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18 **UNITED STATES DISTRICT COURT**

19 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

20 SABAS ARREDONDO, JOSE CUEVAS,) Case No.: 1:09-CV-01247-MJS
21 HILARIO GOMEZ, IRMA LANDEROS,) **FIRST AMENDED CLASS ACTION**
22 ROSALBA LANDEROS, and ISIDRO) **COMPLAINT FOR DAMAGES**
23 PANIAGUA, individually and on behalf of all
others similarly situated,))
24) Plaintiffs,))
25) vs.))
26 DELANO FARMS COMPANY, a))
Washington State Corporation; CAL-PACIFIC))
27 FARM MANAGEMENT, L.P.; T&R))
28 BANGI’S AGRICULTURAL SERVICES,))
INC.; KERN AG LABOR MANAGEMENT,))
INC., ELITE AG LABOR SERVICES, INC.;))
and DOES 1 through 10 inclusive,))
Defendants.)

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby demand a trial by jury and complain as follows:

3 **JURISDICTION AND VENUE**

4 1. The Court has jurisdiction over Plaintiffs’ federal claims pursuant to 28 U.S.C. § 1331
5 and U.S.C. § 1854. The Court has supplemental jurisdiction over Plaintiffs’ state law claims
6 pursuant to 28 U.S.C. § 1367.

7 2. Venue is proper in this district pursuant to 28 U.S.C. § 1891(d) because the actions at
8 issue took place in this district.

9 3. This is properly assigned to the Fresno division of this Court, pursuant to Local Rule
10 3-120(d), because the action arose in Tulare County and Kern County, California.

11 **NATURE OF THE CASE**

12 4. This is a Class Action by current and former employees of CAL-PACIFIC FARM
13 MANAGEMENT, L.P., T&R BANGI'S AGRICULTURAL SERVICES, INC., KERN AG
14 LABOR MANAGEMENT, INC., LA VINA CONTRACTING, INC., ELITE AG LABOR
15 SERVICES, INC., and DELANO FARMS COMPANY CO. (collectively referred to herein as
16 “Defendants”) for recovery of unpaid wages and penalties, restitution, attorneys' fees and costs
17 and injunctive relief. Defendants, and each of them, are or have been engaged jointly in the
18 business of growing and harvesting table grapes on land located primarily in Kern and Tulare
19 Counties, California. Plaintiffs and Class Members are seasonal agricultural workers who have
20 worked in Defendants' vineyards and/or packing sheds. On behalf of themselves and the Class,
21 Plaintiffs complain that Defendants have required their agricultural workers to perform unpaid,
22 off-the-clock work in violation of federal and state wage and hour laws. Plaintiffs also complain,
23 on behalf of the Class, that Defendants have committed other violations of applicable law,
24 including failing to keep accurate records of hours worked, failing to provide itemized wage
25 statements that comport with the requirements of the applicable Industrial Welfare Commission
26 Wage Order and California Labor Code § 226, and failing to compensate straight piece rate
27 workers for mandatory rest periods time in violation of federal and state wage and hour laws.

28 **PARTIES**

1 5. Plaintiffs are residents of Kern County and Tulare County, State of California. Named
2 Plaintiffs and the class members are or were agricultural workers within the meaning of 29
3 U.S.C § 1802(10), and are or were employed by CAL-PACIFIC FARM MANAGEMENT, L.P.,
4 T& R BANGI'S AGRICULTURAL SERVICES, INC., KERN AG LABOR MANAGEMENT,
5 INC., LA VINA CONTRACTING, INC., ELITE AG LABOR SERVICES, INC., and
6 DELANO FARMS COMPANY, within the meaning of 29 U.S.C § 1802 (3), to work in
7 Defendant DELANO FARMS COMPANY's agricultural fields in or near Kern and Tulare
8 Counties, California, at various times from four (4) years prior to the filing of this action to the
9 present (“the relevant period”).

