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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN JOAQUIN**

13 **FIDENCIO MARTINEZ, individually, and on**
14 **behalf of all others similarly situated,**

15 **Plaintiff,**

16 **vs.**

17 **DELICATO VINEYARDS, LLC, a limited**
18 **liability company; and DOES 1 through 10,**
19 **inclusive,**

20 **Defendants**

Case No.: STK-CV-UOE-2024-0005241

FIRST AMENDED COMPLAINT

**AMENDED AS OF RIGHT PURSUANT
TO LABOR CODE § 2699.3(C)**

1. Failure to Pay Minimum Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197];
2. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198];
3. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512];
4. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7];
5. Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802];
6. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
7. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226];
and
8. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.];
9. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

DEMAND FOR JURY TRIAL

FILED

2024 JUL -8 PM 3: 21

STEPHANNE DOHRER, CLERK
NATALIE BASHAW
BY _____

BY FAX

TABLE OF CONTENTS

INTRODUCTION & PRELIMINARY STATEMENT	1
THE PARTIES	3
A. Plaintiff.....	3
B. Defendants.....	3
ALLEGATIONS COMMON TO ALL CAUSES OF ACTION	4
FIRST CAUSE OF ACTION.....	8
SECOND CAUSE OF ACTION.....	9
THIRD CAUSE OF ACTION	10
FOURTH CAUSE OF ACTION.....	11
FIFTH CAUSE OF ACTION.....	12
SIXTH CAUSE OF ACTION.....	12
SEVENTH CAUSE OF ACTION.....	13
EIGHTH CAUSE OF ACTION.....	14
NINTH CAUSE OF ACTION	17
PRAYER FOR RELIEF	19
DEMAND FOR JURY TRIAL.....	23

1 Plaintiff Fidencio Martinez ("Plaintiff"), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants Delicato Vineyards, LLC, and Does
6 1 through 10 (collectively referred to as "Defendants") for California Labor Code violations and
7 unfair business practices stemming from Defendants' failure to pay minimum wages, failure to
8 pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods,
9 failure to maintain accurate records of hours worked and meal periods, failure to timely pay all
10 wages to terminated employees, failure to indemnify necessary business expenses, and failure to
11 furnish accurate wage statements.

12 2. Plaintiff brings the First through Eighth Causes of Action individually and on
13 behalf of himself.

14 3. Plaintiff brings the Ninth Cause of Action as a representative action under the
15 California Private Attorney General Act ("PAGA") to recover civil penalties that are owed to
16 Plaintiff, the State of California, and past and present non-exempt employees of Defendants
17 employed at any time within the applicable statutory period (hereinafter referred to as the
18 "Aggrieved Employees").

19 4. Defendants own/owned and operate/operated an industry, business, and
20 establishment within the State of California, including San Joaquin County. As such, and based
21 upon all the facts and circumstances incident to Defendants' business in California, Defendants
22 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
23 Commission ("IWC"), and the California Business & Professions Code.

24 5. Despite these requirements, throughout the statutory period Defendants
25 maintained a systematic, company-wide policy and practice of:

- 26 (a) Failing to pay Plaintiff for all hours worked, including all minimum wages,
27 and overtime wages in compliance with the California Labor Code and
28 IWC Wage Orders;

- 1 (b) Failing to provide Plaintiff with timely and duty-free meal periods in
2 compliance with the California Labor Code and IWC Wage Orders, failing
3 to maintain accurate records of all meal periods taken or missed, and
4 failing to pay an additional hour's pay for each workday a meal period
5 violation occurred;
- 6 (c) Failing to authorize and permit Plaintiff to take timely and duty-free rest
7 periods in compliance with the California Labor Code and IWC Wage
8 Orders, and failing to pay an additional hour's pay for each workday a rest
9 period violation occurred;
- 10 (d) Failing to indemnify Plaintiff for necessary business expenses incurred;
- 11 (e) Willfully failing to pay Plaintiff all minimum wages, overtime wages, meal
12 period premium wages, and rest period premium wages due within the time
13 period specified by California law when employment terminates; and
- 14 (f) Failing to maintain accurate records of the hours that Plaintiff worked.
- 15 (g) Failing to provide Plaintiff with accurate, itemized wage statements
16 containing all the information required by the California Labor Code and
17 IWC Wage Orders.

