

22 63. This cause of action is brought pursuant to Labor Code §§ 221, 227.3, which
23 makes it unlawful for an employer to make deductions from an employee’s earned wages.

24 64. Plaintiff and members of the Paid Vacation Class earned paid vacation time
25 throughout the calendar year and under California law, accrued paid vacation time is a form of
26 earned wages. Earned and unused vacation time must be paid at the employee’s final rate of pay
27 in accordance with the employment policy.

28 65. Defendants’ policy and/or practice of paying Plaintiff and members of the Paid

1 Vacation Class less than their final rate is unlawful and creates an entitlement to recovery by
2 Plaintiff and members of the Paid Vacation Class for unpaid wages, interest, attorneys' fees and
3 costs, in a civil action according to California Labor Code §§ 218.6, 221 and Code of Civil
4 Procedure § 1021.5.

5 **TENTH CAUSE OF ACTION**
6 **PRIVATE ATTORNEYS GENERAL ACT**
7 **(AGAINST ALL DEFENDANTS)**

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

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

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

- 552, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
 - c. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
 - d. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;
 - e. Failing to reimburse Plaintiff, the Employee Expense Class, and other aggrieved employees for 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 provide Plaintiff, the Vacation Pay Class and other aggrieved employees all vested vacation benefits in violation of Labor Code §§ 221 and 227.3;
 - g. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
 - h. 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;
 - i. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
 - j. 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;

k. 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;

l. 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

m. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198.

68. On October 25, 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 67 (a)-(m). 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.

69. 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;

1 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
2 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2,
3 1198 and Wage Order 14 § 5(A);

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

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

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

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

13 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
14 226;

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

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

20 12. Upon the Ninth Cause of action, for compensatory, consequential, general and
21 special damages according to proof pursuant to Labor Code §§ 221, 227.3;

22 13. Upon the Tenth Cause of Action, for (1) \$100.00 for each initial violation for each
23 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
24 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
25 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
26 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
27 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
28 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 the violations of the Labor Code Sections cited in Labor Code § 2699.5.

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

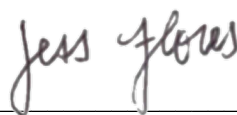
15. On all causes of action, for attorneys' fees and costs as provided by Labor Code §226, and Code of Civil Procedure § 1021.5; and

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

Dated: January 9, 2024

Respectfully submitted,
STANSBURY BROWN LAW, PC

By:



Daniel J. Brown
Jessica Flores
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

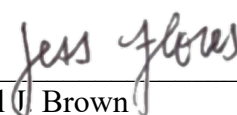
Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: January 9, 2024

Respectfully submitted,

STANSBURY BROWN LAW, PC

By:



Daniel J. Brown
Jessica Flores
Attorneys for Plaintiff

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