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11 *DANIEL DAVID KENT and*
12 *SALVADOR MARTINEZ GARCIA*

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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By: Gabriel Mendoza, DEPUTY

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN BERNARDINO**

15 DANIEL DAVID KENT, an individual, on
16 behalf of himself, and on behalf of all
17 aggrieved employees; and SALVADOR
18 MARTINEZ GARCIA, an individual, on behalf
19 of himself, and on behalf of all aggrieved
20 employees

21 Plaintiffs,

22 vs.

23 GILSTRAP TRUCKING, INC., a California
24 corporation; DARIN C. GILSTRAP, an
25 individual; and DOES 1 through 50 inclusive

26 Defendants.

Case No. CIVSB2424255

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF;
ENFORCEMENT ACTION UNDER
THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA
LABOR CODE § 2698, ET SEQ.:**

1. **FAILURE TO PAY OVERTIME
COMPENSATION AND
LIQUIDATED DAMAGES [CAL.
LAB. CODE §§ 510, 551, 552, 553,
1194, 1194.2, 1198];**
2. **FAILURE TO PAY MINIMUM
WAGES AND LIQUIDATED
DAMAGES [CAL. LAB. CODE §§
1182.12, 1194; 1194.2; 1197; 1197.1;
1198, and CAL. CODE REGS., TIT. 8,
§§ 11070];**
3. **FAILURE TO PROVIDE MEAL
PERIODS [CAL. LAB. CODE §§
226.7 and 512, and CAL. CODE
REGS., TIT. 8, §§ 11070];**
4. **FAILURE TO PROVIDE REST
PERIODS [CAL. LAB. CODE §§
226.7 and 512, and CAL. CODE
REGS., TIT. 8, §§ 11070];**
5. **FAILURE TO PROVIDE
ITEMIZED STATEMENTS AND
MAINTAIN ACCURATE
PAYROLL RECORDS [CAL. LAB.
CODE §§ 226(a), 1174(d), and
1198];**
6. **VIOLATIONS OF THE
CALIFORNIA OCCUPATIONAL**

- 1 SAFETY AND HEALTH ACT OF
2 1973 [CAL. LAB. CODE §§ 6300, et
3 seq.];
4 7. FAILURE TO PAY WAGES
5 UPON TERMINATION OF
6 EMPLOYMENT [CAL. LAB. CODE
7 § 203];
8 8. UNFAIR COMPETITION [CAL.
9 BUS. & PROF. CODE § 17200 et
10 seq.]; and,
11 9. CIVIL PENALTIES FOR
12 VIOLATIONS OF THE
13 CALIFORNIA LABOR CODE,
14 PURSUANT TO THE PRIVATE
15 ATTORNEYS GENERAL ACT
16 [CAL. LAB. CODE § 2698, et seq.]

17 **DEMAND FOR A JURY TRIAL**

18 All allegations in this Complaint are based upon information and belief except for
19 those allegations which pertain to the Plaintiffs named herein and their counsel. Each
20 allegation has evidentiary support, or is likely to have evidentiary support, after a
21 reasonable opportunity for further investigation and discovery.

22 **I.**

23 **JURISDICTION AND VENUE**

24 1. The Court has jurisdiction over this Complaint under CAL. CIV. PROC. CODE §
25 410.10. Plaintiffs bring this complaint on their own behalf and as aggrieved employees on
26 behalf of all aggrieved employees.

27 2. Venue is proper in the Court pursuant to CAL. CIV. PROC. CODE §§ 395 and
28 395.5 because the claims made, and the CAL. LAB. CODE violations as against the persons
identified herein, occurred in San Bernardino County. Further, each of the Defendants
owned and operated their businesses in San Bernardino County.

3. The Private Attorney Generals Act (“PAGA”) authorizes aggrieved employees
to sue directly as the proxy of the State of California for civil penalties for violations of
various provisions in the CAL. LAB. CODE.

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II.

THE PARTIES

PLAINTIFFS

4. DANIEL DAVID KENT is, and at all material times mentioned was:

- (a) An individual who resides in San Bernardino County, California;
- (b) Jointly employed as an employee by GILSTRAP TRUCKING, INC, DARIN C. GILSTRAP, and DOES 1 through 50 inclusive (“DEFENDANTS”), from on or about September 2023 to on or about May 3, 2024;
- (c) Was not properly paid for overtime hours worked;
- (d) Was not properly paid minimum wages for hours worked;
- (e) Did not receive one day’s rest in seven days worked;
- (f) Did not receive compliant meal periods or meal period premiums;
- (g) Did not receive compliant rest periods or rest period premiums;
- (h) Did not receive accurate itemized wage statements;
- (i) Was subjected to an unhealthy and unsafe workplace in violation of the California Occupational Safety and Health Act of 1973;
- (j) When terminated from his employment, was not paid for overtime wages owed, minimum wages owed, meal period wages owed, and rest period wages owed within the time limits prescribed by CAL. LABOR CODE § 201.

5. SALVADOR MARTINEZ GARCIA is, and at all material times mentioned was:

- (a) An individual who resides in San Bernardino County, California;
- (b) Jointly employed as an employee by GILSTRAP TRUCKING, INC, DARIN C. GILSTRAP, and DOES 1 through 50 inclusive (“DEFENDANTS”), from on or about April 2017, to on or about July

2022, and again from on or about October 2023, to on or about May 2024;

- (c) Was not properly paid for overtime hours worked;
- (d) Was not properly paid minimum wages for hours worked;
- (e) Did not receive compliant meal periods or meal period premiums;
- (f) Did not receive compliant rest periods or rest period premiums;
- (g) Did not receive accurate itemized wage statements;
- (h) Was subjected to an unhealthy and unsafe workplace in violation of the California Occupational Safety and Health Act of 1973;
- (i) When terminated from his employment, was not paid for overtime wages owed, minimum wages owed, meal period wages owed, and rest period wages owed within the time limits prescribed by CAL. LABOR CODE § 201.

6. DANIEL DAVID KENT and SALVADOR MARTINEZ GARCIA are referred to as “PLAINTIFFS” throughout this Complaint.

DEFENDANTS

7. PLAINTIFFS are informed and believe, and based upon that information and belief allege, that Defendant GILSTRAP TRUCKING, INC. is, and at all times mentioned was:

- (a) A California corporation authorized to conduct business, and actually conducting business in San Bernardino County, California;
- (b) Does business as Gilstrap Trucking, Affordable Decorative Rock, and Cal Herbold’s Nursery;
- (c) Along with DARIN C. GILSTRAP, and DOES 1 through 50, inclusive, was the former joint employer of PLAINTIFFS, and all aggrieved employees, as GILSTRAP TRUCKING, INC., DARIN C. GILSTRAP, and DOES 1 through 50 controlled PLAINTIFFS’, and

1 all aggrieved employees' wages, hours, working conditions, and how
2 PLAINTIFFS, and all aggrieved employees were paid;

- 3 (d) Failed to properly pay PLAINTIFFS, and all aggrieved employees for
4 overtime wages, for minimum wages, for missed meal periods, for
5 missed rest periods, failed to provide PLAINTIFFS and all aggrieved
6 employees with accurate itemized wage statements, failed to provide
7 PLAINTIFFS and all aggrieved employees, with a safe and healthy
8 workplace in violation of the California Occupational Safety and
9 Health Act of 1973, and failed to pay PLAINTIFFS and all aggrieved
10 employees for wages due upon termination. Each of these
11 transgressions violated the CAL. LAB. CODE.

12 8. PLAINTIFFS are informed and believe, and based upon that information and
13 belief allege, that Defendant DARIN C. GILSTRAP is, and at all times mentioned was:

- 14 (a) An individual who resides in San Bernardino County, California;
15 (b) The owner and operator of GILSTRAP TRUCKING, INC.;
16 (c) Does business as Gilstrap Trucking, Affordable Decorative Rock, and
17 Cal Herbold's Nursery;
18 (d) Along with GILSTRAP TRUCKING, INC., and DOES 1 through 50,
19 inclusive, was the former joint employer of PLAINTIFFS, and all
20 aggrieved employees, as GILSTRAP TRUCKING, INC., DARIN C.
21 GILSTRAP, and DOES 1 through 50 controlled PLAINTIFFS', and
22 all aggrieved employees' wages, hours, working conditions, and how
23 PLAINTIFFS, and all aggrieved employees were paid;
24 (e) Failed to properly pay PLAINTIFFS, and all aggrieved employees for
25 overtime wages, for minimum wages, for missed meal periods, for
26 missed rest periods, failed to provide PLAINTIFFS, and all aggrieved
27 employees with accurate itemized wage statements, failed to provide
28 PLAINTIFFS, and all aggrieved employees, with a safe and healthy

workplace in violation of the California Occupational Safety and Health Act of 1973, and failed to pay PLAINTIFFS and all aggrieved employees for wages due upon termination. Each of these transgressions violated the CAL. LAB. CODE.