18 6. On information and belief, Defendants, and each of them were on actual and
19 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
20 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
21 willful and deliberate.

22 7. At all relevant times, Defendants were and are legally responsible for all of the
23 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
24 foregoing paragraphs as the employer of Plaintiff. Further, Defendants are responsible for each
25 of the unlawful acts or omissions complained of herein under the doctrine of "respondeat
26 superior".
27
28

THE PARTIES

A. Plaintiff

8. Plaintiff is a California resident that worked for Defendants in the County of San Joaquin, State of California, as a material handler from approximately January 2019 to March 2024.

9. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

10. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant is:

(a) A California corporation with its principal place of business in San Joaquin, California.

(b) A business entity conducting business in numerous counties throughout the State of California, including in San Joaquin County; and

(c) The former employer of Plaintiff, and the current and/or former employer of the Aggrieved Employees. Defendants suffered and permitted Plaintiff and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

11. Plaintiff does not currently know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff in the State of California.

1 13. Plaintiff is informed and believes and thereon alleges that at all relevant times
2 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
3 the Aggrieved Employees, described above, and exercised control over their wages, hours, and
4 working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant
5 times, each Defendant was the principal, agent, partner, joint venturer, officer, director,
6 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
7 predecessor in interest of some or all of the other Defendants, and was engaged with some or all
8 of the other Defendants in a joint enterprise for profit, and bore such other relationships to some
9 or all of the other Defendants so as to be liable for their conduct with respect to the matters
10 alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted
11 pursuant to and within the scope of the relationships alleged above, that each Defendant knew or
12 should have known about, and authorized, ratified, adopted, approved, controlled, aided and
13 abetted the conduct of all other Defendants.

14 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

15 14. Plaintiff is a California resident who worked for Defendants in the County of San
16 Joaquin, State of California during the statutory period. During the statutory period, Defendants
17 misclassified as an exempt employee, when in fact Plaintiff should have been classified as non-
18 exempt.

19 15. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
20 worked (including minimum wages and overtime wages), failed to provide Plaintiff with
21 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
22 periods, failed to indemnify Plaintiff for necessary business expenses, failed to timely pay all
23 final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish
24 accurate wage statements to Plaintiff.

25 16. Throughout the statutory period, Defendants maintained a policy and practice of
26 not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime
27 wages. Plaintiff and the Aggrieved Employees were sometimes required to prepare for work, and
28 told not to come into work without being paid reporting time pay. Also, Plaintiff and the

1 19. Throughout the statutory period, Defendants have wrongfully failed to authorize
2 and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods.
3 Defendants sometimes, but not always, required Plaintiff and the Aggrieved Employees to work
4 in excess of four consecutive hours a day without Defendants authorizing and permitting them to
5 take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or
6 major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees
7 for rest periods that were not authorized or permitted. Defendants also did not adequately inform
8 Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants
9 did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and
10 the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the
11 timing of rest periods. Defendants also did not have adequate policies or practices to verify
12 whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further,
13 Defendants did not maintain accurate records of employee work periods, and therefore
14 Defendants cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods
15 during the middle of each work period. Accordingly, Defendants' policy and practice was to not
16 authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance
17 with California law.

18 20. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
19 Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
20 Defendants without reimbursement, which included the purchase of masks, and the occasional
21 use of personal cellular telephones for work purposes.

22 21. Throughout the statutory period, Defendants willfully failed and refused to timely
23 pay Plaintiff and the Aggrieved Employees at the conclusion of their employment all wages for
24 all minimum wages, overtime wages, meal period premium wages, and rest period premium
25 wages.

26 22. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
27 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
28 rates, and all gross and net wages earned (including correct hours worked, correct wages earned

1 for hours worked, correct overtime hours worked, correct wages for meal periods that were not
2 provided in accordance with California law, correct wages for rest periods that were not
3 authorized and permitted to take in accordance with California law, and Defendant's address).

