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

RAFAEL BERBER AYALA, as an individual,
and on behalf of all others similarly situated,

Plaintiff,

v.

EL DORADO LAND, INC., a California
corporation; COTTONWOOD FARMS, INC.,
a California corporation; MOUREN FEEDING
COMPANY, a California corporation;
WHEAT LAND, INC., a California
corporation; COALINGA FEED YARD, INC.,
a California corporation; BEAR CANYON
FARMS, INC., a California corporation;
SPANISH LAKE FARMS, INC., a California
corporation; LOST HILLS RANCH, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

ELECTRONICALLY
FILED
BY SUPERIOR COURT OF CALIFORNIA,
COUNTY OF KING'S COUNTY
06/11/2024
NOCONA SOBOLESKI, CLERK OF THE COURT
KAYA GODINEZ, DEPUTY

Case No. 24CU0135

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

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

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, AND
1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 512);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 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 PAY ALL AGREED-
UPON WAGES INCLUDING BONUS
WAGES ACCRUED (LABOR CODE
§ § 221-223); AND**

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

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Rafael Berber Ayala (hereinafter “Plaintiff”), as an individual, and on behalf of
2 all others similarly situated, hereby brings this First Amended Class and Representative Action
3 Complaint against El Dorado Land, Inc., a California corporation; Cottonwood Farms, Inc., a
4 California corporation; Mouren Feeding Company, a California corporation; Wheat Land, Inc., a
5 California corporation; Coalinga Feed Yard, Inc., a California corporation; Bear Canyon Farms,
6 Inc., a California corporation; Spanish Lake Farms, Inc., a California corporation; Lost Hills
7 Ranch, Inc., a California corporation; and DOES 1 to 100, inclusive (collectively “Defendants”),
8 and on information and belief alleges as follows:

9 **JURISDICTION**

10 1. Plaintiff hereby brings this First Amended Class and Representative Action
11 Complaint for recovery of unpaid wages and penalties under California Business and Professions
12 Code § 17200 *et seq.*, Labor Code §§ 201-204, 221-223, 226 *et seq.*, 226.2, 226.7, 510, 512, 558,
13 1182.12, 1194, 1194.2, 1197, 1198, 2698, *et seq.*, and Industrial Welfare Commission Wage
14 Order 14 (“Wage Order 14”), in addition to seeking declaratory relief and restitution. This
15 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
16 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
17 controversy exceeds this Court’s jurisdictional minimum.

18 **VENUE**

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

24 **PARTIES**

25 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
26 Plaintiff was and currently is a California resident. During the four years immediately preceding
27 the filing of the Complaint in this action and within the statute of limitations periods applicable
28 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt

1 employee. Plaintiff was and is a victim of Defendants' policies and/or practices complained of
2 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
3 §§ 201-204, 221-223, 226 *et seq.*, 226.2, 226.7, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1198,
4 2698 *et seq.*, and California Business and Professions Code § 17200 *et seq.* ("Unfair Competition
5 Law"), and Wage Order 14, which sets employment standards for the agricultural industries.

6 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
7 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
8 continue to do) business by performing farming operations in California and the United States,
9 employed Plaintiff within Kings County and the state of California and, therefore, were (and are)
10 doing business in Kings County and the State of California.

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

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

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

28 8. At all times mentioned herein, Defendants, and each of them, were members of

1 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
2 and scope of, and in pursuance of said joint venture, partnership, and common enterprise. Further,
3 Plaintiff alleges that all Defendants were joint employers for all purposes towards Plaintiff and
4 all members of the Classes.

