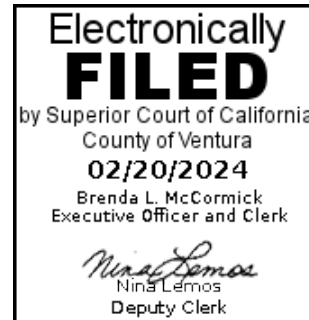




Tuvia Korobkin, Esq. # 268066
tuvia@abramsonlabor.com
Neil M. Larsen, Esq. #276490
neil@abramsonlabor.com
Jennifer Rivera, Esq. #353268
jennifer.r@abramsonlabor.com
ABRAMSON LABOR GROUP
1700 W. Burbank Blvd.
Burbank, California 91506
Tel: (213) 493-6300
Fax: (213) 723-2522

Attorneys for Plaintiff

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

LEON ODEN, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

DAIRY FARMERS OF AMERICA, INC., a
corporation; and DOES 1 through 100, inclusive,
Defendants.

Case No. 2023CUOE017859

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

- (1) **FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) **FAILURE TO PAY MEAL PERIOD
PREMIUMS AT THE REGULAR
RATE OF COMPENSATION
(LABOR CODE §§ 226.7, 1198)**
- (3) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (4) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (5) **UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*); and**
- (6) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Leon Oden (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this Class and Representative Action Complaint against Dairy Farmers of America,
3 Inc., a corporation; and Does 1 through 100, inclusive (collectively, “Defendants”), and on
4 information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 class action for recovery of unpaid wages and penalties under California Business and Professions
8 Code section 17200, *et. seq.*; Labor Code sections 201-204, 226, 226.7, 510, 558, 1194, 1198,
9 2698 *et seq.*; and Industrial Welfare Commission Wage Order No. 1 (“Wage Order 1”), in addition
10 to seeking declaratory relief and restitution. This class action is brought pursuant to California
11 Code of Civil Procedure section 382. This Court has jurisdiction over Defendants’ violations of
12 the California Labor Code because the amount in controversy exceeds this Court’s jurisdictional
13 minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
23 the filing of this action and within the statute of limitations periods applicable to each cause of
24 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
25 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
26 and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-
27 204, 226, 226.7, 510, 558, 1194, and 1198, 2698 *et seq.*; California Business & Professions Code
28 § 17200, *et seq.* (Unfair Competition); and Wage Order 1, which sets employment standards for

1 the manufacturing industry.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
3 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
4 business as a beverage product manufacturer, and that they employed Plaintiff and other similarly
5 situated non-exempt employees within Ventura County and the state of California.

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

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

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

22 8. At all times mentioned herein, Defendants, and each of them, were members of
23 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
24 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
25 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
26 Members (as defined in Paragraph 14).

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

10. During Plaintiff's employment with Defendants, Defendants failed to compensate Plaintiff and other non-exempt employees' overtime and/or double-time compensation at one-and-one-half times (or two times) employees' "regular rate" of pay. Specifically, Defendants failed to include non-discretionary bonuses, shift premium wages, and/or other remuneration that is not excludable from the regular rate (such forms of remuneration shall be referred to herein collectively as "Incentive Pay"), when calculating overtime and/or double-time wages. For example, in the pay period of February 19-March 4, 2023, Plaintiff's wage statements reflect that he earned a 'gainshare' bonus of \$606.70 as well as a \$17.33 shift premium, and that he worked 57.85 regular hours at a rate of \$33.00 per hour, 59.79 overtime hours at a rate of \$49.50 per hour, and .27 double-time hours at a rate of \$33.00 per hour. Thus, Plaintiff's overtime hours were paid at one-and-one-half times his *base* rate of pay of \$33.00 and Plaintiff's doubletime hours were paid equal to his *base* rate of pay, without incorporating the value of his non-discretionary bonus or his shift premium. Likewise, in the March 5-March 18, 2023 pay period, Plaintiff's wage statements reflect that he earned a 'taxable fringe' of \$42.20, earned a \$14.27 shift premium, worked 48.35 regular hours paid at \$33.99 per hour, 43.77 overtime hours paid at \$50.985 per hour, and .13 double-time hours paid at \$33.99 per hour; again, Defendants paid his overtime compensation at 1.5 times his *base* rate of pay of \$33.99 per hour and his doubletime compensation equal to his *base* rate of pay, without incorporating the value of the 'taxable fringe' or shift premium in the regular rate. As a result of Defendants' failure to incorporate Incentive Pay into the regular rate of pay, Plaintiff and other non-exempt employees have been underpaid their overtime and/or double-time compensation.

