

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

E-FILED
8/14/2024 11:50 AM
Superior Court of California
County of Fresno
By: S. Garcia, Deputy

Attorneys for Plaintiff

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

EVERARDO GARCIA, as an individual, and
on behalf of all others similarly situated,

Plaintiff,

v.

FOSTER FARMS, LLC, a California limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 24CECG00162

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

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

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

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

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Everardo Garcia (hereinafter “Plaintiff”), as an individual, and on behalf of all
2 others similarly situated, hereby brings this Second Amended Class and Representative Action
3 Complaint against Foster Farms, LLC; and DOES 1 to 100, inclusive (collectively “Defendants”),
4 and on information and belief alleges as follows:

5 **JURISDICTION**

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

14 **VENUE**

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

20 **PARTIES**

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

all members of the Classes.

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff worked for Defendants from approximately July 22, 2019 to approximately February 3, 2023 at their Foster Farms Poultry Cedar Plant location. During his employment, Plaintiff worked in Defendants' hatchery as a machine attendant monitoring the temperature and humidity in incubators and maintaining the incubators and related machines. Plaintiff was generally scheduled to work for five (5) days per week. Every three months, Plaintiff rotated through one of four work schedules. For one set of three months, Plaintiff was scheduled to work from approximately 3:00 a.m. to approximately 11:30 a.m. For a second set of three months, Plaintiff was scheduled to work from approximately 7:00 a.m. to approximately 3:30 p.m. For a third set of three months, Plaintiff was scheduled to work from approximately 11:00 a.m. to approximately 7:30 p.m. For a fourth set of three months, Plaintiff was scheduled to work from approximately 7:00 p.m. to approximately 3:30 a.m.

10. Throughout the duration of Plaintiff's employment with Defendants, Plaintiff and other non-exempt employees were not paid for all hours worked as Defendants required Plaintiff and other employees to work off-the-clock. Defendants instructed Plaintiff and other non-exempt employees not to clock in before putting on their work uniform consisting in part of coveralls, a helmet, a mask, gloves and boots. Plaintiff and other non-exempt employees spent at least approximately 10 minutes putting on and removing their uniforms before clocking in and after clocking out.

11. Furthermore, Plaintiff and other non-exempt employees worked overtime hours, based on the requirements of Wage Order 14, but did not receive overtime compensation equal to one and one-half times their regular rates of pay for all overtime hours worked. Defendants failed to pay overtime compensation due to Plaintiff and other non-exempt employees when they worked off the clock. As a result, Defendants failed to ensure that Plaintiff and other non-exempt employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Plaintiff and other non-exempt employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 14.

1 12. Plaintiff and other non-exempt employees were not authorized to take all legally
2 required rest periods. By way of example, Defendants instructed Plaintiff that he could not leave
3 the premises during his rest period because he had to attend to the incubators and related
4 machines. As another example, at least once per week, Plaintiff's rest period was interrupted
5 because Defendants required Plaintiff to address an alarm or other work matter. Despite
6 Defendants' failure to authorize and permit Plaintiff and other non-exempt employees to take all
7 lawful paid rest periods, due to their uniform and unlawful practices, Defendants did not provide
8 Plaintiff and other non-exempt employees with an hour of pay at their regular rate for each rest
9 period violation as required by Labor Code § 226.7.

10 13. Defendants did not provide Plaintiff and other non-exempt employees with legally
11 compliant meal periods when they worked shifts in excess of 5.0 hours. By way of example,
12 consistent with their rest period policies, Defendants instructed Plaintiff that he could not leave
13 the premises during his meal period because he had to attend to the incubators and related
14 machines. As another example, at least once per week, Plaintiff's meal period was interrupted
15 because Defendants required Plaintiff to address an alarm or other work matter. Despite
16 Defendants' failure to provide Plaintiff and other non-exempt employees with all lawful meal
17 periods due to their uniform and unlawful practices, Defendants did not provide Plaintiff and
18 other non-exempt employees with an hour of pay at their regular rate for each meal period
19 violation as required by Labor Code § 226.7.

20 14. Furthermore, Defendants failed to adequately reimburse Plaintiff and other non-
21 exempt employees for all reasonable and necessary work expenditures, including but not limited
22 to, requiring Plaintiff to purchase his own tools to fix broken incubator/machine parts. Plaintiff
23 was not ever provided any reimbursement for these necessary uses.

24 15. Additionally, Defendants forced Plaintiff to wait approximately two months for
25 his final paycheck, in violation of Labor Code 201.

26 16. Defendants have maintained inaccurate payroll records, failed to timely pay all
27 wages owed to employees, and failed to timely pay separating employees at the time of their
28

1 separation, and issued inaccurate wage statements. This is in part a result of Defendants' failure
2 to accurately compensate Plaintiff and other non-exempt employees for all minimum and
3 overtime wages, and failure to pay premium pay for failing to provide all required meal periods
4 and authorize all rest periods.