9. GILSTRAP TRUCKING, INC., DARIN C. GILSTRAP, and DOES 1 through 50 are collectively referred to as “DEFENDANTS” throughout this Complaint.

10. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of Defendant DOES 1 through 50, inclusive, are unknown to the PLAINTIFFS, who therefore sue these Defendants by those fictitious names under CAL. CIV. PROC. § 474. PLAINTIFFS will seek leave to amend the Complaint to allege the true names and capacities of DOES 1 through 50, inclusive, when they are ascertained.

11. PLAINTIFFS are informed and believe, and based upon that information and belief allege, that Defendant DOES 1 through 50 are persons, corporations or other entities which reside in, or are otherwise doing business in the State of California. Each of the Defendant DOES 1 through 50 was the managerial agent, employee, predecessor, successor, joint-venturer, co-conspirator, alter ego and/or representative of one or more of the other Defendants named herein, and acted with permission, authorization and/or ratification and consent of other Defendants.

12. PLAINTIFFS are informed and believe, and based upon that information and belief allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

13. PLAINTIFFS are informed and believe, and based upon that information and belief allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees of each of the other Defendants, and that each Defendant was acting within the course of scope of his, hers, or its authority as the agent, servant and/or employee of each

1 of the other Defendants. Consequently, all the Defendants are jointly and severally liable to
2 PLAINTIFFS, and all aggrieved employees for their damages sustained as a proximate
3 result of Defendants' conduct.

4 14. PLAINTIFFS are informed and believe, and based upon that information and
5 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
6 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
7 themselves and entered into a combination and systemized campaign of activity to *inter*
8 *alia* damage PLAINTIFFS, and all aggrieved employees and to otherwise consciously
9 and/or recklessly act in derogation of PLAINTIFFS', and all aggrieved employees' rights,
10 and the trust reposed by PLAINTIFFS, and all aggrieved employees in each of the
11 Defendants, the acts being negligently and/or intentionally inflicted. Their conspiracy, and
12 Defendants' concerted actions, were such that, to PLAINTIFFS' information and belief,
13 and to all appearances, Defendants represented a unified body so that the actions of one
14 Defendant were accomplished in concert with, and with the knowledge, ratification,
15 authorization and approval of each of the other Defendants.

16 **ALTER-EGO ALLEGATIONS**

17 15. PLAINTIFFS are informed and believe, and based upon that information and belief
18 allege, that:

19 (a) GILSTRAP TRUCKING, INC., and DOES 1 through 50, are, and at all
20 relevant times were, mere shells without capital, assets, stock or stockholders;

21 (b) Defendants GILSTRAP TRUCKING, INC., and DOES 1 through 50 are, and
22 at all relevant times were, the alter ego of Defendants DARIN C. GILSTRAP, and DOES 1
23 through 50, inclusive, and each of them, who were the controlling shareholders, officers,
24 and directors of GILSTRAP TRUCKING, INC., and DOES 1 through 50;

25 (c) There is, and at all relevant times was, a unity of interest and/or ownership
26 between all of these Defendants so that any individuality or separateness between them has
27 ceased to exist in that GILSTRAP TRUCKING, INC., and DOES 1 through 50, inclusive
28 were and are under their control and domination; and

1 (d) GILSTRAP TRUCKING, INC., and DOES 1 through 50, inclusive are, and
2 at all relevant times were, completely controlled, dominated, managed and operated by
3 DARIN C. GILSTRAP, and Defendants DOES 1 through 50, inclusive, and each of them,
4 so that GILSTRAP TRUCKING, INC., and DOES 1 through 50 were mere shells,
5 instrumentalities, and/or conduits through which each of these Defendants conducted some
6 or all of their/its business. Adherence to the fiction of the separate existence of GILSTRAP
7 TRUCKING, INC., and DOES 1 through 50, inclusive as entities distinct from DARIN C.
8 GILSTRAP, Defendants DOES 1 through 50, inclusive, or any of them, would permit an
9 abuse of the corporate privilege and sanction fraud or promote injustice in that, among
10 other things, it would enable each of these Defendants to avoid liability and to defraud his,
11 her, or its creditors, the effect of which would be to render each Defendant financially
12 unable to respond to a monetary judgment awarded against each or any of them in the
13 action.

14 16. PLAINTIFFS and all persons employed by DEFENDANTS in California who
15 received at least one wage statement are “aggrieved employees” as defined by CAL. LAB.
16 CODE § 2699 in that they are all current or former employees of DEFENDANTS, and one
17 or more of the alleged violations was committed against them.

18 III.

19 PAGA REPRESENTATIVE ALLEGATIONS

20 17. At all times herein set forth, PAGA provides that any provision of law under
21 the CAL. LAB. CODE and applicable IWC Wage Order that provides for a civil penalty to be
22 assessed and collected by the LWDA for violations of the CAL. LAB. CODE and applicable
23 IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil
24 action brought on behalf of themselves and other current or former employees pursuant to
25 procedures outlined in CAL. LAB. CODE § 2699.3.

26 18. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as
27 “any person who was employed by the alleged violator and against whom one or more of
28 the alleged violations was committed.”

1 19. PLAINTIFFS and other current and former employees of DEFENDANTS are
2 “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all
3 Defendants’ current or former employees and one or more of the alleged violations were
4 committed against them.

5 20. On May 22, 2024, DANIEL DAVID KENT provided written notice by online
6 filing to the LWDA and by Certified Mail to DEFENDANTS of the specific provisions of the
7 California Labor Code alleged to have been violated, including facts and theories to support the
8 alleged violations, in accordance with CAL. LAB. CODE § 2699.3. DANIEL DAVID KENT’s
9 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
10 PAGA Administrator confirmed receipt of DANIEL DAVID KENT’s written notice and
11 assigned DANIEL DAVID KENT the PAGA Case Number LWDA-CM-1029866-24.

12 21. On May 22, 2024, SALVADOR MARTINEZ GARCIA provided written notice by
13 online filing to the LWDA and by Certified Mail to DEFENDANTS of the specific provisions
14 of the California Labor Code alleged to have been violated, including facts and theories to
15 support the alleged violations, in accordance with CAL. LAB. CODE § 2699.3. SALVADOR
16 MARTINEZ GARCIA’s notice was accompanied with the applicable filing fee of seventy-five
17 dollars (\$75). The LWDA PAGA Administrator confirmed receipt of SALVADOR
18 MARTINEZ GARCIA’s written notice and assigned SALVADOR MARTINEZ GARCIA the
19 PAGA Case Number LWDA-CM-1029870-24.

20 22. PLAINTIFFS have satisfied the administrative prerequisites under CAL. LAB.
21 CODE §§ 2699.3(a) and 2699.3(c) to recover civil penalties against DEFENDANTS for
22 violations of CAL. LAB. CODE §§ 201, 202, 203, 226, 226.7, 510, 512, 516, 551, 552, 553, 558,
23 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2810.5, 6300, *et. seq.*, and the applicable Cal.
24 Code of Regulations.

25 23. CAL. LAB. CODE § 558(a) provides, “Any employer or other person acting on
26 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
27 provision regulating hours and days of work in any order of the Industrial Welfare Commission
28 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for

1 each underpaid employee for each pay period for which the employee was underpaid.... (2) For
2 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each
3 pay period for which the employee was underpaid....” Labor Code section 558(d) provides,
4 “The civil penalties provided for in this section are in addition to any other civil or criminal
5 penalty provided by law.”

6 24. DEFENDANTS, at all times relevant to this complaint, were employers or persons
7 acting on behalf of an employer(s) who violated PLAINTIFFS’ and other aggrieved employees’
8 rights by violating various sections of the CAL. LAB. CODE as set forth above.

9 25. As set forth below, DEFENDANTS have violated numerous provisions of both the
10 CAL. LAB. CODE sections regulating hours and days of work as well as the applicable IWC
11 Wage Order.

12 26. Pursuant to PAGA, and in particular, CAL. LAB. CODE §§ 2699(a), 2699.3(a),
13 2699.3(c), and 2699.5, and section 558, PLAINTIFFS, acting in the public interest as private
14 attorneys generals, seek assessment and collection of civil penalties for themselves, all other
15 aggrieved employees, and the State of California against DEFENDANTS for violations of CAL.
16 LAB. CODE §§ 201, 202, 203, 226, 226.7, 510, 512, 516, 551, 552, 553, 558, 1174, 1182.12,
17 1194, 1194.2, 1197, 1197.1, 1198, 2810.5, 6300, *et. seq*, and the applicable Cal. Code of
18 Regulations.