4 Further, the wage statements do not show Defendant's address as required by California law. As
5 a result of these violations of California Labor Code § 226(a), the Plaintiff and the Aggrieved
6 Employees suffered injury because, among other things:

- 7 (a) the violations led them to believe that they were not entitled to be paid
8 minimum wages, overtime wages, meal period premium wages, and rest
9 period premium wages to which they were entitled, even though they were
10 entitled;
- 11 (b) the violations led them to believe that they had been paid the minimum,
12 overtime, meal period premium, and rest period premium wages, even
13 though they had not been;
- 14 (c) the violations led them to believe they were not entitled to be paid
15 minimum, overtime, meal period premium, and rest period premium wages
16 at the correct California rate even though they were;
- 17 (d) the violations led them to believe they had been paid minimum, overtime,
18 meal period premium, and rest period premium wages at the correct
19 California rate even though they had not been;
- 20 (e) the violations hindered them from determining the amounts of minimum,
21 overtime, meal period premium, and rest period premium owed to them;
- 22 (f) in connection with their employment before and during this action, and in
23 connection with prosecuting this action, the violations caused them to have
24 to perform mathematical computations to determine the amounts of wages
25 owed to them, computations they would not have to make if the wage
26 statements contained the required accurate information;

- 1 (g) by understating the wages truly due them, the violations caused them to
2 lose entitlement and/or accrual of the full amount of Social Security,
3 disability, unemployment, and other governmental benefits;
4 (h) the wage statements inaccurately understated the wages, hours, and wages
5 rates to which Plaintiff and the Aggrieved Employees were entitled, and
6 Plaintiff and the Aggrieved Employees were paid less than the wages and
7 wage rates to which they were entitled.

8 **FIRST CAUSE OF ACTION**

9 **(Against all Defendants for Failure to Pay Minimum Wages for All Hours Worked)**

10 23. Plaintiff incorporates by reference and re-alleges as if fully stated herein
11 paragraphs 1 through 22 in this First Amended Complaint.

12 24. "Hours worked" is the time during which an employee is subject to the control of
13 an employer, and includes all the time the employee is suffered or permitted to work, whether or
14 not required to do so.

15 25. At all relevant times herein mentioned, Defendants knowingly failed to pay to
16 Plaintiff compensation for all hours they worked. By their failure to pay compensation for each
17 hour worked as alleged above, Defendants willfully violated the provisions of Section 1194 of
18 the California Labor Code, and any additional applicable Wage Orders, which require such
19 compensation to non-exempt employees.

20 26. Accordingly, Plaintiff is entitled to recover minimum wages for all non-overtime
21 hours worked for Defendants.

22 27. By and through the conduct described above, Plaintiff has been deprived of his
23 rights to be paid wages earned by virtue of their employment with Defendants.

24 28. By virtue of the Defendants' unlawful failure to pay additional compensation to
25 Plaintiff for her non-overtime hours worked without pay, Plaintiff suffered, and will continue to
26 suffer, damages in amounts which are presently unknown to Plaintiff, but which exceed the
27 jurisdictional minimum of this Court, and which will be ascertained according to proof at trial.
28

29. By failing to keep adequate time records required by California Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage compensation due Plaintiff.

30. Pursuant to California Labor Code section 1194.2, Plaintiff is entitled to recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

31. California Labor Code section 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff was entitled to be paid twice a month at rates required by law, including minimum wages. However, during all such times, Defendants systematically failed and refused to pay Plaintiff all such wages due, and failed to pay those wages twice a month.

32. Plaintiff is also entitled to seek recovery of all unpaid minimum wages, interest, and reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5, 218.6, and 1194(a).

SECOND CAUSE OF ACTION

(Against all Defendants for Failure to Pay Overtime Wages)

33. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this First Amended Complaint.

34. California Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

35. California Labor Code §§ 1194 and 1198 provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, California Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

36. At all times relevant hereto, Plaintiff has worked more than eight hours in a workday, as employees of Defendants.

37. At all times relevant hereto, Defendants failed to pay Plaintiff overtime

1 compensation for the hours she worked in excess of the maximum hours permissible by law as
2 required by California Labor Code § 510 and 1198. Plaintiff is regularly required to work
3 overtime hours.

4 38. By virtue of Defendants' unlawful failure to pay additional premium rate
5 compensation to the Plaintiff for his overtime hours worked, Plaintiff has suffered, and will
6 continue to suffer, damages in amounts which are presently unknown to his but which exceed the
7 jurisdictional minimum of this Court and which will be ascertained according to proof at trial.