10 6. Plaintiffs and the class members are or were non-exempt employees of CAL-PACIFIC
11 FARM MANAGEMENT, L.P., T&R BANGI'S AGRICULTURAL SERVICES, INC., KERN
12 AG LABOR MANAGEMENT, INC., LA VINA CONTRACTING, INC., ELITE AG LABOR
13 SERVICES, INC., and DELANO FARMS COMPANY. At all relevant times herein, Plaintiff
14 and the Class Members are or were employed by Defendants as agricultural employees on land
15 owned, leased and/or operated by Defendants in and around the Counties of Kern and Tulare,
16 California.

17 7. Defendant DELANO FARMS COMPANY is engaged in the ownership and operation
18 of vineyards and/or packing sheds located in and around Kern County and Tulare County,
19 California. At all times mentioned herein, DELANO FARMS COMPANY, as a joint employer
20 with CAL-PACIFIC FARM MANAGEMENT, L.P., T&R BANGI'S AGRICULTURAL
21 SERVICES, INC., KERN AG LABOR MANAGEMENT, INC., LA VINA CONTRACTING,
22 INC., and ELITE AG LABOR SERVICES, INC., employed Plaintiffs and similarly situated
23 persons as non-exempt employees.

24 8. DELANO FARMS COMPANY is located and has its principal place of business in
25 Kern County, and is conducting business in good standing in the State of California, including
26 the growth, harvesting and packaging of table grapes for sale in California and elsewhere.

27 9. Defendant CAL-PACIFIC FARM MANAGEMENT, L.P. is or was engaged in the
28 provision of labor for the operation of vineyards and/or packing sheds located in and around

1 Kern County and Tulare County, California. At all times mentioned herein, CAL-PACIFIC
2 FARM MANAGEMENT, L.P., as a joint employer with DELANO FARMS COMPANY,
3 employed Plaintiffs and similarly situated persons as non-exempt employees.

4 10. CAL-PACIFIC FARM MANAGEMENT is or was located and had its principal place
5 of business in Kern County, and conducted business in good standing in the State of California
6 during the relevant time period.

7 11. T&R BANGI'S AGRICULTURAL SERVICES, INC., KERN AG LABOR
8 MANAGEMENT, INC., LA VINA CONTRACTING, INC., and ELITE AG LABOR
9 SERVICES, INC. are or were engaged in the provision of labor for the operation of vineyards
10 and/or packing sheds located in and around Kern County and Tulare County, California. At all
11 times mentioned herein, T&R BANGI'S AGRICULTURAL SERVICES, INC., KERN AG
12 LABOR MANAGEMENT, INC., LA VINA CONTRACTING, INC., and ELITE AG LABOR
13 SERVICES, INC. were joint employers with DELANO FARMS COMPANY, when they
14 employed Plaintiffs and similarly situated persons as non-exempt employees.

15 12. T&R BANGI'S AGRICULTURAL SERVICES, INC., KERN AG LABOR
16 MANAGEMENT, INC., LA VINA CONTRACTING, INC., and ELITE AG LABOR
17 SERVICES, INC. are or were located and have their principal place of business in Kern County,
18 and are or were conducting business in good standing in the State of California.

19 13. CAL-PACIFIC FARM MANAGEMENT, L.P., T&R BANGI'S AGRICULTURAL
20 SERVICES, INC., KERN AG LABOR MANAGEMENT, INC., LA VINA CONTRACTING,
21 INC., and ELITE AG LABOR SERVICES, INC. have issued payroll checks to the same
22 employees with either the CAL-PACIFIC FARM MANAGEMENT, L.P., T&RBANGI'S
23 AGRICULTURAL SERVICES, INC., KERN AG LABOR MANAGEMENT, INC., LA VINA
24 CONTRACTING, INC., or ELITE AG LABOR SERVICES, INC.'s name. During the relevant
25 time period these Defendants have routinely alternated between these names on the same
26 employees' paychecks for work performed for Delano Farms.