19 IV.

20 THE CONDUCT

21 27. DEFENDANTS do business as and operate Gilstrap Trucking, Affordable
22 Decorative Rock, and Cal Herbold’s Nursery in San Bernardino County, California.

23 28. DEFENDANTS’ business requires the use of “non-exempt” employees as
24 defined by the California Labor Code and IWC Wage Order No. 7-2001 (as amended),
25 including, but not limited to customer service employees, yard attendants, order loaders,
26 laborers, delivery drivers, mechanics, secretaries, and cashiers.

27 29. DEFENDANTS jointly employed DANIEL DAVID KENT from on or about
28 September 2023 to on or about May 3, 2024. DANIEL DAVID KENT’s duties for

1 DEFENDANTS included, without limitation, customer service, attending DEFENDANTS'
2 yards, loading orders, and general labor for DEFENDANTS.

3 30. DEFENDANTS typically employed DANIEL DAVID KENT seven days per
4 week. DEFENDANTS would typically employ DANIEL DAVID KENT beginning at
5 approximately 6:00 a.m. to 7:00 a.m. in the morning, each day, and would continue to employ
6 DANIEL DAVID KENT until approximately 8:00 p.m. to 9:00 p.m. at night. On occasion,
7 DANIEL DAVID KENT would work until as late as 12:00 a.m. Additionally, on approximately
8 three nights per week, for approximately half an hour to one hour of time, DANIEL DAVID
9 KENT had to address security concerns in DEFENDANTS' yard or unload trucks making after-
10 hours deliveries.

11 31. From September, 2023, until approximately the end of January 2024,
12 DEFENDANTS completely failed to pay DANIEL DAVID KENT, under the guise that checks
13 to DANIEL DAVID KENT "were piling up." Then during the end of January 2024,
14 DEFENDANTS provided DANIEL DAVID KENT with 14 payments of approximately
15 \$432.00. DEFENDANTS then began paying DANIEL DAVID KENT approximately \$432.00
16 per week, regardless of the hours that he worked.

17 32. DEFENDANTS jointly employed SALVADOR MARTINEZ GARCIA from
18 on or about April 2017, to on or about July 2022, and again from on or about October 2023,
19 to on or about May 2024. SALVADOR MARTINEZ GARCIA's duties for DEFENDANTS
20 included, without limitation, customer service, attending DEFENDANTS' yards, loading
21 orders, general labor, sales, and deliveries.

22 33. DEFENDANTS regularly employed SALVADOR MARTINEZ GARCIA six days
23 per week. From 2020 to on or about July 2022, DEFENDANTS would typically employ
24 SALVADOR MARTINEZ GARCIA from approximately 8:00 a.m. until approximately 9:00
25 p.m. From approximately October 2023, to approximately January 2024, DEFENDANTS would
26 typically employ SALVADOR MARTINEZ GARCIA from approximately 7:00 a.m. until
27 approximately 7:00 p.m. From approximately January 2024, until approximately May 2024,
28

1 DEFENDANTS would typically employ SALVADOR MARTINEZ GARCIA from
2 approximately 8:00 a.m. to approximately 7:00 p.m.

3 34. DEFENDANTS paid SALVADOR MARTINEZ GARCIA in cash throughout the
4 duration of his employment. From approximately 2020 until approximately 2021,
5 DEFENDANTS would pay SALVADOR MARTINEZ GARCIA \$15.00 per hour, regardless of
6 the hours that he worked. From on or about 2021 until on or about July 2022, DEFENDANTS
7 would pay SALVADOR MARTINEZ GARCIA \$18.00 per hour, regardless of the hours that he
8 worked. From on or about October 2023, to on or about January, 2024, DEFENDANTS would
9 pay SALVADOR MARTINEZ GARCIA \$200.00 per day, regardless of the hours that he
10 worked. From on or about January 2024, to on or about April 2024, DEFENDANTS would
11 sporadically pay SALVADOR MARTINEZ GARCIA amounts that had seemingly no
12 correlation with the hours that he worked. From on or about April 2024, to on or about May
13 2024, DEFENDANTS would pay SALVADOR MARTINEZ GARCIA \$25.00 per hour,
14 regardless of the hours that he worked.

15 35. During PLAINTIFFS', and all aggrieved employees' employment,
16 DEFENDANTS exercised complete and unfettered control over PLAINTIFFS', and all
17 aggrieved employees' work schedules; their hours worked; their rate of pay and method of
18 payment; dictated how PLAINTIFFS, and all aggrieved employees would actually perform
19 their job duties; and dictated when PLAINTIFFS, and all aggrieved employees could or
20 could not take lunch or rest breaks. PLAINTIFFS, and all aggrieved employees could not
21 exercise discretion and independent judgment in performing their tasks. PLAINTIFFS, and
22 all aggrieved employees had to obtain approval on all actions they took on their jobs.
23 Additionally, DEFENDANTS did not pay PLAINTIFFS, and all aggrieved employees
24 salaries twice the state minimum wage for full-time employment. CAL. CODE REGS. §
25 11070, including the applicable California Wage Order apply to PLAINTIFFS, and all
26 aggrieved employees. PLAINTIFFS, and all aggrieved employees were not exempt
27 employees or independent contractors.

28 36. During PLAINTIFFS', and all aggrieved employees employment,

1 DEFENDANTS failed to properly pay PLAINTIFFS, and all aggrieved employees for
2 overtime hours worked.

3 37. CAL. LAB. CODE § 510 provides that employees in California shall not be
4 employed more than 8 hours in any workday or 40 hours in a workweek unless they receive
5 additional compensation beyond their regular wages in amounts specified by law.

6 38. CAL. LAB. CODE. §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198 require
7 employers to pay employees the minimum wage fixed by the California Industrial Welfare
8 Commission. The payment of a lesser wage than the minimum so fixed is unlawful.

9 39. During PLAINTIFFS', and all aggrieved employees' employment,
10 DEFENDANTS failed to properly pay PLAINTIFFS, and aggrieved employees minimum
11 wages for all hours worked.

12 40. During DANIEL DAVID KENT's, and other aggrieved employees'
13 employment, DEFENDANTS failed to provide DANIEL DAVID KENT, and other
14 aggrieved employees with one day's rest in seven days worked.

15 41. CAL. LAB. CODE § 551 and 552 provide that every person employed in any
16 occupation of labor is entitled to one day's rest therefrom in seven and that no employer
17 shall cause their employees to work more than six days in seven. CAL. LAB. CODE § 553
18 provides that any person who violates CAL. LAB. CODE § 551 or 552 is guilty of a
19 misdemeanor.

20 42. DEFENDANTS failed to permit PLAINTIFFS, and all aggrieved employees to
21 take code-complaint meal periods.

22 43. DEFENDANTS regularly failed to provide PLAINTIFFS, and all aggrieved
23 employees with code-compliant thirty (30) minute meal periods during shifts in excess of
24 five (5) hours, and a second meal period of at least thirty (30) minutes during shifts in
25 excess of ten (10) hours. When meal periods were provided, they were shorter in duration
26 than 30 minutes or were interrupted. PLAINTIFFS and other aggrieved employees often
27 could not leave the premises during meal periods that were provided, as there were no other
28 staff available to relieve them from their duties. DEFENDANTS effectively maintained

1 control over PLAINTIFFS, and all aggrieved employees during the meal periods that were
2 provided. On each day where a code-compliant thirty (30) minute meal period was not
3 provided to PLAINTIFFS, and all aggrieved employees, DEFENDANTS failed to pay
4 PLAINTIFFS, and all aggrieved employees one additional hour of pay at their regular rates
5 of pay.

6 44. DEFENDANTS refused to allow PLAINTIFFS, and all aggrieved employees
7 to take code-complaint rest periods.

8 45. DEFENDANTS did not provide PLAINTIFFS, and all aggrieved employees
9 with a code compliant 10-minute net rest period for every four (4) hours or major fraction
10 thereof worked. Where rest periods were provided, they were shorter in duration than 10
11 minutes, were interrupted, or were not provided every four (4) hours or major fraction
12 thereof worked. DEFENDANTS and other aggrieved employees often could not leave the
13 premises during rest periods that were provided, as there were no other staff available to
14 relieve them from their duties. DEFENDANTS effectively maintained control over
15 PLAINTIFFS, and all aggrieved employees during rest periods that were provided. On each
16 day when code-compliant ten (10) minute rest periods were not provided to PLAINTIFFS,
17 and all aggrieved employees, DEFENDANTS failed to pay PLAINTIFFS, and all aggrieved
18 employees one additional hour of pay at their regular rates of pay.