8 39. By failing to keep adequate time records required by Labor Code § 1174(d),
9 Defendants have made it difficult to calculate the full extent of overtime compensation due to
10 Plaintiff.

11 40. Plaintiff also requests recovery of overtime compensation according to proof,
12 interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well as the
13 assessment of any statutory penalties against Defendants, in a sum as provided by the California
14 Labor Code and/or other statutes.

15 41. California Labor Code § 204 requires employers to provide employees with all
16 wages due and payable twice a month. The Wage Orders also provide that every employer shall
17 pay to each employee, on the established payday for the period involved, overtime wages for all
18 overtime hours worked in the payroll period. Defendants failed to provide Plaintiff with all
19 compensation due, in violation of California Labor Code § 204.

20 **THIRD CAUSE OF ACTION**

21 **(Against All Defendants for Failure to Provide Meal Periods)**

22 42. Plaintiff incorporates by reference and re-alleges as if fully stated herein
23 paragraphs 1 through 22 in this First Amended Complaint.

24 43. Under California law, Defendants have an affirmative obligation to relieve the
25 Plaintiff of all duty in order to take his first daily meal periods no later than the start of Plaintiff's
26 sixth hour of work in a workday, and to take his second meal periods no later than the start of the
27 eleventh hour of work in the workday. Section 512 of the California Labor Code, and Section 11
28 of the applicable Wage Orders require that an employer provide unpaid meal periods of at least

1 Defendants made it impossible or impracticable to take these uninterrupted rest periods),
2 Defendants willfully violated the provisions of Section 226.7 of the California Labor Code and
3 the applicable Wage Orders.

4 49. Under California law, Plaintiff is entitled to be paid one hour of premium wages
5 rate for each workday she was not provided with all required rest break(s), plus interest thereon.

6 **FIFTH CAUSE OF ACTION**

7 **(Against All Defendants for Failure to Indemnify Necessary Business Expenses)**

8 50. Plaintiff incorporates by reference and re-alleges as if fully stated herein
9 paragraphs 1 through 22 in this First Amended Complaint.

10 51. Defendants violated Labor Code section 2802 and the IWC Wage Orders, by
11 failing to pay and indemnify the Plaintiff for their necessary expenditures and losses incurred in
12 direct consequence of the discharge of his duties or of his obedience to directions of Defendants.

13 52. As a result, Plaintiff was damaged at least in the amounts of the expenses she paid,
14 or which were deducted by Defendants from his wages.

15 53. Plaintiff is entitled to attorney's fees, expenses, and costs of suit pursuant to Labor
16 Code section 2802(c) and interest pursuant to Labor Code section 2802(b).

17 **SIXTH CAUSE OF ACTION**

18 **(Against all Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time**
19 **Penalties)**

20 54. Plaintiff incorporates by reference and re-alleges as if fully stated herein
21 paragraphs 1 through 22 in this First Amended Complaint.

22 55. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if
23 an employer discharges an employee, the wages earned and unpaid at the time of discharge are
24 due and payable immediately, and that if an employee voluntarily leaves his or his employment,
25 his or his wages shall become due and payable not later than seventy-two (72) hours thereafter,
26 unless the employee has given seventy-two (72) hours previous notice of his or his intention to
27 quit, in which case the employee is entitled to his or his wages at the time of quitting.

1 56. Within the applicable statute of limitations, the employment of Plaintiff ended, i.e.
2 was terminated by quitting or discharge. However, during the relevant time period, Defendants
3 failed, and continue to fail to pay, without abatement, all wages required to be paid by California
4 Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72)
5 hours of their leaving Defendants' employ.

6 57. Defendants' failure to pay Plaintiff his wages earned and unpaid at the time of
7 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation
8 of California Labor Code §§ 201 and 202.

9 58. California Labor Code § 203 provides that if an employer willfully fails to pay
10 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
11 continue as a penalty wage from the due date, and at the same rate until paid or until an action is
12 commenced; but the wages shall not continue for more than thirty (30) days.

13 59. Plaintiff is entitled to recover from Defendants their additionally accruing wages
14 for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum
15 pursuant to California Labor Code § 203.