11. Defendants have also failed to pay meal period premiums to Plaintiff and other non-exempt employees at one hour of their “regular rate of compensation” as required under Labor Code § 226.7. The California Supreme Court has held that the terms “regular rate of pay” used in Labor Code § 510 and “regular rate of compensation” used in Labor Code § 226.7 are

1 synonymous, and therefore, just as bonuses and other remuneration must be incorporated into the
2 “regular rate of pay” when calculating overtime pay, they must also be incorporated into the
3 “regular rate of compensation” when calculating meal period premiums under Labor Code §
4 226.7. *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858, 862 (2021) (holding “that the
5 terms are synonymous: ‘regular rate of compensation’ under section 226.7(c), like ‘regular rate
6 of pay’ under section 510(a), encompasses all non-discretionary payments, not just hourly
7 wages.”) When paying meal period premiums, which were denoted as “Meal Period Prm” on
8 wage statements, Defendants have failed to incorporate bonuses, shift premiums, and other pay
9 that may not be excluded from the regular rate and have thereby underpaid Plaintiff and other
10 non-exempt employees their meal period premium wages. For example, in the pay periods
11 mentioned in the immediately preceding paragraph, Plaintiff earned Incentive Pay including a
12 ‘gainshare bonus’, a ‘taxable fringe’ payment, and/or shift premium wages, but Defendants paid
13 Plaintiff’s meal period premiums at his *base rate* of pay, and failed to incorporate the Incentive
14 Pay into the regular rate when calculating his meal period premiums. As a result of Defendants’
15 failure to incorporate these sums into the regular rate, Plaintiff and other non-exempt employees
16 have been underpaid their meal period premiums under Labor Code § 226.7.

17 12. Defendants have also provided Plaintiff and other non-exempt employees with
18 inaccurate and/or incomplete wage statements, in that the wage statements issued to Plaintiff and
19 other employees were facially deficient because they failed to list the correct rate of pay for
20 doubletime hours worked and failed to list the hours and rate of pay for shift premium wages, and
21 therefore, failed to comply with Labor Code § 226(a)(9). Specifically, the wage statements issued
22 by Defendants list the doubletime rate of pay as being equal to the *base rate* of pay, and
23 Defendants failed to list the hours and rate of pay for shift premium wages. For example, in the
24 March 5-18, 2023 pay period cited above, Plaintiff’s wage statement simply listed \$14.27 in
25 “Shift Premium” wages without listing an hourly rate or number of hours worked for the shift
26 premium, and in the same pay period, Plaintiff’s wage statement listed \$33.90 as the double-time
27 “rate” of pay, which was actually Plaintiff’s *base rate* of pay for that pay period. Plaintiff is
28 informed and believes, and thereon alleges, that Defendants have issued similar wage statements

1 to all of its employees during the relevant time period. Thus, the wage statements issued to
2 Plaintiff and Defendants' other employees, failed to comply with the requirements set forth by
3 Labor Code § 226(a)(9).

4 13. As a result of Defendants' failure to pay all overtime wages, and failure to pay
5 meal period premium wages at the correct rate of pay, Defendants failed to pay all wages to
6 Plaintiff and other formerly employed non-exempt employees at the separation of their
7 employment. Additionally, Defendants failed to timely pay Plaintiff final wages owed to him.
8 Specifically, Defendants terminated Plaintiff's employment on March 24, 2023, but did not
9 provide Plaintiff with his final wages until March 27, 2023 or later.

10 **CLASS ACTION ALLEGATIONS**

11 14. Class Definitions¹: Plaintiff bring this action on behalf of himself and the
12 following Classes pursuant to Section 382 of the Code of Civil Procedure:

13 a. The Overtime Class consists of all of Defendants' current and former non-exempt
14 employees in California who earned Incentive Pay and also worked overtime and/or
15 double-time hours in a corresponding pay period, at any time from four years immediately
16 preceding the filing of this action through the present.

17 b. The Meal Period Premium Underpayment Class consists of all of Defendants'
18 current and former non-exempt employees in California who received a meal period
19 premium and also received Incentive Pay in a corresponding pay period, at time from four
20 years immediately preceding the filing of this action through the present.

21 c. The Derivative Wage Statement Class consists of the Overtime Class and Meal
22 Period Premium Underpayment Class who received a wage statement at any time from one
23 year immediately preceding the filing of this action through the present.

24 d. The Direct Wage Statement Class consists of all of the Defendants' current and
25 former employees in California who in at least one pay period were issued a wage statement
26

27 ¹ A prior class action settlement in *Mathew Angelette v. Dairy Farmers of America, Inc.*, Ventura
28 Superior Court, Case No. 56-2021-00554611-CU-OE-VTA, resolved the Labor Code violations
alleged herein through December 31, 2022. Thus, for those class members who were Participating
Class Members in *Angelette*, the putative class period begins on January 1, 2023.