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

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

26 **CLASS ACTION ALLEGATIONS**

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

- 1 a. The Minimum Wage Class consists of all current and former non-exempt
2 employees of Defendants who performed in California at Defendants' Cedar Plant
3 location and were subject to Defendants' timekeeping systems and/or practices
4 during the four years immediately preceding the filing of this lawsuit through the
5 present.
- 6 b. The Overtime Wage Class consists of all current and former non-exempt
7 employees of Defendants who performed work in California at Defendants' Cedar
8 Plant location and who worked overtime hours during the four years immediately
9 preceding the filing of this lawsuit through the present.
- 10 c. The Rest Period Class consists of all current and former non-exempt employees of
11 Defendants who performed work in California at Defendants' Cedar Plant location
12 and who worked at least one shift in excess of 3.5 hours during the four years
13 immediately preceding the filing of this lawsuit through the present.
- 14 d. The Meal Period Class consists of all current and former non-exempt employees
15 of Defendants who performed work in California at Defendants' Cedar Plant
16 location and worked at least one shift in excess of 5.0 hours without a meal period
17 of at least 30 minutes in duration commencing prior to the conclusion of the fifth
18 hour of work, and who do not have a corresponding meal period premium payment
19 made for such shifts.
- 20 e. The Employee Expense Class consists of all current and former non-exempt
21 employees of Defendants who performed work in California at Defendants' Cedar
22 Plant location who were not reimbursed for expenses in the performance of their
23 job duties, including, but not limited to tools during the four years immediately
24 preceding the filing of this lawsuit to the present.
- 25 f. The Wage Statement Class consists of all members of the Rest Period Class,
26 Minimum Wage Class, Overtime Class, and/or Meal Period Class who received a
27
28

wage statement from Defendants during the one year immediately preceding the filing of this lawsuit through the present.

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

20. **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 one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

21. **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;

- 1 v. Whether Defendants provided all legally compliant rest periods to members of the
2 Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 3 vi. Whether Defendants failed to reimburse members of the Employee Expense Class
4 for business expenditures necessarily incurred in the performance of their duties;
- 5 vii. Whether Defendants provided accurate, itemized wage statements to members of
6 the Classes; and
- 7 viii. Whether Defendants' policies and/or practices for the timing and amount of
8 payment of final wages to members of the Waiting Time Class at the time of
9 separation from employment were lawful.

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

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

27 24. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
28 to represent fairly and adequately the interests of the members of the Classes. Moreover,

1 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
2 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
3 and-hour class actions in state and federal courts in the past and are committed to vigorously
4 prosecuting this action on behalf of the members of the Classes.

5 25. **Superiority:** The California Labor Code is broadly remedial in nature and serves
6 an important public interest in establishing minimum working conditions and standards in
7 California. These laws and labor standards protect the average working employee from
8 exploitation by employers who have the responsibility to follow the laws and who may seek to
9 take advantage of superior economic and bargaining power in setting onerous terms and
10 conditions of employment. The nature of this action and the format of laws available to Plaintiff
11 and members of the Classes make the class action format a particularly efficient and appropriate
12 procedure to redress the violations alleged herein. If each employee were required to file an
13 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
14 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
15 their vastly superior financial and legal resources. Moreover, requiring each member of the
16 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
17 employees who would be disinclined to file an action against their former and/or current employer
18 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
19 employment. Further, the prosecution of separate actions by the individual class members, even
20 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
21 with respect to the individual class members against Defendants herein; and which would
22 establish potentially incompatible standards of conduct for Defendants; and/or legal
23 determinations with respect to individual class members which would, as a practical matter, be
24 dispositive of the interest of the other class members not parties to adjudications or which would
25 substantially impair or impede the ability of the class members to protect their interests. Further,
26 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
27 individual prosecution considering all of the concomitant costs and expenses attending thereto.
28

As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

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

28. 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.

29. 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.

30. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and

1 the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated
2 damages, including interest thereon, statutory penalties, and attorneys' fees and costs of suit
3 according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of Civil
4 Procedure § 1021.5.

5 **SECOND CAUSE OF ACTION**

6 **OVERTIME VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

23 **THIRD CAUSE OF ACTION**

24 **MEAL PERIOD VIOLATIONS**

25 **(AGAINST ALL DEFENDANTS)**

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

27 36. Plaintiff is informed and believe, and based thereon allege, that Defendants failed
28 in their affirmative obligation to provide all of their non-exempt employees in California,

1 including Plaintiff and members of the Meal Period Class with all legally compliant meal periods
2 in accordance with the mandates of the California Labor Code and Wage Order 14, § 11. Despite
3 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and the Meal
4 Period Class at their respective regular rate of pay, in accordance with California Labor Code §§
5 204, 210, 226.7, and 512.