16 60. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, Plaintiff is also
17 entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this
18 action.

19 **SEVENTH CAUSE OF ACTION**

20 **(Against all Defendants for Failure to Provide and Maintain Accurate and**
21 **Compliant Wage Records)**

22 61. Plaintiff incorporates by reference and re-alleges as if fully stated herein
23 paragraphs 1 through 22 in this First Amended Complaint.

24 62. At all material times set forth herein, California Labor Code § 226(a) provides that
25 every employer shall furnish each of his or her employees an accurate itemized wage statement
26 in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours
27 worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate
28 if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made

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

7 63. Defendants have intentionally and willfully failed to provide employees with
8 complete and accurate wage statements. The deficiencies include, among other things, the
9 failure to correctly identify the gross wages earned by Plaintiff, the failure to list the true "total
10 hours worked by the employee," and the failure to list the true net wages earned.

11 64. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
12 has suffered injury and damage to his statutorily-protected rights.

13 65. Specifically, Plaintiff has been injured by Defendants' intentional violation of
14 California Labor Code § 226(a) because she was denied both his legal right to receive, and his
15 protected interest in receiving, accurate, itemized wage statements under California Labor Code
16 § 226(a).

17 66. Calculation of the true wage entitlement for Plaintiff is difficult and time
18 consuming. As a result of this unlawful burden, Plaintiff is also injured as a result of having to
19 bring this action to attempt to obtain correct wage information following Defendants' refusal to
20 comply with many of the mandates of California's Labor Code and related laws and regulations.

21 67. Plaintiff is entitled to recover from Defendants his actual damages caused by
22 Defendants' failure to comply with California Labor Code § 226(a).

23 68. Plaintiff is also entitled to injunctive relief, as well as an award of attorney's fees
24 and costs to ensure compliance with this section, pursuant to California Labor Code § 226(h).

25 **EIGHTH CAUSE OF ACTION**

26 **(Against all Defendants for Violation of California Business & Professions Code §§ 17200,**
27 **et seq.)**

1 69. Plaintiff incorporates by reference and re-alleges as if fully stated herein
2 paragraphs 1 through 22 in this First Amended Complaint.

3 70. Defendants, and each of them, are “persons” as defined under California Business
4 & Professions Code § 17201.

5 71. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
6 unlawful, and harmful to Plaintiff and to the general public. Plaintiff seeks to enforce important
7 rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

8 72. Defendants’ activities, as alleged herein, are violations of California law, and
9 constitute unlawful business acts and practices in violation of California Business & Professions
10 Code §§ 17200, *et seq.*

11 73. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
12 predicated on the violation of any state or federal law. All of the acts described herein as
13 violations of, among other things, the California Labor Code, are unlawful and in violation of
14 public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous,
15 and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of
16 California Business & Professions Code §§ 17200, *et seq.*

17 **Failure to Pay Minimum Wages**

18 74. Defendants’ failure to pay minimum wages, and other benefits in violation of the
19 California Labor Code constitutes unlawful and/or unfair activity prohibited by California
20 Business & Professions Code §§ 17200, *et seq.*

21 **Failure to Pay Overtime Wages**

22 75. Defendants’ failure to pay overtime compensation and other benefits in violation
23 of California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity
24 prohibited by California Business & Professions Code §§ 17200, *et seq.*

25 **Failure to Maintain Accurate Records of All Hours Worked**

26 76. Defendants’ failure to maintain accurate records of all hours worked in accordance
27 with California Labor Code § 1174.5 and the IWC Wage Orders constitutes unlawful and/or
28 unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

1 **Failure to Provide Meal Periods**

2 77. Defendants' failure to provide meal periods in accordance with California Labor
3 Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or
4 unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

5 **Failure to Authorize and Permit Rest Periods**

6 78. Defendants' failure to authorize and permit rest periods in accordance with
7 California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful
8 and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

9 **Failure to Indemnify Necessary Business Expenses**

10 79. Defendants' failure to indemnify employees for necessary business expenses in
11 accordance with California Labor Code § 2802 and the IWC Wage Orders, as alleged above,
12 constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§
13 17200, *et seq.*

14 **Failure to Provide Accurate Itemized Wage Statements**

15 80. Defendants' failure to provide accurate itemized wage statements in accordance
16 with California Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity
17 prohibited by California Business & Professions Code §§ 17200, *et seq.*

18 81. By and through their unfair, unlawful and/or fraudulent business practices
19 described herein, the Defendants, have obtained valuable property, money and services from
20 Plaintiff, and all persons similarly situated, and have deprived Plaintiff, and all persons similarly
21 situated, of valuable rights and benefits guaranteed by law, all to their detriment.