19 46. Under California law, an employee who works more than 4 hours or major
20 fraction thereof is entitled to a compensated rest period of 10 minutes. An employee who
21 works more than 5 hours in a day is entitled to a meal period of at least 30 minutes, and a
22 second meal period of at least 30 minutes if he or she works more than 10 hours in a
23 workday. (CAL. LAB. CODE § 512(a).) An employer that fails to provide a rest or meal
24 period that satisfies the requirements of the applicable IWC Wage Order 7-2001 (as
25 amended) must pay a premium to the employee of one additional hour of pay at the
26 employee's regular rate for each day that a meal or rest period was not provided. (CAL.
27 LAB. CODE § 226.7(b).)

28 47. The wage statements that DEFENDANTS did provide to DANIEL DAVID

1 KENT and other aggrieved employees did not conform with CAL. LAB. CODE § 226 as those
2 wage statements failed to accurately reflect DANIEL DAVID KENT's, and other aggrieved
3 employees' hours worked, including overtime wages, minimum wages, missed meal
4 periods, and rest periods, and failed to state the correct rate of pay. DEFENDANTS
5 completely failed to provide wage statements to SALVADOR MARTINEZ GARCIA.
6 SALVADOR MARTINEZ GARCIA was paid by DEFENDANTS in cash. The cash
7 payments were typically contained within an envelope, with the enclosed amount written
8 on a post-it note.

9 48. DEFENDANTS forced PLAINTIFFS, and other aggrieved employees to work
10 in deplorable, unsafe, and unhealthy conditions, and without personal protective equipment,
11 all in violation of California Occupational Safety and Health Act of 1973 and the
12 CALIFORNIA CODE OF REGULATIONS. DEFENDANTS exposed PLAINTIFFS and other
13 aggrieved employees to other hazardous conditions including extremely dusty
14 environments when trucks would dump gravel or fertilizer materials. DEFENDANTS
15 would also require that PLAINTIFFS spray pesticides on plants. DEFENDANTS never
16 provided PLAINTIFFS or other aggrieved employees with personal protective equipment
17 such as goggles, respirators, or gloves. Additionally, DEFENDANTS required that
18 PLAINTIFFS lift heavy objects, weighing in excess of 50 pounds, without providing
19 PLAINTIFFS with a weightlifting belt.

20 49. As evidenced by the conduct discussed, *supra*, DEFENDANTS clearly failed to
21 properly assess their workplace for hazardous conditions and implement a proper and effective
22 written injury-prevention program to protect PLAINTIFFS, and other aggrieved employees
23 from workplace hazards.

24 50. DEFENDANTS' conduct flagrantly violated, among other laws, the California
25 Occupational Safety and Health Act of 1973 (CALIFORNIA LABOR CODE §§ 6300, *et. seq.*)
26 and the CALIFORNIA CODE OF REGULATIONS. The California Occupational Safety and Health
27 Act of 1973 requires employers to, inter alia, furnish employment and a place of
28 employment that is safe and healthful for the employees, to establish, implement, and

1 maintain a written and effective injury prevention program, to provide and use safety
2 devices and safeguards reasonably adequate to render the employment and place of
3 employment safe, and to assess the workplace to determine if hazards are present which
4 necessitate the use of personal protective equipment and then select, purchase, and have
5 each affected employee use, the types of personal protective equipment that will protect the
6 affected employees from the hazards identified in the hazard assessment.

7 51. CAL. LAB. CODE § 201(a) provides that a discharged employee's unpaid wages
8 are due and payable immediately. Under CAL. LAB. CODE § 202(a), when an employee not
9 having a written contract for a definite period is terminated, his or her wages become
10 immediately due and payable. CAL. LAB. CODE § 203(a) provides, "If an employer willfully
11 fails to pay, without abatement or reduction, in accordance with Sections [201 and 202],
12 any wages of an employee who is discharged or who quits, the wages of the employee shall
13 continue as a penalty from the due date thereof at the same rate until paid or until an action
14 therefore is commenced; but the wages shall not continue for more than 30 days."

15 52. As a result, under CAL. LAB. CODE § 203, PLAINTIFFS, and all aggrieved
16 employees are entitled to one day's wages for each day they were not timely paid all wages
17 due, up to a maximum of 30 days' wages. Because DEFENDANTS failed to pay overtime
18 wages, minimum wages, meal period wages, and rest period wages to PLAINTIFFS, and all
19 aggrieved employees, each of these individuals whose employment has been terminated
20 during the applicable statutory period, including PLAINTIFFS, are entitled to 30 days'
21 wages.

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FIRST CAUSE OF ACTION
FOR FAILURE TO PAY OVERTIME COMPENSATION AND LIQUIDATED
DAMAGES

[CAL. LAB. CODE §§ 510, 1194, 1194.2 and 1198]
(By PLAINTIFFS, and Against All DEFENDANTS)

53. PLAINTIFFS repeat and re-allege paragraphs 1 through 52, inclusive, of this Complaint and they are incorporated herein by this reference.

54. Under the applicable IWC Wage Order 7-2001 (as amended), DEFENDANTS were the joint employers of PLAINTIFFS.

55. CAL. LAB. CODE § 510 provides that employees in California shall not be employed more than 8 hours in any workday or 40 hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

56. CAL. CODE REGS. § 11070(3)(A)(1) provides that overtime hours shall be compensated at: (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

57. CAL. LAB. CODE § 1194 establishes an employee's right to recover unpaid overtime compensation, interest thereon, together with the costs of suit, and attorneys' fees. CAL. LAB. CODE § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

58. CAL. LAB. CODE § 1194.2 establishes an employee's right to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon in an action for payment of a wage less than the minimum wage fixed by the Industrial Welfare Commission or by statute.

1 59. At all times relevant hereto, PLAINTIFFS worked more than 8 hours in a
2 workday and/or 40 hours in a workweek as employees of DEFENDANTS. At all times
3 relevant hereto, PLAINTIFFS were paid on an hourly basis.

4 60. At all times relevant hereto, DEFENDANTS failed to pay overtime
5 compensation to PLAINTIFFS for the hours they worked in excess of maximum hours
6 permissible by law as required by CAL. LAB. CODE §§ 510, 1194, 1194.2, and 1198.

7 61. DEFENDANTS acted intentionally, oppressively, and maliciously toward
8 PLAINTIFFS, with a conscious disregard of their rights, or the consequences to them, with
9 the intent of depriving them of property and legal rights and otherwise causing them injury.
10 By virtue of DEFENDANTS' unlawful failure to pay overtime wages, PLAINTIFFS have
11 suffered, and will continue to suffer, damages in the amounts which are presently unknown
12 to them but which exceed the jurisdictional limits of the court and which will be
13 ascertained according to proof at trial.

14 62. PLAINTIFFS seek to recover overtime wages and / or prevailing wages
15 according to proof, interest, as well as the assessment of all applicable statutory penalties
16 against DEFENDANTS, in a sum as provided by the CAL. LAB. CODE and/or other statutes.
17 PLAINTIFFS also seek to recover liquidated damages as provided by CAL. LAB. CODE §
18 1194.2, and reasonable attorneys' fees and costs.

19 **SECOND CAUSE OF ACTION**
20 **FOR FAILURE TO PAY MINIMUM WAGES AND LIQUIDATED DAMAGES**

21 **[CAL. LAB. CODE §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198]**

22 **(By PLAINTIFFS, and Against All DEFENDANTS)**

23 63. PLAINTIFFS repeat and re-allege paragraphs 1 through 62, inclusive, of this
24 Complaint and they are incorporated herein by this reference.

25 64. Under the applicable IWC Wage Order 7-2001 (as amended), DEFENDANTS
26 were the joint employers of PLAINTIFFS.

1 65. CAL. LAB. CODE §§ 1182.12, 1197, and 1197.1 require employers to pay
2 employees the minimum wage fixed by the California Industrial Welfare Commission. The
3 payment of a lesser wage than the minimum so fixed is unlawful.

4 66. Compensable work time is defined in Industrial Wage Order No. 7 as “the time
5 during which an employee is subject to the control of an employer, and includes all the
6 time the employee is suffered or permitted to work, whether or not required to do so.”
7 (CAL. CODE REGS., TIT. 8, § 11070(2)(G) [defining “Hours Worked”]).

8 67. CAL. LAB. CODE § 1194 establishes an employee’s right to recover unpaid
9 wage compensation, interest thereon, together with the costs of suit, and attorneys’ fees.

10 68. CAL. LAB. CODE § 1194.2 establishes an employee’s right to recover liquidated
11 damages in an amount equal to the wages unlawfully unpaid and interest thereon in an
12 action for payment of a wage less than the minimum wage fixed by the Industrial Welfare
13 Commission or by statute.

14 69. At all times relevant hereto, DEFENDANTS paid PLAINTIFFS on an hourly
15 basis.