5 **GENERAL FACTUAL ALLEGATIONS**

6 9. Plaintiff began working for Defendants in approximately February 1994 and
7 continued working through approximately October 2023. Plaintiff was a supervisor's assistant
8 tasked with mechanic duties such as repairing a tractor, a plow, a booster or other agricultural
9 machine or machine part. He was also responsible for clearing weeds, driving between work
10 locations, including locations in Kings County, and placing tickets on almond trailers prior to
11 almond trailers being sent to packaging. During the almond season between approximately
12 August and October or November, Plaintiff generally worked Monday through Saturday from
13 approximately 6:30 a.m. through approximately 8:30 p.m. or up to 10:00 p.m. on multiple fields.
14 During the rest of the year, Plaintiff generally worked Monday through Saturday from
15 approximately 7:00 a.m. until 3:30 p.m. or until 5:00 p.m.

16 10. Throughout the duration of Plaintiff's employment with Defendants, Plaintiff and
17 other non-exempt employees were not paid all wages earned and for all hours worked as
18 Defendants would not accurately keep track of their actual hours worked. Upon information and
19 belief, the time records maintained by Defendants were not reflective of the actual number of
20 hours that Plaintiff and other non-exempt employees actually worked. Generally, for most of the
21 year other than the almond season, Plaintiff's supervisor wrote down Plaintiff's hours and the
22 hours worked by other non-exempt employees. During the almond season, Plaintiff wrote down
23 his hours per his supervisor's instruction. Plaintiff's supervisor instructed Plaintiff that Plaintiff
24 could not write down his hours worked before 6:30 a.m. or receive compensation for that time
25 even though at least twice per week, during the almond season, Plaintiff worked at least 1.5 hours
26 prior to 6:30 a.m. placing tickets on almond trailers. Further, Defendants did not consistently
27 compensate Plaintiff and other non-exempt employees for their duties during the almond season
28 after 8:30 p.m. During the almond season, approximately three days per week, after 8:30 p.m.,

1 Plaintiff spent a couple of hours driving to Fresno and back. During the rest of the year, even
2 though Plaintiff and other non-exempt employees informed their supervisor that they worked
3 beyond 3:30 p.m. and until 5:00 p.m. at least twice per week, the supervisor often chose to ignore
4 their extra hours worked and only wrote down their pre-scheduled work hours.

5 11. Under Defendants' stated policies and Plaintiff's agreement with Defendants,
6 Plaintiff earned bonus wages and was entitled to bonuses at least at the end of each almond season.
7 Plaintiff was not paid all bonuses owed upon separation of employment and still has not received
8 them.

9 12. Plaintiff and other non-exempt employees worked overtime hours, based on the
10 requirements of Wage Order 14, but generally did not receive overtime compensation equal to
11 one and one-half times their regular rates of pay for all overtime hours worked. Further, as
12 described above, Defendants regularly excluded hours worked before the scheduled start time and
13 after the scheduled end time. The overtime pay amount to Plaintiff and other non-exempt
14 employees did not factor in the bonus that Plaintiff and other non-exempt employees received at
15 the end of each season into the regular rate of pay. As a result, Defendants failed to ensure that
16 Plaintiff and other non-exempt employees received proper overtime wages for all overtime hours
17 worked, in compliance with Wage Order 14.

18 13. Defendants did not provide Plaintiff and other non-exempt employees with a
19 legally compliant first meal period when they worked shifts in excess of 5.0 hours or a legally
20 compliant second meal period when they worked shifts longer than 10 hours. For example,
21 Plaintiff and other non-exempt employees did not receive a duty-free 30 minutes. Instead,
22 Defendants requested that Plaintiff and other non-exempt employees perform work tasks during
23 their 30-minute meal periods such as repairing a machine or going to the store to get machine
24 parts. As another example, Plaintiff and other non-exempt employees generally began their meal
25 periods at 12:00 p.m., more than 5 hours after their 6:30 a.m. start time during the almond season.
26 Also, Plaintiff and other non-exempt employees experienced frequent interruptions to their meal
27 periods preventing them from taking a duty-free 30-minute meal period. Even though Plaintiff
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1 and other non-exempt employees often worked shifts in excess of 10 hours, Plaintiff and other
2 non-exempt employees were almost never permitted to exercise their right to a second meal
3 period, and were never informed of their right to do so. Despite Defendants' failure to provide
4 Plaintiff and other non-exempt employees with all lawful meal periods due to their uniform and
5 unlawful practices, Defendants never provided Plaintiff and other non-exempt employees with an
6 hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7.
7 Upon information and belief, during at least a portion of the class period, Defendants maintained
8 no payroll code or another mechanism for the payment of meal period premiums in the event
9 Plaintiff and other non-exempt employees were not authorized to take lawful meal periods.