22 82. Plaintiff suffered monetary injury as a direct result of Defendants' wrongful
23 conduct.

24 83. Plaintiff is entitled to, and do, seek such relief as may be necessary to disgorge
25 money and/or property which the Defendants have wrongfully acquired, or of which Plaintiff has
26 been deprived, by means of the above-described unfair, unlawful and/or fraudulent business
27 practices. Plaintiff is not obligated to establish individual knowledge of the wrongful practices
28 of Defendants in order to recover restitution.

84. Plaintiff is further entitled to and do seek a declaration that the above described business practices are unfair, unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

85. Plaintiff has no plain, speedy, and/or adequate remedy at law to redress the injuries which she has suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff suffered and will continue to suffer irreparable harm unless the Defendants, and each of them, are restrained from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

86. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth herein above, they will continue to avoid paying the appropriate taxes, insurance and other withholdings.

87. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff is entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

NINTH CAUSE OF ACTION

**(Against all Defendants for Civil Penalties Under the Private Attorneys General Act
of 2004, Cal. Lab. Code § 2698 et seq.)**

88. Plaintiff incorporates by reference and re-allege as if fully stated herein paragraphs 1 through 22 in this First Amended Complaint.

89. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

90. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by

1 the Labor and Workforce Development Agency or any of its departments, divisions,
2 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
3 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
4 herself and other current or former employees pursuant to the procedures specified in Section
5 2699.3.”

6 91. Plaintiff has exhausted his administrative remedies pursuant to California Labor
7 Code § 2699.3. On April 14, 2024, Plaintiff gave written notice by online filing to the Labor and
8 Workforce Development Agency and by certified mail to Defendants of the specific provisions of
9 the Labor Code that Defendants have violated against Plaintiff and current and former aggrieved
10 employees, including the facts and theories to support the violations. At the time of this filing, 65
11 days has elapsed since Plaintiff provided notice, but the Labor and Workforce Development
12 Agency has not indicated that it intends to investigate Defendants’ Labor Code violations
13 discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties
14 under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in
15 this Complaint. These penalties include, but are not limited to, penalties under California Labor
16 Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

17 92. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor
18 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
19 employing labor who willfully fails to maintain accurate and complete records required by
20 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
21 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins
22 and ends each work period. Meal periods, and total hours worked daily shall also be recorded.
23 Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall keep total
24 hours worked in the payroll period and applicable rates of pay.

25 93. During the time period of employment for Plaintiff and the Aggrieved Employees,
26 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
27 maintain accurate records showing meal periods, and accurate records showing when employees
28 begin and end each work period. Defendants’ failure to provide and maintain records required by

1 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
2 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
3 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
4 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
5 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
6 Employees have suffered and continue to suffer, substantial losses related to the use and
7 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
8 to compel Defendants to fully perform its obligation under state law, all to their respective
9 damage in amounts according to proof at trial. Because of Defendants' knowing failure to
10 comply with the Labor Code and applicable IWC Wage Orders, Plaintiffs and the Aggrieved
11 Employees have also suffered an injury in that they were prevented from knowing,
12 understanding, and disputing the wage payments paid to them.

13 94. Based on the conduct described in this First Amended Complaint, Plaintiff is
14 entitled to an award of civil penalties on behalf of himself, the State of California, and similarly
15 Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in
16 an amount to be shown according to proof at trial. These penalties are in addition to all other
17 remedies permitted by law.

18 95. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
19 pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in
20 any action shall be entitled to an award of reasonable attorney's fees and costs."