27 14. The true names and capacities, whether individual, corporate, associate or otherwise,
28 of Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiffs,

1 who therefore sue Defendants by such fictitious names. Plaintiffs are informed and believe, and
2 based thereon allege, that each of the Defendants designated herein as a DOE is legally
3 responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of
4 Court to amend this Complaint to reflect the true names and capacities of the Defendants
5 designated as DOE when the same are ascertained.

6 15. Defendants, and each of them, are and during the relevant time period have been
7 engaged jointly in the business of cultivating, harvesting, packing, and shipping table grapes.

8 16. With respect to the events at issue in this case, Defendants acted as agents for each
9 other and as joint employers of Plaintiffs and class members.

10 17. As joint employers of Plaintiffs and the Class, Defendants DELANO FARMS
11 COMPANY, CAL-PACIFIC FARM MANAGEMENT, L.P., KERN AG LABOR
12 MANAGEMENT, INC., LA VINA CONTRACTING, INC., ELITE AG LABOR SERVICES,
13 INC., and T&R BANGI'S AGRICULTURAL SERVICES, INC. are jointly and severally liable
14 for the violations of law described in this Complaint.

15 **FACTUAL BACKGROUND**

16 18. Plaintiffs and the Class Members are, and at all times pertinent hereto have been,
17 non-exempt employees within the meaning of the California Labor Code § 500, et seq., and the
18 rules and regulations of the IWC California Wage Orders. Defendants hire table grape workers
19 who work in Defendants' vineyards, such as, pruners, girdlers, tyers, deleafers, pickers and
20 packers, as well as workers employed to work in the packing shed and cold storage areas.

21 19. Plaintiffs and the Class Members were not compensated for all time worked as a
22 condition of their employment. Specifically, they were not compensated for: (1) pre-shift work;
23 (2) post-shift work; (3) work performed at home (4) time stopped from working during the day;
24 (5) time spent traveling during the work day; and (6) mandatory rest periods time where total
25 daily work time of workers earning wages under a straight piece rate contract or working
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1 arrangement exceeded 3½ hours.¹ As a result, Plaintiffs and class members were not
2 compensated for all the hours worked. Nor were Plaintiffs and class members provided with
3 legally compliant rest periods while working on a piece rate basis and therefore were not
4 compensated for all the hours worked. Further, in some instances, Plaintiffs are entitled to
5 overtime compensation that was either not paid or not paid at the correct overtime rate.
6 Defendants' failure to pay this compensation was knowing and willful.

7 20. Plaintiffs and the Class are covered by California Industrial Welfare Commission
8 (IWC) Occupational Wage Order No.14-2001 (Title 8 Cal. Code of Reg. § 11050).

9 21. Defendants have failed to comply with IWC Wage Order 14-2001(7) by failing to
10 maintain time records showing when the employee begins and ends each work period and total
11 daily hours worked by itemizing in wage statements all deductions from payment of wages and
12 accurately reporting total hours worked by Plaintiffs and the members of the proposed Class.

13 22. Defendants have failed to comply with IWC Wage Order 14-2001 (12) by failing to
14 count mandatory rest periods time as hours worked. Defendants have also failed to separately
15 compensate, account for, and document payment to employees for mandated rest periods of
16 employees working under a straight piece rate contract or working arrangement.

17 23. Plaintiffs and members of the proposed class were not advised of their right to take
18 rest or recovery breaks during piece rate work, rest and recovery breaks were not made available
19 during piece rate work, and/or Plaintiff and the proposed class were discouraged or otherwise
20 prevented from taking such breaks during piece rate work, within the meaning of Labor Code
21 section 226.2(g)(3).

22 CLASS ACTION ALLEGATIONS

23 24. Plaintiffs bring this action on behalf of themselves and all others similarly situated
24 as a Class Action pursuant to Rule 23(a) and 23(b)(3) of the F.R.C.P. The Plaintiffs satisfy the
25 requirements of Rule 23(a) and (b)(3) for the prosecution of this action as a Class Action.