10 14. Even though Plaintiff and other non-exempt employees regularly worked beyond
11 12 hours in a work day, they were not authorized to take their second or third 10-minute rest
12 period. Defendants did not provide Plaintiffs and other non-exempt employees with an hour of
13 pay at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon
14 information and belief, during at least a portion of the class period, Defendants maintained no
15 payroll code or another mechanism for the payment of rest period premiums in the event Plaintiff
16 and other non-exempt employees were not authorized to take lawful rest periods.

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

27 16. Defendants have maintained inaccurate payroll records, failed to timely pay all
28

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

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

17 **CLASS ACTION ALLEGATIONS**

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

- 20 a. The Minimum Wage Class consists of all current and former non-exempt
21 employees of Defendants who performed work for Defendants in California
22 during the four years immediately preceding the filing of this lawsuit through the
23 present.
- 24 b. The Overtime Wage Class consists of all current and former non-exempt
25 employees of Defendants who performed work for Defendants in California who
26 worked overtime hours during the four years immediately preceding the filing of
27 this lawsuit through the present.
- 28

- 1 c. The Agreed-Upon Wage Class consists of all of Defendants' current and former
2 non-exempt employees in California who were paid less than all agreed-upon
3 wages owed, including bonuses accrued, during the four years immediately
4 preceding the filing of this action through the present.
- 5 d. The Rest Period Class consists of all current and former non-exempt employees of
6 Defendants in California who worked at least one shift in excess of 3.5 hours
7 during the four years immediately preceding the filing of this lawsuit through the
8 present.
- 9 e. The Meal Period Class consists of all current and former non-exempt employees
10 of Defendants who performed work for Defendants in California who: (i) worked
11 at least one shift in excess of 5.0 hours without a meal period of at least 30 minutes
12 in duration commencing prior to the conclusion of the fifth hour of work, and who
13 do not have a corresponding meal period premium payment made for such shifts
14 and/or (ii) worked at least one shift in excess of 10.0 hours without a second meal
15 period of at least 30 minutes in duration commencing prior to the conclusion of
16 the tenth hour of work, and who do not have a corresponding meal period premium
17 for such shifts during the four years preceding the filing of this lawsuit through the
18 present.
- 19 f. The Wage Statement Class consists of all members of all current and former non-
20 exempt employees of Defendants in California who received a wage statement
21 from Defendants during the one year immediately preceding the filing of this
22 lawsuit through the present.
- 23 g. The Waiting Time Class consists of all of Defendants' formerly employed non-
24 exempt employees in California who were subject to Defendants' timekeeping
25 systems and/or practices, during the three years immediately preceding the filing
26 of this lawsuit through the present.
27
28

1 19. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
2 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
3 unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number
4 greater than forty (40) individuals. The identity of such membership is readily ascertainable via
5 inspection of Defendants' employment records.

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

- 10 i. Whether Defendants paid all minimum wages owed for all hours worked to
11 members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194,
12 1194.2, and 1197;
- 13 ii. Whether Defendants violated the applicable Labor Code provisions, including, but
14 not limited to, §§ 510 and 1194 and Wage Order 14 by requiring members of the
15 Overtime Wage Class to perform overtime work and not paying for said work in
16 accordance with the overtime laws of the State of California;
- 17 iii. Whether Defendants' timekeeping policies/practices resulted in the failure to
18 properly compensate members of the Minimum Wage Class;
- 19 iv. Whether Defendants provided all legally compliant rest periods to members of the
20 Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 21 v. Whether Defendants provided all legally compliant meal periods to members of
22 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 23 vi. Whether Defendants failed to pay the members of the Agreed-Upon Wage Class
24 all agreed-upon wages including bonuses accrued, pursuant to Labor Code §§ 221-
25 223;
- 26 vii. Whether Defendants provided accurate, itemized wage statements to members of
27 the Classes; and
28

viii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful.