16 70. During PLAINTIFFS’ employment, DEFENDANTS failed to properly pay
17 PLAINTIFFS for all hours worked at the legal minimum wage and / or prevailing wage
18 rate.

19 71. DEFENDANTS acted intentionally, oppressively, and maliciously toward
20 PLAINTIFFS, with a conscious disregard of their rights, or the consequences to them, with
21 the intent of depriving them of property and legal rights and otherwise causing them injury.
22 By virtue of DEFENDANTS’ unlawful failure to pay wages, PLAINTIFFS have suffered,
23 and will continue to suffer damages in an amount that is presently unknown to them but
24 which exceeds the jurisdictional limits of the court and which will be ascertained according
25 to proof at trial.

26 72. PLAINTIFFS to recover minimum wages and / or prevailing wages according
27 to proof, interest, and the assessment of all applicable statutory penalties against
28 DEFENDANTS, in a sum as provided by the CAL. LAB. CODE and/or other statutes.

1 PLAINTIFFS also seek to recover liquidated damages as provided by CAL. LAB. CODE §
2 1194.2, and reasonable attorneys' fees and costs.

3 **THIRD CAUSE OF ACTION**

4 **FOR FAILURE TO PROVIDE MEAL PERIODS**

5 **[CAL. LAB. CODE §§ 226.7 and 512, and CAL. CODE REGS., TIT. 8, § 11070]**

6 **(By PLAINTIFFS, and Against All DEFENDANTS)**

7 73. PLAINTIFFS repeat and re-allege paragraphs 1 through 72, inclusive, of this
8 Complaint and they are incorporated herein by this reference.

9 74. Under the applicable IWC Wage Order 7-2001 (as amended), DEFENDANTS
10 were the joint employers of PLAINTIFFS.

11 75. CAL. LAB. CODE §§ 226.7 and 512, and CAL. CODE REGS., TIT. 8, § 11070(11)
12 provide that an employee who works more than five (5) hours in a day is entitled to a meal
13 period of at least thirty (30) minutes, and a second meal period of at least thirty (30)
14 minutes if he or she works more than ten (10) hours in a workday.

15 76. CAL. LAB. CODE § 226.7 and CAL. CODE REGS., TIT. 8, § 11070(11) provide
16 that if an employer fails to provide an employee a meal period in accordance with the
17 section, the employer shall pay the employee one (1) hour of pay at the employee's regular
18 rate of compensation for each workday that the meal period is not provided.

19 77. At all times relevant hereto, PLAINTIFFS worked more than five (5) hours in
20 a workday for DEFENDANTS.

21 78. At times relevant hereto, PLAINTIFFS worked more than ten (10) hours in a
22 workday for DEFENDANTS.

23 79. DEFENDANTS regularly failed to provide PLAINTIFFS with compliant thirty
24 (30) minute meal periods during shifts in excess of five (5) hours and compliant second
25 meal periods of at least thirty (30) minutes during shifts in excess of ten (10) hours. When
26 meal periods were provided, they were shorter in duration than 30 minutes or were
27 interrupted. PLAINTIFFS and other aggrieved employees often could not leave the
28 premises during meal periods that were provided, as there were no other staff available to

1 relieve them from their duties. DEFENDANTS effectively maintained control over
2 PLAINTIFFS during the meal periods that were provided. On each day where a compliant
3 thirty (30) minute meal period was not provided to PLAINTIFFS, DEFENDANTS failed to
4 pay PLAINTIFFS one additional hour of pay at PLAINTIFFS' regular rates of pay.

5 80. DEFENDANTS have intentionally and improperly denied meal periods to
6 PLAINTIFFS in violation of CAL. LAB. CODE §§ 226.7 and 512 and CAL. CODE REGS., TIT.
7 8, § 11070(11) and other regulations and statutes.

8 81. By virtue of the DEFENDANTS' unlawful failure to provide meal periods to
9 PLAINTIFFS, PLAINTIFFS, have suffered, and will continue to suffer, damages in
10 amounts which are presently unknown to PLAINTIFFS, but which damages exceed the
11 jurisdictional limits of the court and which will be ascertained according to proof at trial.

12 82. PLAINTIFFS are informed and believe, and based upon that information and
13 belief allege, that DEFENDANTS purposely elected not to provide meal periods to their
14 hourly paid employees. DEFENDANTS acted intentionally, oppressively, and maliciously
15 toward PLAINTIFFS, with a conscious disregard of their rights, or the consequences to
16 PLAINTIFFS, with the intent of depriving PLAINTIFFS of property and legal rights and
17 otherwise causing PLAINTIFFS injury.

18 83. PLAINTIFFS seek to recover meal-period compensation according to proof,
19 interest, all applicable statutory penalties against DEFENDANTS, in a sum as provided by
20 the CAL. LAB. CODE and/or other statutes, and reasonable attorneys' fees and costs.

21 **FORTH CAUSE OF ACTION**

22 **FOR FAILURE TO PROVIDE REST PERIODS**

23 **[CAL. LAB. CODE §§ 226.7 and 512, and CAL. CODE REGS., TIT. 8, § 11070]**

24 **(By PLAINTIFFS, and Against All DEFENDANTS)**

25 84. PLAINTIFFS repeat and re-allege paragraphs 1 through 83, inclusive, of this
26 Complaint and they are incorporated herein by this reference.

27 85. Under the applicable IWC Wage Order 7-2001 (as amended), DEFENDANTS
28 were the joint employers of PLAINTIFFS.

1 86. CAL. LAB. CODE §§ 226.7 and CAL. CODE REGS., TIT. 8, § 11070 (12)(A)
2 provide that employers shall authorize and permit all employees to take rest periods at the
3 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof, of work.

4 87. CAL. LAB. CODE §§ 226.7 and CAL. CODE REGS., TIT. 8, § 11070(12)(B)
5 provide that if an employer fails to provide an employee with rest periods in accordance
6 with those statutes, the employer shall pay the employee one (1) hour of pay at the
7 employee's regular rate of compensation for each workday that the rest period was not
8 provided. The Wage Order provides a separate remedy for violations of meal period
9 requirements and violations of rest period requirements" and section 226.7 allows recovery
10 of up to two premium payments per work day – one for each type of violation. (*United*
11 *Parcel Service, Inc., v. Superior Court* (2011) 196 Cal.App.4th 57, 69.)

12 88. At all times relevant hereto, PLAINTIFFS worked more than four hours in a
13 workday for DEFENDANTS.

14 89. At all times relevant hereto, DEFENDANTS failed to provide rest periods to
15 PLAINTIFFS as required by CAL. LAB. CODE §§ 226.7 and CAL. CODE REGS., TIT. 8, §
16 11070(12)(A).

17 90. DEFENDANTS did not provide PLAINTIFFS with a 10-minute net rest period
18 for every four (4) hours or major fraction thereof worked. Where rest periods were
19 provided, they were shorter in duration than 10 minutes, were interrupted, or were not
20 provided every four (4) hours or major fraction thereof worked. PLAINTIFFS and other
21 aggrieved employees often could not leave the premises during rest periods that were
22 provided, as there were no other staff available to relieve them from their duties.
23 DEFENDANTS effectively maintained control over PLAINTIFFS, during rest periods that
24 were provided. On each day where compliant ten (10) minute rest periods were not
25 provided to PLAINTIFFS, DEFENDANTS failed to pay PLAINTIFFS one additional hour
26 of pay at their regular rates of pay.

1 91. DEFENDANTS have intentionally and improperly denied rest periods to
2 PLAINTIFFS, in violation of CAL. LAB. CODE §§ 226.7 and 512 and CAL. CODE REGS., TIT.
3 8, § 11070(12).

4 92. By virtue of the DEFENDANTS' unlawful failure to provide rest periods to the
5 PLAINTIFFS, PLAINTIFFS, have suffered, and will continue to suffer, damages in
6 amounts that are presently unknown to PLAINTIFFS, but which exceed the jurisdictional
7 limits of the court and which will be ascertained according to proof at trial.

8 93. PLAINTIFFS are informed and believe, and based upon that information and
9 belief allege, that DEFENDANTS knew or should have known that PLAINTIFFS were
10 entitled to rest periods and purposely elected not to provide rest periods. DEFENDANTS
11 acted intentionally, oppressively, and maliciously toward PLAINTIFFS, with a conscious
12 disregard of their rights, or the consequences to PLAINTIFFS, with the intent of depriving
13 PLAINTIFFS of property and legal rights and otherwise causing PLAINTIFFS injury.

14 94. PLAINTIFFS seek to recover rest-period compensation according to proof,
15 interest, all applicable statutory penalties against DEFENDANTS, in a sum as provided by
16 the CAL. LAB. CODE and/or other statutes, and reasonable attorneys' fees and costs.