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28 ¹Under Bluford v. Safeway Stores, Inc., 216 Cal. App. 4th 864 (2013), employers must "separately compensate"
employees for mandatory rest periods while those employees are working on a piece rate basis in order to comply
with California law. Bluford, 216 Cal. App. 4th at 872.

1 Plaintiffs seek to represent one class composed of and defined as follows: All agricultural
2 employees who are or have been employed, and who have worked one or more shifts as non-
3 exempt hourly and/or piece rate workers for DELANO FARMS COMPANY, CAL-PACIFIC
4 FARM MANAGEMENT, L.P., KERN AG LABOR MANAGEMENT, INC., LA VINA
5 CONTRACTING, INC., ELITE AG LABOR SERVICES, INC., and/or T&R BANGI'S
6 AGRICULTURAL SERVICES, INC. in the State of California from four (4) years prior to the
7 filing of this action.

8 25. Plaintiffs reserve the right to amend or modify the class description with greater
9 specificity or further division into subclasses or limitation to particular issues.

10 **A. Numerosity**

11 26. The potential members of the Class as defined are so numerous that joinder of all the
12 members of the Class is impracticable. While the precise number of Class members has not been
13 determined at this time, Plaintiffs are informed and believe, and based upon such information
14 and belief thereupon allege that Defendants, during the relevant time period, employed well over
15 20,000 agricultural workers.

16 27. Plaintiffs allege that Defendants' employment records would provide information as
17 to the number and location of all Class members. Joinder of all members of the proposed Class
18 is not practicable.

19 28. Plaintiffs allege that Defendants' employment records, payment histories, "Datatech"
20 records, and/or other evidence and documents demonstrate that approximately 5000 employees,
21 who worked for Defendants' on a straight piece rate basis during the remedial period, were not
22 paid wages earned during mandatory rest periods under IWC 14-2001 (12), where total daily
23 work time exceeded 3½ hours. Plaintiffs also allege that Defendants did not separately account
24 for those earned, but unpaid, wages on itemized wage statements.

25 **B. Commonality**

26 29. There are questions of law and fact common to the Class that predominate over any
27 questions affecting only individual Class members. These common questions of law and fact
28 include, without limitation:

1 (a) Whether Defendants violated the Migrant And Seasonal Agricultural Worker
2 Protection Act 29 U.S.C. § 1801 et seq. (AWPA) by failing to pay wages due to class members for
3 all hours worked, including when they failed to pay Plaintiffs and Class Members working under a
4 straight piece rate contract or working arrangement for time spent on mandated rest periods when
5 a worker's daily time equaled 3 ½ hours or more;

6 (b) Whether Defendants failed to pay wages and/or overtime compensation for all hours
7 worked;

8 (c) Whether Defendants paid all piece rate/bonuses for work performed;

9 (d) Whether Defendants violated California Labor Code § 226 by failing to (i) maintain
10 time records showing when the employee begins and ends each work period and total daily hours
11 worked for all members of the proposed Class, whether paid on an hourly, hourly plus bonus or
12 straight piece rate basis, and by failing to itemize in wage statements all deductions from
13 payment of wages and accurately report total hours worked by Plaintiffs and the members of the
14 proposed Class; and/or (ii) maintain records showing that workers employed on a straight piece
15 rate basis were separately compensated for rest periods;

16 (e) Whether Defendants violated § 2802 of the California Labor Code by failing to
17 reimburse Class Members for the costs of the tools Plaintiffs purchased that were required and
18 necessary for them to perform their work in Defendants' agricultural operations.

19 (f) Whether Defendants violated §§ 201- 203 by failing to pay compensation due and
20 owing at the time that any Class Member's employment with Defendants terminated;

21 (g) Whether Defendants violated § 17200, et seq., of the Business & Professions Code by
22 engaging in the acts previously alleged;

23 (h) Whether Plaintiffs and the Members of the Class are entitled to equitable relief
24 pursuant to Business & Professions Code § 17200, et seq.;

25 (i) Whether Plaintiffs and the Members of the Class, when working under a straight piece
26 rate contract or working arrangement, were entitled to payment for the time spent during each
27 rest period mandated by IWC 14-2001 (12) on days when time total daily work time
28 equaled 3½ hours or more.