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

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

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

24. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from

1 exploitation by employers who have the responsibility to follow the laws and who may seek to
2 take advantage of superior economic and bargaining power in setting onerous terms and
3 conditions of employment. The nature of this action and the format of laws available to Plaintiff
4 and members of the Classes make the class action format a particularly efficient and appropriate
5 procedure to redress the violations alleged herein. If each employee were required to file an
6 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
7 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
8 their vastly superior financial and legal resources. Moreover, requiring each member of the
9 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
10 employees who would be disinclined to file an action against their former and/or current employer
11 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
12 employment. Further, the prosecution of separate actions by the individual class members, even
13 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
14 with respect to the individual class members against Defendants herein; and which would
15 establish potentially incompatible standards of conduct for Defendants; and/or legal
16 determinations with respect to individual class members which would, as a practical matter, be
17 dispositive of the interest of the other class members not parties to adjudications or which would
18 substantially impair or impede the ability of the class members to protect their interests. Further,
19 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
20 individual prosecution considering all of the concomitant costs and expenses attending thereto.
21 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
22 Civil Procedure.
23

24 **FIRST CAUSE OF ACTION**
25 **MINIMUM WAGE VIOLATIONS**
26 **(AGAINST ALL DEFENDANTS)**

- 27 25. Plaintiff re-alleges and incorporates by reference all previous paragraphs.
28 26. Wage Order 14, § 4 and California Labor Code §§ 1197 and 1182.12 establish the

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

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

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

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

26 **SECOND CAUSE OF ACTION**

27 **FAILURE TO PAY ALL OVERTIME WAGES**

28 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

36. As a result, Defendants are responsible for paying premium compensation for meal period violations including interest thereon, as well as statutory penalties, civil penalties, and

costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 14, and Civil Code §§ 3287(b) and 3289.

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FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

37. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

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

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

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

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

42. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of 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.

43. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class

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

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

13 **SIXTH CAUSE OF ACTION**

14 **WAGE STATEMENT VIOLATIONS**

15 **(AGAINST ALL DEFENDANTS)**

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

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

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

27 48. Defendants' failures create an entitlement to recovery by Plaintiff and the Wage
28 Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226

et seq., including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 et seq.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

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

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

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

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

54. Plaintiff is compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the

1 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
2 which he is entitled to recover under Code of Civil Procedure § 1021.5.

3 **EIGHTH CAUSE OF ACTION**

4 **FAILURE TO PAY ALL AGREED-UPON WAGES INCLUDING BONUS WAGES**

5 **ACCRUED**

6 **(AGAINST ALL DEFENDANTS)**

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

8 56. This cause of action is brought pursuant to Labor Code §§ 204 and 221-223 which
9 provide that all non-exempt employees are entitled to be paid all agreed-upon wages owed,
10 inclusive of bonus wages accrued and provide a right of action for the failure to pay all agreed-
11 upon wages owed for all work performed.

12 57. At all times relevant herein, Defendants were required to properly compensate
13 Plaintiff and the members of the Agreed-Upon Wage Class for all hours worked at the agreed-
14 upon wages, inclusive of bonus wages accrued, pursuant to California Labor Code §§ 221-223.
15 At all relevant times herein, Defendants required Plaintiff and the members of the Agreed-Upon
16 Wage Class to remain under Defendants' control and perform work without paying them all
17 agreed-upon wages owed, including bonus wages accrued, which resulted in Plaintiff and the
18 members of the Agreed-Upon Wage Class earning less than all agreed-upon wages owed for their
19 work. This pattern and practice by Defendants of failing to pay all agreed-upon wages owed,
20 inclusive of bonus wages for all work performed violates the Labor Code and constitutes unjust
21 enrichment.