17 **FIFTH CAUSE OF ACTION**

18 **FOR FAILURE TO PROVIDE ITEMIZED STATEMENTS AND MAINTAIN**

19 **ACCURATE PAYROLL RECORDS**

20 **[CAL. LAB. CODE §§ 226(a), 1174(d), and 1198]**

21 **(By PLAINTIFFS, and Against All DEFENDANTS)**

22 95. PLAINTIFFS repeat and re-allege paragraphs 1 through 94, inclusive, of this
23 Complaint and they are incorporated herein by this reference.

24 96. Under the applicable IWC Wage Order 7-2001 (as amended), DEFENDANTS
25 were the joint employers of PLAINTIFFS.

26 97. CAL. LAB. CODE § 226(a) requires employers to provide non-exempt
27 employees with detailed and accurate wage statements (*i.e.* "pay stubs"). Specifically, the
28 statute provides:

1 Every employer shall, semimonthly or at the time of each payment of
2 wages, furnish each of his or her employees, either as a detachable
3 part of the check, draft, or voucher paying the employee's wages, or
4 separately when wages are paid by personal check or cash, an
5 accurate itemized statement in writing showing (1) gross wages
6 earned, (2) total hours worked by the employee, except for any
7 employee whose compensation is solely based on a salary and who is
8 exempt from payment of overtime under subdivision (a) of Section
9 515 or any applicable order of the Industrial Welfare Commission,
10 (3)) the number of piece-rate units earned and any applicable piece
11 rate if the employee is paid on a piece-rate basis, (4) all deductions,
12 provided that all deductions made on written orders of the employee
13 may be aggregated and shown as one item, (5) net wages earned, (6)
14 the inclusive dates of the period for which the employee is paid, (7)
the name of the employee and only the last four digits of his or her
social security number or an employee identification number other
than a social security number, (8) the name and address of the legal
entity that is the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682, the name
and address of the legal entity that secured the services of the
employer, and (9) all applicable hourly rates in effect during the pay
period and the corresponding number of hours worked at each hourly
rate by the employee and, beginning July 1, 2013, if the employer is a
temporary services employer as defined in Section 201.3, the rate of
pay and total hours worked for each temporary services assignment.

15 98. For violations of CAL. LAB. CODE § 226, CAL. LAB. CODE § 226(e) provides
16 that an employee: (a) is entitled to recover the greater of all actual damages or minimum
17 statutory damages of \$50 for the initial pay period in which a violation occurs and \$100 for
18 each subsequent violation, up to a maximum of \$4,000.

19 99. Additionally, CAL. LAB. CODE § 1174(d) provides, "Every person employing
20 labor in this state shall...[k]eep a record showing the names and addresses of all employees
21 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
22 plants or establishments at which employees are employed, payroll records showing the
23 hours worked daily by and the wages paid to, and the number of piece-rate units earned by
24 and any applicable piece rate paid to, employees employed at the respective plants or
25 establishments...."

26 100. CAL. LAB. CODE § 1174.5 provides that employers are subject to a \$500 civil
27 penalty if they fail to maintain accurate and complete records as required by section
28 1174(d).

1 101. DEFENDANTS regularly intentionally failed to furnish to DANIEL DAVID
2 KENT, and other aggrieved employees, upon the payment of wages, itemized wage
3 statements in conformity with CALIFORNIA LABOR CODE § 226. The wage statements failed
4 to accurately reflect DANIEL DAVID KENT's hours worked, including overtime wages,
5 minimum wages, missed meal periods, missed rest periods, and failed to state the correct
6 rate of pay.

7 102. DEFENDANTS completely failed to provide wage statements to SALVADOR
8 MARTINEZ GARCIA. SALVADOR MARTINEZ GARCIA was paid by DEFENDANTS
9 in cash. The cash payments were typically contained within an envelope, with the enclosed
10 amount written on a post-it note.

11 103. PLAINTIFFS were damaged by these failures because, among other things, the
12 failures led PLAINTIFFS, to believe that they were not entitled to be paid for all hours
13 worked even though they were so entitled, and because these failures hindered
14 PLAINTIFFS from determining the amounts of wages owed to them.

15 104. PLAINTIFFS are also informed and believe, and based upon that information
16 and belief allege, that DEFENDANTS willfully failed to maintain accurate payroll records
17 showing the daily hours PLAINTIFFS worked and the wages that should have been paid as
18 a result of failing to record hours that PLAINTIFFS worked, as well as PLAINTIFFS'
19 missed meal periods and rest periods.

20 105. PLAINTIFFS seek to recover damages, penalties, and interest under CAL. LAB.
21 CODE §§ 226, 1174, and 1198, and reasonable attorneys' fees and costs.

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1 employment and place of employment safe; and, (c) to do every other thing reasonably
2 necessary to protect the life, safety, and health of employees.

3 112. CALIFORNIA CODE OF REGULATIONS section 3380(f), “Hazard assessment and
4 equipment selection,” requires an employer to assess the workplace to determine if hazards are
5 present, or are likely to be present, which necessitate the use of personal protective equipment
6 (PPE). If such hazards are present, or likely to be present, the employer shall: “(A) Select, and
7 have each affected employee use, the types of PPE that will protect the affected employee from
8 the hazards identified in the hazard assessment; (B) Communicate selection decisions to each
9 affected employee; and, (C) Select PPE that properly fits each affected employee.”

10 113. An employer is required to pay for personal protective equipment if the law
11 requires that the employer to provide the equipment. (*Bendix Forest Products Corporation v.*
12 *Division of Occupational Safety and Health* (1979) 25 Cal.3d 465, 473.)

13 114. DEFENDANTS forced PLAINTIFFS, to work in deplorable, unsafe, and
14 unhealthy conditions, and without personal protective equipment, all in violation of
15 California Occupational Safety and Health Act of 1973 and the CALIFORNIA CODE OF
16 REGULATIONS. DEFENDANTS exposed PLAINTIFFS and other aggrieved employees to
17 other hazardous conditions including extremely dusty environments when trucks would
18 dump gravel or fertilizer materials. DEFENDANTS would also require that PLAINTIFFS
19 spray pesticides on plants. DEFENDANTS never provided PLAINTIFFS or other aggrieved
20 employees with personal protective equipment such as goggles, respirators, or gloves.
21 Additionally, DEFENDANTS required that PLAINTIFFS lift heavy objects, weighing in
22 excess of 50 pounds, without providing PLAINTIFFS with a weightlifting belt.

23 115. As evidenced by the conduct discussed, *supra*, DEFENDANTS clearly failed to
24 properly assess its workplace for hazardous conditions and implement a proper and effective
25 written injury-prevention program to protect PLAINTIFFS from workplace hazards.

26 116. DEFENDANTS’ conduct flagrantly violated, among other laws, the California
27 Occupational Safety and Health Act of 1973 (CALIFORNIA LABOR CODE §§ 6300, *et. seq.*)
28 and the CALIFORNIA CODE OF REGULATIONS. The California Occupational Safety and

1 Health Act of 1973 requires employers to, inter alia, furnish employment and a place of
2 employment that is safe and healthful for the employees, to establish, implement, and
3 maintain a written and effective injury prevention program, to provide and use safety
4 devices and safeguards reasonably adequate to render the employment and place of
5 employment safe, and to assess the workplace to determine if hazards are present which
6 necessitate the use of personal protective equipment and then select, purchase, and have
7 each affected employee use, the types of personal protective equipment that will protect the
8 affected employee from the hazards identified in the hazard assessment.

9 117. DEFENDANTS' conduct flagrantly violated, among other laws, the California
10 Occupational Safety and Health Act of 1973 (CALIFORNIA LABOR CODE §§ 6300, *et. seq.*) and
11 the CALIFORNIA CODE OF REGULATIONS. PLAINTIFFS request recovery of civil penalties,
12 attorney's fees, costs, and interest thereon.

13 **SEVENTH CAUSE OF ACTION**
14 **FOR FAILURE TO PAY WAGES UPON TERMINATION OF EMPLOYMENT**

15 **[CAL. LAB. CODE § 203]**

16 **(By PLAINTIFFS, and Against All DEFENDANTS)**

17 118. PLAINTIFFS repeat and re-allege paragraphs 1 through 117, inclusive, of this
18 Complaint and they are incorporated herein by this reference.

19 119. Under the applicable IWC Wage Order 7-2001 (as amended), DEFENDANTS
20 were the joint employers of PLAINTIFFS.

21 120. CAL. LAB. CODE § 201(a) provides that a discharged employee's unpaid wages
22 are due and payable immediately. Under CAL. LAB. CODE § 202(a), when an employee not
23 having a written contract for a definite period is terminated, his or her wages become
24 immediately due and payable.