6 37. As a result, Defendants are responsible for paying premium compensation for meal
7 period violations including interest thereon, as well as statutory penalties, civil penalties, and
8 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 14, and Civil Code §§
9 3287(b) and 3289.

10 **FOURTH CAUSE OF ACTION**

11 **REST PERIOD VIOLATIONS**

12 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

24 **FIFTH CAUSE OF ACTION**

25 **WAITING TIME PENALTIES**

26 **(AGAINST ALL DEFENDANTS)**

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

28 43. 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.

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

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

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

48. Defendants' failures in furnishing Plaintiff and the Wage Statement Class with

1 complete and accurate itemized wage statements resulted in actual injury, as said failures led to,
2 among other things, the non-payment of all minimum wages, overtime wages, meal and rest
3 period premium wages, and deprived them of the information necessary to identify the
4 discrepancies in Defendants' reported data.

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

9 **SEVENTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

8 **EIGHTH CAUSE OF ACTION**

9 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

10 **(AGAINST ALL DEFENDANTS)**

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

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

16 58. Due to Defendants' unlawful policy and practice of requiring employees to
17 purchase their own work boots, aprons and sleeves in the performance of their work duties,
18 Defendants have violated Labor Code § 2802.

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

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

25 **NINTH CAUSE OF ACTION**

26 **PRIVATE ATTORNEYS GENERAL ACT**

27 **(AGAINST ALL DEFENDANTS)**

28 61. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though

1 fully set forth herein.

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

- 19
- 20 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
21 Wage Class, and other aggrieved employees in violation of Labor Code §§ 551-
22 552, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
 - 23 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
24 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
25 1194, and 1198;
 - 26 c. Failing to authorize and permit all legally required rest periods, and failure to
27 pay rest period premium wages, to Plaintiff, the Rest Period Class, and other
28 aggrieved employees at the regular rate of compensation in violation of Labor

Code §§ 226.7, 516 and 558;

- 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, 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.

63. On January 11, 2024, Plaintiff notified Defendants via certified mail, and notified

1 the California Labor and Workforce Development Agency (“LWDA”) via its website, of
2 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
3 civil penalties under California Labor Code § 2698 et seq. with respect to violations of the
4 California Labor Code identified in Paragraph 62 (a)-(l). Now that sixty-five days have passed
5 from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not
6 provided notice that it intends to investigate the violations, Plaintiff has exhausted his
7 administrative requirements for bringing a claim under the Private Attorneys General Act with
8 respect to these violations.

9 64. Plaintiff was compelled to retain the services of counsel to file this court action to
10 protect his interests and the interests of other similarly aggrieved employees, and to assess and
11 collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and
12 costs, which he is entitled to receive under California Labor Code § 2699(g).

13 **PRAYER**

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

16 1. For an order certifying the proposed Classes;
17 2. For an order appointing Plaintiff as representative of the Classes;
18 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
19 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
20 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2,
21 1198 and Wage Order 14 § 5(A);

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

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

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

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

3 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
4 226;

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

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

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

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

22 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
23 §226, and Code of Civil Procedure § 1021.5; and

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

25 ///

26 ///

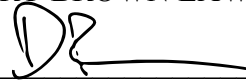
27 ///

1
2 Dated: July 24, 2024
3

Respectfully submitted,

STANSBURY BROWN LAW, PC

4 By:



Daniel J. Brown

Jessica Flores

Attorneys for Plaintiff
5
6
7

8 **DEMAND FOR JURY TRIAL**
9

10 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.
11

Respectfully submitted,

12 Dated: July 24, 2024
13

STANSBURY BROWN LAW, PC



14 By:

Daniel J. Brown

Jessica Flores

Attorneys for Plaintiff
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 August 14, 2024 I served the document listed below on the parties in this action as follows:

- **SECOND 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.

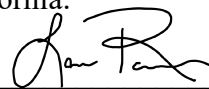
☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.

☐ (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.

☒ (BY EMAIL or ELECTRONIC TRANSMISSION) By electronically transmitting the document(s) listed above to the email address(es) of the person(s) set forth on the attached service list from the email address assistant@stansburybrownlaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. Service by e-mail was made pursuant to agreement of the parties, confirmed in writing, or as an additional method of service as a courtesy to the parties or pursuant to Court Order. See Cal. R. Ct. R. 2.260.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 14, 2024 at South Gate, California.



Laura Romero

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

WANGER JONES HELSLEY PC (via Email)

Michael S. Helsley, Esq.
Colleen E. Busby, Esq.
Dena Richardson
Belinda Ordway
mhelsley@wjhattorneys.com
cbusby@wjhattorneys.com
drichardson@wjhattorneys.com
bordway@wjhattorneys.com
265 E. River Park Circle
Suite 310
Fresno, California 93720

Attorneys for Defendant Foster Farms, LLC