1 (j) Whether Defendants violated their obligation to pay wages, when they failed to pay
2 Plaintiffs and Class Members working under a straight piece rate contract or working
3 arrangement for time spent on IWC 14-2001 (12) mandated rest periods when a worker's total
4 daily work time equaled 3½ hours or more.

5 (k) Whether Defendants violated Labor Code §§221 and/or 223 by failing to pay Plaintiffs
6 and Class Members for time spent during mandated rest periods, where Plaintiffs and Class
7 Members worked under a straight piece rate contract or working arrangement and total daily
8 work time equaled 3½ hours or more.

9 (l) Whether Defendants owe premium pay to Plaintiffs and Class Members under Labor
10 Code §226.7; and whether Defendants owe penalties or other costs to Plaintiffs and the Class
11 Members who worked under a straight piece rate contract or working arrangement, by failing to
12 pay them wages due for mandatory rest periods time, where total daily work time equaled 3½
13 hours or more.

14 **C. Typicality**

15 30. The claims of the Named Plaintiffs are typical of the claims of the Class. Plaintiffs
16 and all Members of the Class sustained damages arising out of and caused by Defendants'
17 common course of conduct in violation of laws and regulations that have the force and effect of
18 law and statutes as alleged herein.

19 **D. Adequacy of Representation**

20 31. Plaintiffs will fairly and adequately represent and protect the interests of the
21 Members of the Class. Counsel representing Plaintiffs are competent and experienced in
22 litigating large employment Class Actions, and in litigating Class Actions involving agricultural
23 employees.

24 **E. Superiority of Class Action**

25 32. A Class Action is superior to other available means for the fair and efficient
26 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
27 questions of law and fact common to the Class predominate over any questions affecting only
28 individual members of the Class.

1 33. Class Action treatment will allow those similarly situated persons to litigate their
2 claims in the manner that is most efficient and economical for the parties and the judicial system.
3 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of
4 this action that would preclude its maintenance as a Class Action.

5 **FACTS**

6 34. During the relevant period, CAL-PACIFIC FARM MANAGEMENT, L.P.,T&R
7 BANGI'S AGRICULTURAL SERVICES, INC., KERN AG LABOR MANAGEMENT, INC.,
8 LA VINA CONTRACTING, INC., ELITE AG LABOR SERVICES, INC., and DELANO
9 FARMS COMPANY have cultivated, harvested, packed, and shipped agricultural commodities,
10 including table grapes, on agricultural land located in or near Kern and Tulare Counties,
11 California, for fresh market sale. Defendants sell and ship their agricultural produce to various
12 parts of California and other states of the United States.

13 35. During the relevant period, CAL-PACIFIC FARM MANAGEMENT, L.P.,T&R
14 BANGI'S AGRICULTURAL SERVICES, INC., KERN AG LABOR MANAGEMENT, INC.,
15 LA VINA CONTRACTING, INC., ELITE AG LABOR SERVICES, INC., and DELANO
16 FARMS COMPANY have employed, as that term is used in 29 U.S.C. § 1892(3), hundreds of
17 seasonal agricultural workers in its pruning, girdling, tying, thinning, harvesting and field
18 packing and packaging operations.

19 36. During the relevant period, many of Defendants' field laborers have quit their
20 employment during or between the various table grape seasons, or have been discharged or laid
21 off at the end of each season.

22 37. During the relevant period, Named Plaintiffs and the Class they represent have
23 engaged in agricultural employment, as that term is used in 29 U.S.C. § 1802(3), on agricultural
24 land owned or operated by Defendants.