25 121. CAL. LAB. CODE § 203 (a) provides, "If an employer willfully fails to pay,
26 without abatement or reduction, in accordance with Sections [201 and 202], any wages of
27 an employee who is discharged or who quits, the wages of the employee shall continue as a
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1 penalty from the due date thereof at the same rate until paid or until an action therefore is
2 commenced; but the wages shall not continue for more than 30 days.”

3 122. PLAINTIFFS did not have a written contract for definite terms of employment.
4 DEFENDANTS discharged PLAINTIFFS from their employment within the applicable
5 statute of limitations. DEFENDANTS willfully failed to pay PLAINTIFFS the wages due
6 to them—without abatement or reduction.

7 123. Under CAL. LAB. CODE § 203, PLAINTIFFS are entitled to one day’s wages
8 for each day they were not timely paid all wages due, up to a maximum of 30 days’ wages.
9 Because DEFENDANTS failed to pay overtime wages owed, minimum wages owed, meal
10 period wages owed, and rest period wages owed, PLAINTIFFS seek to recover 30 days’
11 wages, and applicable penalties. PLAINTIFFS also seek reasonable attorneys’ fees and
12 costs.

13 **EIGHTH CAUSE OF ACTION**

14 **FOR UNFAIR COMPETITION**

15 **[CAL. BUS. & PROF. CODE § 17200, et seq.]**

16 **(By PLAINTIFFS, and Against All DEFENDANTS)**

17 124. PLAINTIFFS repeat and re-allege paragraphs 1 through 123, inclusive, of this
18 Complaint and they are incorporated herein by this reference.

19 125. Under the applicable IWC Wage Order 7-2001 (as amended), DEFENDANTS
20 were the joint employers of PLAINTIFFS. DEFENDANTS are also a “person” as that term
21 is defined under CAL. BUS. & PROF. CODE § 17021.

22 126. CAL. BUS. & PROF. CODE section 17200 defines unfair competition as any
23 unlawful, unfair, or fraudulent business act or practice. At all times relevant hereto, by and
24 through the conduct described herein, DEFENDANTS have engaged in unfair and unlawful
25 practices by, among other violations, failing to pay overtime wages to PLAINTIFFS,
26 failing to pay minimum wages to PLAINTIFFS, failing to provide compliant meal periods
27 to PLAINTIFFS, failing to provide compliant rest periods to PLAINTIFFS, failing to
28 provide accurate wage statements to PLAINTIFFS, failing to provide PLAINTIFFS with a

1 healthy and safe workplace compliant with the California Occupational Safety and Health
2 Act of 1973, and failing to provide wages due upon termination of employment to
3 PLAINTIFFS, under the applicable CAL. LAB. CODE, and Industrial Welfare Commission
4 requirements in violation of CAL. BUS. & PROF. CODE § 17200 et seq., and have thereby
5 deprived PLAINTIFFS of fundamental rights and privileges.

6 127. By and through the unfair and unlawful business practices described herein,
7 DEFENDANTS have obtained valuable property, money, and services from PLAINTIFFS,
8 and have deprived them of valuable rights and benefits guaranteed by law, all to the
9 detriment of PLAINTIFFS.

10 128. All the acts described herein are violations of, among other things, the CAL.
11 LAB. CODE, CAL. CODE REGS., and Industrial Welfare Commission Wage Order 7; are
12 unlawful and in violation of public policy; and in addition are immoral, unethical,
13 oppressive, and unscrupulous, and thereby constitute unfair and unlawful business practices
14 in violation of CAL. BUS. & PROF. CODE § 17200 et seq.

15 129. PLAINTIFFS are entitled to and seek such relief as may be necessary to
16 restore to them the money and property that DEFENDANTS have acquired, or of which
17 PLAINTIFFS have been deprived, by means of the above-described unfair and unlawful
18 business practices.

19 130. PLAINTIFFS are further entitled to seek a declaration that the above-described
20 business practices are unfair and unlawful and that an injunctive relief should be issued
21 restraining DEFENDANTS from engaging in any of the above-described unfair and
22 unlawful business practices in the future.

23 131. PLAINTIFFS have no plain, speedy, and/or adequate remedy at law to redress
24 the injuries that they have suffered as a consequence of DEFENDANTS' unfair and
25 unlawful business practices. As a result of the unfair and unlawful business practices
26 described above, PLAINTIFFS have suffered and will continue to suffer irreparable harm
27 unless DEFENDANTS are restrained from continuing to engage in these unfair and
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1 unlawful business practices. In addition, DEFENDANTS should be required to disgorge the
2 unpaid moneys to PLAINTIFFS.

3 **NINTH CAUSE OF ACTION**
4 **FOR PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**

5 **[California Labor Code § 2698, *et seq.*]**

6 **(By PLAINTIFFS, On Their Own Behalves, and As Private Attorneys Generals for All**
7 **Aggrieved Employees, and Against All DEFENDANTS)**

8 132. PLAINTIFFS repeat and re-allege paragraphs 1 through 131, inclusive, of this
9 Complaint and they are incorporated herein by this reference.

10 133. CAL. LAB. CODE §§ 2698-2699, the Private Attorneys General Act of 2004
11 expressly establishes that any provision of the CAL. LAB. CODE which provides for a civil
12 penalty to be assessed and collected by the Labor and Workforce Development Agency
13 (“LWDA”), or any of its departments, divisions, commissions, boards, agencies or employees
14 for a violation of the CAL. LAB. CODE, may be recovered through a civil action brought by an
15 aggrieved employee on behalf of himself or herself, and other current or former employees.

16 134. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
17 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is
18 authorized to exercise the same discretion, subject to the same limitations and conditions, to
19 assess a civil penalty.

20 135. PLAINTIFFS and all persons employed by DEFENDANTS as hourly paid
21 employees, are “aggrieved employees” as defined by CAL. LAB. CODE § 2699 in that they are all
22 current or former employees of DEFENDANTS, and one or more of the alleged violations was
23 committed against them.

24 136. PLAINTIFFS assert all of their claims in this Complaint on their own behalves and
25 on behalf of all aggrieved employees in their capacity as Private Attorneys Generals, and seek
26 all statutory penalties available under CAL. LAB. CODE §§ 2698-2699.

27 137. On May 22, 2024, DANIEL DAVID KENT gave written notice by certified mail
28 to DEFENDANTS of the specific code provisions alleged to have been violated, as required by

1 CAL. LAB. CODE § 2699.3. On the same date, DANIEL DAVID KENT submitted a “PAGA
2 Claim Notice” to the Labor and Workforce Development Agency (“LWDA”) through its online
3 portal. DANIEL DAVID KENT’s PAGA Notice Letter and LWDA Claim Submissions
4 indicated that he, “as an aggrieved employee, on his own behalf and on behalf of other
5 aggrieved employees of Gilstrap Trucking, Inc., Darin C. Gilstrap, [who also do business as
6 Gilstrap Trucking, Affordable Decorative Rock, and Cal Herbold’s Nursery] and any other
7 affiliated entity (collectively referred to herein as “**GILSTRAP**” and/or “Defendants”), intends
8 to avail himself of the protections granted by the CALIFORNIA LABOR CODE PRIVATE ATTORNEY
9 GENERAL ACT OF 2004 (“the Act”) (LAB. CODE, § 2698 et seq.).” The statutory waiting period
10 for DANIEL DAVID KENT to add these allegations to the Complaint has expired. As a result,
11 pursuant to CAL. LAB. CODE § 2699.3, DANIEL DAVID KENT, on behalf of himself and all
12 aggrieved employees, may now commence a representative civil action pursuant to CAL. LAB.
13 CODE § 2699 as the proxy of the State of California.

14 138. On May 22, 2024, SALVADOR MARTINEZ GARCIA gave written notice by
15 certified mail to DEFENDANTS of the specific code provisions alleged to have been violated,
16 as required by CAL. LAB. CODE § 2699.3. On the same date, SALVADOR MARTINEZ
17 GARCIA submitted a “PAGA Claim Notice” to the Labor and Workforce Development Agency
18 (“LWDA”) through its online portal. SALVADOR MARTINEZ GARCIA’s PAGA Notice
19 Letter and LWDA Claim Submissions indicated that he, “as an aggrieved employee, on his own
20 behalf and on behalf of other aggrieved employees of Gilstrap Trucking, Inc., Darin C. Gilstrap,
21 [who also do business as Gilstrap Trucking, Affordable Decorative Rock, and Cal Herbold’s
22 Nursery] and any other affiliated entity (collectively referred to herein as “**GILSTRAP**” and/or
23 “Defendants”), intends to avail himself of the protections granted by the CALIFORNIA LABOR
24 CODE PRIVATE ATTORNEY GENERAL ACT OF 2004 (“the Act”) (LAB. CODE, § 2698 et seq.).” The
25 statutory waiting period for SALVADOR MARTINEZ GARCIA to add these allegations to the
26 Complaint has expired. As a result, pursuant to CAL. LAB. CODE § 2699.3, SALVADOR
27 MARTINEZ GARCIA, on behalf of himself and all aggrieved employees, may now commence
28

1 a representative civil action pursuant to CAL. LAB. CODE § 2699 as the proxy of the State of
2 California.