22 58. Pursuant to Labor Code § 204, all wages earned by any person in any employment
23 are due and payable twice during each calendar month, on days designated in advance by the
24 employer at the regular pay days. All wages earned for labor in excess of the normal work period
25 shall be paid no later than the payday for the next regular payroll period.

26 59. Pursuant to Labor Code § 204.1, commission wages paid to any person by an
27 employer are due and payable once during each calendar month on a day designated in advance
28 by the employer as the regular payday.

60. Plaintiff and other non-exempt employees earned agreed-upon wages including bonus wages through their employment.

61. Defendants have refused to pay all of Plaintiff's agreed-upon wages including bonus wages accrued. Defendants' failure to pay all agreed-upon wages including bonus wages accrued was intentional and without cause or other reason.

62. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiff and the members of the Agreed-Upon Wage Class in a civil action for the unpaid amount of agreed-upon wages owing, including interest thereon, as well as statutory penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 318.5, 218.6, 221, and 558, and California Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

64. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each

1 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
2 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
3 subsequent violation per employee per pay period for those violations of the Labor Code for which
4 no civil penalty is specifically provided, based on the following Labor Code violations:

- 5 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
6 Wage Class, and other aggrieved employees in violation of Labor Code §§ 551-
7 552, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 8 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
9 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
10 1194, and 1198;
- 11 c. Failing to authorize and permit all legally required rest periods, and failure to
12 pay rest period premium wages, to Plaintiff, the Rest Period Class, and other
13 aggrieved employees at the regular rate of compensation in violation of Labor
14 Code §§ 226.7, 516 and 558;
- 15 d. Failing to provide all legally required meal periods, and failure to pay meal
16 period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
17 employees at the regular rate of compensation in violation of Labor Code §§
18 226.7, 512, and 1198;
- 19 e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
20 employees with complete, accurate, itemized wage statements in violation of
21 Labor Code § 226;
- 22 f. Failing to timely pay all final wages and compensation earned by Plaintiff, the
23 Waiting Time Class, and other aggrieved employees at the time of separation
24 in violation of Labor Code §§ 201, 202, and 203;
- 25 g. Failing to pay non-exempt employees all earned wages at least twice during
26 each calendar month in violation of Labor Code § 204;
- 27 h. Failing to pay Plaintiff and other aggrieved employees all wages earned up to
28 and including the fourth day before the scheduled payday in violation of Labor

Code § 205;

- i. 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;
- j. Failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Plaintiff and other non-exempt employees in violation of Labor Code § 2810.5;
- k. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174 and 1198; and
- l. Failing to pay Plaintiff and other aggrieved employees all agreed-upon wages including bonus wages accrued.

65. On April 2, 2024, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 64 (a)-(l). Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;

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

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

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

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

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

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

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

18 11. Upon the Eighth Cause of Action, for compensatory, consequential, general and
19 special damages according to proof pursuant to Labor Code §§ 204 and 221-223;

20 12. Upon the Ninth Cause of Action, for (1) \$100.00 for each initial violation for each
21 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
22 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
23 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
24 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
25 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
26 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
27 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
28 each initial violation and \$200 for each subsequent violation per employee per pay period for the

violations of the Labor Code Sections cited in Labor Code § 2699.5;

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

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

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

Dated: June 11, 2024
Respectfully submitted,
STANSBURY BROWN LAW, PC

By: Jess Flores
Daniel J. Brown
Jessica Flores
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: June 11, 2024
Respectfully submitted,
STANSBURY BROWN LAW, PC

By: Jess Flores
Daniel J. Brown
Jessica Flores
Attorneys for Plaintiff

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 90201

On June 11, 2024, I served the document listed below on the parties in this action as follows:

- FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.

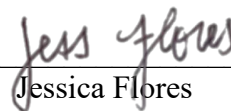
☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.

☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.

X (BY EMAIL 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 jflores@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.

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

Executed on June 11, 2024 at Los Angeles, California.



Jessica Flores

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