1 that failed to list the correct doubletime rate of pay and/or failed to list the rate and hours
2 worked for shift premium wages, at any time from one year immediately preceding the
3 filing of this action through the present.

4 e. The Derivative Waiting Time Class consists of all members of the Overtime Class
5 and Meal Period Premium Underpayment Class who are no longer employed by
6 Defendants and whose employment with Defendants ended at any time from three years
7 immediately preceding the filing of this lawsuit through the present.

8 f. The Direct Waiting Time Class consists of Defendants' former non-exempt
9 employees in California who were not paid their final wages at the time of discharge or
10 within 72 hours of notice of quitting, at any time from three years immediately preceding
11 the filing of this lawsuit through the present.

12 15. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
13 joinder of all members would be unfeasible and impracticable. The membership of the Classes is
14 unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than
15 fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via
16 Defendants' employment records.

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

- 21 i. Whether Defendants' overtime practices violate the applicable Labor Code
22 provisions including, but not limited to, Sections 510 and 1194 by
23 requiring overtime work and not paying the Overtime Class for said work
24 according to the overtime laws of the State of California;
- 25 ii. Whether Defendants paid meal period premiums to members of the Meal
26 Period Premium Underpayment Class at the regular rate of compensation
27 pursuant to Labor Code § 226.7;
28

1 iii. Whether Defendants furnished legally compliant wage statements to
2 members of the Derivative Wage Statement Class and Direct Wage
3 Statement Class pursuant to Labor Code § 226; and

4 iv. Whether Defendants paid all wages due to members of the Derivative
5 Waiting Time Class and Direct Waiting Time Class at the time of
6 separation of employment.

7 17. **Predominance of Common Questions:** Common questions of law and fact
8 predominate over questions that affect only individual Class members. The common questions
9 set forth above are numerous and substantial and stem from Defendants' policies and/or practices
10 applicable to each Class member, such as Defendants' overtime, wage statement, meal period,
11 and final wage policies/practices. As such, the common questions predominate over individual
12 questions concerning each individual class member's showing as to his or her eligibility for
13 recovery or as to the amount of his or her damages.

14 18. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
15 Plaintiff was employed by Defendants as a non-exempt employee in California during the
16 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As
17 alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned overtime
18 wages, was subject to Defendants' uniform meal period policies/practices, was furnished with
19 inaccurate wage statements, and was deprived of all final wages upon his separation of
20 employment from Defendants.

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

27 20. **Superiority:** The California Labor Code is broadly remedial in nature and serves
28 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 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 14 are maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

22. 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.

23. 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 1. Wage Order 1, § 3 requires an employer to pay an employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on the seventh consecutive workday in a workweek. Wage Order 1, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours in a workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and Overtime Class members to work overtime hours but did not compensate them at one and one-half times (or two times) their regular rate of pay for such hours.

24. 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, 218.6, 510, 558, 1194, and 1198, Wage Order 1, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PAY MEAL PERIOD PREMIUMS AT REGULAR RATE OF COMPENSATION (AGAINST ALL DEFENDANTS)

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

26. At all relevant times, Defendants were required to pay meal period premiums at employees’ “regular rate of compensation” pursuant to Labor Code § 226.7. “Regular rate of compensation” is synonymous with “regular rate of pay” as used in Labor Code § 510. Thus, meal period premiums must be calculated in the same manner as the “regular rate of pay” is calculated for overtime purposes, and must be incorporate the value of Incentive Pay.

27. As alleged herein, Defendants failed to incorporate the value of Incentive Pay, and otherwise failed to accurately calculate the regular rate of compensation, when calculating meal period premiums for Plaintiff and members of the Meal Period Premium Underpayment Class, and thus underpaid Plaintiff and members of the Meal Period Premium Underpayment Class for their meal period premium wages due under Labor Code § 226.7.

28. As a result of the foregoing, Plaintiff and members of the Meal Period Premium Underpayment Class are entitled to the amount of underpayment of meal period premium wages, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

THIRD CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

30. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of the Direct Wage Statement Class and Derivative Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all overtime wages earned, all meal period premium wages earned, and the correct rates of pay and hours worked at each rate of pay, in violation of Labor Code § 226.

31. Defendants' failure to furnish Plaintiff and members of the Direct Wage Statement Class and Derivative Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their overtime wages and meal period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

32. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Classes in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs

of suit pursuant to California Labor Code §§ 226 and 226.3.

FOURTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

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

35. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Direct Waiting Time Class and Derivative Waiting Time Class all final wages due to them at their separation from employment, including (but not limited to) underpaid overtime wages and underpaid meal period premium wages.

36. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Direct Waiting Time Class and Derivative Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.

37. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Direct Waiting Time Class and Derivative Waiting Time Class their earned wages upon separation from employment results in a continued payment of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

///

///

///

1 **FIFTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 39. Defendants have engaged, and continue to engage, in unfair and/or unlawful
6 business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay
7 Plaintiff and the Classes all overtime wages due, failing pay meal period premium wages owed,
8 failing to furnish accurate and complete itemized wage statements in violation of Labor Code §
9 226, and failing to pay all earned wages at the time of their separation of employment.

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

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

19 42. The acts complained of herein occurred within the four years immediately
20 preceding the filing of this action.

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

26 ///

27 ///

28 ///

1 **SIXTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **(AGAINST ALL DEFENDANTS)**

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

5 45. Defendants have committed several Labor Code violations against Plaintiff and
6 other aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of Labor
7 Code § 2698 *et seq.* Plaintiff, acting on behalf of herself and other aggrieved employees, brings
8 this representative action against Defendants to recover the civil penalties due to Plaintiff, other
9 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
10 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
11 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
12 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
13 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
14 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
15 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
16 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and
17 \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay
18 period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
19 employee per pay period for those violations of the Labor Code for which no civil penalty is
20 specifically provided, based on the following Labor Code violations:

21 a. Failing to pay Plaintiff and other aggrieved employees all overtime and/or
22 double-time compensation earned, in violation of Labor Code §§ 204, 510, 558,
23 1194, and 1198;

24 b. Failing to pay meal period premiums to Plaintiff and other aggrieved employees
25 at the employees’ respective regular rates of compensation, in violation of
26 Labor Code §§ 204, 226.7, 512, 516, 558, and 1198;

27 c. Failing to furnish Plaintiff and other aggrieved employees with accurate and
28 complete itemized wage statements, in violation Labor Code §§ 226 and 1198;

- 1 d. Failing to pay all wages owed to Plaintiff and other aggrieved former employees
2 at their separation of employment, in violation of Labor Code §§ 201-203; and
3 e. Failing to maintain accurate records (including but not limited to records of
4 actual hours worked) on behalf of Plaintiff and other aggrieved employees, in
5 violation of Labor Code §§ 1174 and 1198.

6 46. On or about December 14, 2023, Plaintiff notified Defendant Dary Farmers of
7 America, Inc., via certified mail, and the California Labor and Workforce Development Agency
8 (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s
9 intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect
10 to the violations of the California Labor Code identified in paragraph 45(a)-(e) above. Now that
11 sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these
12 violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the
13 Private Attorneys General Act with respect to these violations.

14 47. Plaintiff was compelled to retain the services of counsel to file this court action to
15 protect her interests and the interests of other aggrieved employees, and to assess and collect the
16 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which
17 she is entitled to recover under California Labor Code § 2699(g).

18 **PRAYER**

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

- 21 1. For an order certifying the proposed Classes;
22 2. For an order appointing Plaintiff as representative of the Classes;
23 3. For an order appointing counsel for Plaintiff as counsel for the Classes;
24 4. Upon the First Cause of Action, for compensatory, consequential, general, and
25 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
26 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
27 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;

28 ///

1 6. Upon the Third Cause of Action, for statutory penalties pursuant to Labor Code §
2 226, *et seq.*;

3 7. Upon the Fourth Cause of Action, for statutory waiting time penalties pursuant to
4 Labor Code §§ 201-203;

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

9 9. Upon the Sixth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
10 employees, and the State of California according to proof pursuant to Labor Code § 2699,
11 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
12 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
13 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
14 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
15 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
16 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
17 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
18 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
19 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
20 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
21 Labor Code § 2699(f);

22 10. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
23 §§ 218.6, 1194(a), and 2802(b); Civil Code § 3287, and Art. XV, § 1 of the California
24 Constitution;

25 11. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
26 226(e), 1194 *et seq.*, 2699(g) and Code of Civil Procedure § 1021.5; and

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

28 ///

1
2 Date: February 20, 2024

Respectfully submitted,
ABRAMSON LABOR GROUP

3 By:


Tuvia Korobkin
Attorneys for Plaintiff

4
5 **DEMAND FOR JURY TRIAL**

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

7
8 Dated: February 20, 2024

Respectfully submitted,
ABRAMSON LABOR GROUP

9 By:


Tuvia Korobkin
Attorneys for Plaintiff