3 139. DEFENDANTS' conduct, as alleged herein, violates numerous sections of the
4 CAL. LAB. CODE , including, but not limited to, the following:

- 5 a. Violations of CAL. LAB. CODE §§ 510, 1194, 1194.2, and 1198 for
6 DEFENDANTS' failure to pay overtime compensation and liquidated
7 damages to PLAINTIFFS, and other aggrieved employees;
- 8 b. Violations of CAL. LAB. CODE §§ 1182.12, 1194, 1194.2, 1197, 1197.1, 1198,
9 and CAL. CODE REGS., TIT. 8, § 11070 for DEFENDANTS' failure to pay
10 minimum wages and liquidated damages to PLAINTIFFS, and other
11 aggrieved employees;
- 12 c. Violations of CAL. LAB. CODE § 551, 552, and 553 for DEFENDANTS'
13 failure to provide one day's rest in seven days worked to PLAINTIFF
14 DANIEL DAVID KENT, and other aggrieved employees;
- 15 d. Violations of CAL. LAB. CODE §§ 226.7, 512, 516, and CAL. CODE REGS., TIT.
16 8, § 11070 for DEFENDANTS' failure to provide meal periods to
17 PLAINTIFFS, and other aggrieved employees;
- 18 e. Violations of CAL. LAB. CODE §§ 226.7 and 516, and CAL. CODE REGS., TIT.
19 8, § 11070 for DEFENDANTS' failure to provide rest periods to
20 PLAINTIFFS, and other aggrieved employees;
- 21 f. Violations of CAL. LAB. CODE §§ 226(a), 1174(d), and 1198 for
22 DEFENDANTS' failure to provide accurate itemized wage statements to
23 PLAINTIFFS, and other aggrieved employees and to maintain accurate
24 payroll records for PLAINTIFFS and other aggrieved employees;
- 25 g. Violations of CAL. LAB. CODE § 2810.5 for DEFENDANTS' failure to
26 provide notice of material terms of employment to PLAINTIFFS, and other
27 aggrieved employees.
28

- 1 h. Violations of CAL. LAB. CODE §§ 6300, et seq. for DEFENDANTS' failure to
2 provide a safe and healthy workplace in violation of the California
3 Occupational Safety and Health Act of 1973 to PLAINTIFFS, and other
4 aggrieved employees;
- 5 i. Violations of CAL. LAB. CODE §§ 201, 202, and 203 for DEFENDANTS'
6 failure to timely pay wages to PLAINTIFFS, and other aggrieved employees;

7 140. Therefore, PLAINTIFFS, on their own behalves and on behalf of all aggrieved
8 employees, can and hereby do seek recovery of all civil penalties as prescribed by the CAL. LAB.
9 CODE §§ 2698-2699, the Private Attorneys General Act of 2004, as representatives of the State
10 of California, for the illegal conduct perpetrated on PLAINTIFFS, and all aggrieved employees
11 by DEFENDANTS.

12 **PRAYER**

13 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
14 severally, as follows:

15 **1. ON THE FIRST CAUSE OF ACTION:**

- 16 (a) For overtime wage compensation, and liquidated damages;
- 17 (b) For an award of interest, including prejudgment interest at the legal
18 rate; and,
- 19 (c) For statutory penalties, interest, costs of suit and attorneys' fees.

20 **2. ON THE SECOND CAUSE OF ACTION:**

- 21 (a) For minimum wage compensation, and liquidated damages;
- 22 (b) For an award of interest, including prejudgment interest at the legal
23 rate; and,
- 24 (c) For statutory penalties, interest, costs of suit, and attorneys' fees.

25 **3. ON THE THIRD, FOURTH, FIFTH, SIXTH, AND SEVENTH CAUSES OF**
26 **ACTION:**

- 27 (a) For compensatory damages, including lost wages;
- 28

1 (b) For an award of interest, including prejudgment interest at the legal
2 rate; and,

3 (c) For statutory penalties, interest, costs of suit, and attorneys' fees.

4 **4. ON THE EIGHTH CAUSE OF ACTION:**

5 (a) For restitution and disgorgement;

6 (b) For injunctive relief ordering the continuing unfair business acts and
7 practices to cease, or as the Court otherwise deems just and proper;
8 and,

9 (c) For other injunctive relief ordering DEFENDANTS to notify
10 Plaintiffs that they have not been paid the proper amounts required in
11 accordance with California law.

12 **5. ON THE NINTH CAUSE OF ACTION:**

13 (a) That the Court declare, adjudge and decree that DEFENDANTS
14 violated the following CAL. LAB. CODE provisions as to PLAINTIFFS
15 and/or other aggrieved employees:

16 1. CAL. LAB. CODE §§ 510, 1194, 1194.2, and 1198, for
17 DEFENDANTS' failure to pay overtime compensation, and
18 liquidated damages to PLAINTIFFS, and other aggrieved
19 employees;

20 2. CAL. LAB. CODE §§ 1182.12, 1194, 1194.2, 1197, 1197.1,
21 1198, and CAL. CODE REGS., TIT. 8, § 11070 for
22 DEFENDANTS' failure to pay minimum wages, and
23 liquidated damages to PLAINTIFFS, and other aggrieved
24 employees;

25 3. CAL. LAB. CODE § 551, 552, and 553 for DEFENDANTS'
26 failure to provide one day's rest in seven days worked to
27 PLAINTIFF DANIEL DAVID KENT, and other aggrieved
28 employees;

4. CAL. LAB. CODE §§ 226.7, 512, and 516, and CAL. CODE REGS., TIT. 8, § 11070 for DEFENDANTS' failure to provide meal periods to PLAINTIFFS, and other aggrieved employees;
5. CAL. LAB. CODE §§ 226.7 and 516, and CAL. CODE REGS., TIT. 8, § 11070 for DEFENDANTS' failure to provide rest periods to PLAINTIFFS, and other aggrieved employees;
6. CAL. LAB. CODE §§ 226(a), 1174(d), and 1198 for DEFENDANTS' failure to provide accurate itemized wage statements to PLAINTIFFS, and other aggrieved employees and to maintain accurate payroll records for PLAINTIFFS and other aggrieved employees;
7. CAL. LAB. CODE § 2810.5 for DEFENDANTS' failure to provide notice of material terms of employment to PLAINTIFFS, and other aggrieved employees.
8. CAL. LAB. CODE §§ 6300, et seq. for DEFENDANTS' failure to provide a safe and healthy workplace in violation of the California Occupational Safety and Health Act of 1973 to PLAINTIFFS, and other aggrieved employees;
9. CAL. LAB. CODE § 203 for DEFENDANTS' failure to timely pay wages to PLAINTIFFS, and other aggrieved employees;
10. CAL. LAB. CODE § 2810.5 for DEFENDANTS' failure to provide notice of material terms of employment to PLAINTIFFS, and other aggrieved employees.

(b) For civil penalties under CAL. LAB. CODE §§ 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of CAL. LAB. CODE §§ 201, 202, 203, 226, 226.7, 510, 512, 516, 551, 552, 553, 1182.12, 1194, 1194.2, 1197.1, 1198, 2810.5, 6400(a), 6401, 6401.7, 6402, 6403, 6404 and 2810.5;

- (c) For attorneys' fees and costs under California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of CAL. LAB. CODE §§ 01, 202, 203, 226, 226.7, 510, 512, 516, 551, 552, 553, 1182.12, 1194, 1194.2, 1197.1, 1198, 2810.5, 6400(a), 6401, 6401.7, 6402, 6403, 6404, and 2810.5;
- (d) For pre-judgment and post-judgment interest as provided by law; and
- (e) For such other and further relief as the Court may deem equitable and appropriate.

6. ON ALL CAUSES OF ACTION:

- (a) For reasonable attorneys' fees;
- (b) For costs of suit;
- (c) For prejudgment interest; and,
- (d) For other and further relief their court deems just and proper.

Dated: July 29, 2024

THE OZZELLO PRACTICE, PC

By: 
MARK A. OZZELLO
CALVIN A. MARSHALL
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: July 29, 2024

THE OZZELLO PRACTICE, PC

By: 
MARK A. OZZELLO
CALVIN A. MARSHALL
Attorneys for Plaintiffs