21 **PRAYER FOR RELIEF**

22 Plaintiff, individually, prays for relief and judgment against Defendants, jointly and
23 severally, as follows:

24 **As to the First Cause of Action**

25 96. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all
27 minimum wages due;

28 97. For general unpaid wages as may be appropriate;

1 98. For pre-judgment interest on any unpaid compensation commencing from the date
2 such amounts were due;

3 99. For liquidated damages;

4 100. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
5 California Labor Code § 1194(a); and,

6 101. For such other and further relief as the Court may deem equitable and appropriate.

7 As to the Second Cause of Action

8 102. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
10 overtime wages due;

11 103. For general unpaid wages at overtime wage rates as may be appropriate;

12 104. For pre-judgment interest on any unpaid overtime compensation commencing
13 from the date such amounts were due;

14 105. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
15 California Labor Code § 1194(a); and,

16 106. For such other and further relief as the Court may deem equitable and appropriate.

17 As to the Third Cause of Action

18 107. That the Court declare, adjudge and decree that Defendants violated California
19 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

20 108. For unpaid meal period premium wages as may be appropriate;

21 109. For pre-judgment interest on any unpaid compensation commencing from the date
22 such amounts were due;

23 110. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
24 and for costs of suit incurred herein; and

25 111. For such other and further relief as the Court may deem equitable and appropriate.

26 As to the Fourth Cause of Action

27 112. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

113. For unpaid rest period premium wages as may be appropriate;

114. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

115. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and

116. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

117. That the Court declare, adjudge and decree that Defendants violated Labor Code § 2802 and the IWC Wage Orders;

118. For general unpaid wages and reimbursement of business expenses as may be appropriate;

119. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

120. For reasonable attorneys' fees and for costs of suit incurred herein; and

121. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

122. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment;

123. For statutory wage penalties pursuant to California Labor Code § 203 for former employees who have left Defendants' employ;

124. For pre-judgment interest on any unpaid wages from the date such amounts were due;

125. For reasonable attorneys' fees and for costs of suit incurred herein; and

126. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

127. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and willfully failed to provide accurate itemized wage statements thereto;

128. For penalties and actual damages pursuant to California Labor Code § 226(e);

129. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(h);

130. For reasonable attorneys' fees and for costs of suit incurred herein; and

131. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

132. That the Court declare, adjudge and decree that Defendants violated California Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked (including minimum and overtime wages), failing to provide meal periods, failing to maintain accurate records of meal periods, failing to authorize and permit rest periods, and failing to maintain accurate records of all hours worked and meal periods, failing to furnish accurate wage statements, and failing to indemnify necessary business expenses;

133. For restitution of unpaid wages to Plaintiff and prejudgment interest from the day such amounts were due and payable;

134. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code §§ 17200 *et seq.*;

135. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

136. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and,

137. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

138. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay minimum wages, failure to pay overtime wages, failure to provide

1 meal periods, failure to authorize and permit rest periods, failure to maintain accurate records of
2 hours worked and meal periods, failure to timely pay all wages to terminated employees, failure
3 to indemnify necessary business expenses, and failure to furnish accurate wage statements;

4 139. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all
5 other applicable Labor Code provisions;

6 140. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
7 California Labor Code § 2699;

8 141. For such other and further relief as the Court may deem equitable and appropriate

9 As to all Causes of Action

10 142. For any additional relief that the Court deems just and proper.

11 Dated: July 5, 2024

Respectfully submitted,

12 MOON LAW GROUP, PC

13
14 By: 

Kane Moon
Lilit Ter- Astvatsatryan

15 Attorneys for Plaintiff

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff demands a trial by jury as to all causes of action triable by jury.
18

19 Dated: July 5, 2024

MOON LAW GROUP, PC

20
21 By: 

Kane Moon
Lilit Ter-Astvatsatryan

22 Attorneys for Plaintiff
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 725 S. Figueroa St., 31st Floor Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **FIRST AMENDED COMPLAINT** on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

Andrew M. McNaught
SEYFARTH SHAW LLP
560 Mission Street, Suite 3100
San Francisco, California 94105-2930
Telephone: 415-544-1022
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Attorneys for Defendant Delicato Vineyards, LLC

[✓] **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **July 8, 2024** at Los Angeles, California.

Anayeli Ascencio
Type or Print Name

/s/ Anayeli Ascencio
Signature