25 38. During the relevant class period, Plaintiffs and the Class they represent have entered
26 into working arrangements with Defendants to perform agricultural work for compensation, at
27 times, on a straight piece rate basis. These arrangements are formed and entered into each
28 season, at least once, and in many cases more than once each year, at or near the time Named

1 Plaintiffs and the Class Members are hired by Defendants. Under the working arrangements,
2 which are also oral employment contracts, Defendants offer Plaintiffs and other agricultural
3 workers jobs in their agricultural operations, and Plaintiffs and other agricultural workers accept
4 the job offers. By words, conduct, practice, or custom and usage, it is understood by the parties
5 that Defendants will pay Plaintiffs and other workers, including piece rate workers, for all work
6 performed, consistent with federal and state law. At times, workers were paid a straight piece
7 rate, a stated hourly wage, or, during the table grape harvest season, a stated hourly wage and a
8 stated bonus (incentive) payment based on production in the fields. Said contracts are and were
9 working arrangements as that term is used in the Migrant and Seasonal Agricultural Worker
10 Protection Act, 29 U.S.C. § 1932(c). In addition, by words, conduct, practice, or custom and
11 usage, including but not limited to posting the IWC Wage Order 14-2001 at the place of
12 employment, Defendants communicated to agricultural workers that they would abide by the
13 terms contained therein. Such posting of the IWC Wage Order 14-2001 was and is a "working
14 arrangement" as that term is used in the Migrant and Seasonal Agricultural Worker Protection
15 Act, 29 U.S.C. § 1932(c). This "arrangement" required Defendants to pay agricultural workers
16 their agreed-upon wages for all work performed, and to abide in all respects with the wage order.
17 Further, Defendants were obligated to include payment of wages to straight piece rate workers
18 for mandatory rest periods time pursuant to IWC Wage Order 14-2001 (12), and to abide in all
19 respects with the IWC Wage Order 14-2001, including in regard to wage statement requirements,
20 which formed part of the working arrangements.²

21 39. During the relevant period, Defendants have failed to pay all wages due to their
22 agricultural workers and have failed to keep accurate time records. Specifically, Defendants
23 have failed to pay their field workers in the table grape operations for time at the beginning of
24 the work day during which Plaintiffs and their co-workers have been subject to Defendants'
25 control and/or have been suffered or permitted to work. Defendants' agricultural workers have
26 performed "off-the-clock," unpaid and unrecorded work. Workers have spent this time

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²*Bluford, Id.*, 216 Cal. App. 4th at 872.

1 organizing materials and equipment essential for the harvest, including tables, wheelbarrows,
2 trays, packing material, bags, boxes, and other materials. At times due to rain, wet fields or other
3 reasons, Plaintiffs and the Class were required to report to work and were not permitted to start
4 work. Plaintiffs and the Class were not free to leave and were made to wait until they were
5 provided information as to whether they would begin work or be sent home. In addition,
6 Defendants failed to pay workers working on a straight piece-rate basis wages due for mandatory
7 rest period time, where total daily work time equaled 3½ hours or more.

8 40. During the relevant period, Defendants' foremen have conducted "schooling" or
9 training of Defendants' grape workers 15-30 minutes before the official, recorded start time, one
10 or more times during each table grape season.

11 41. During the relevant period, Defendants' agricultural workers performed work "off-
12 the-clock" at the end of the day, to clean up or finish packing boxes. This time was unrecorded
13 and not paid.

14 42. During the relevant period, Plaintiffs and the Class were required to meet at locations
15 designated by Defendants' foremen before the start of the work day and wait for their foremen to
16 arrive at the location. Plaintiffs and the Class were required to travel from the designated
17 location to their work location, following their foremen. This time was unrecorded and not paid.

18 43. During the relevant period, Defendants required workers to clean their trays at home.
19 This required the transportation of the trays to and from home, as well as the washing and drying
20 of the trays. All of this time was uncompensated.

21 44. Pursuant to California law, Plaintiffs and Class Members were entitled to be paid for
22 the rest periods time, ten (10) minutes for every four (4) hours worked or major fraction thereof,
23 where total daily work exceeded 3½ hours. Named Plaintiff Hilario Gomez and Isidro Paniagua,
24 and thousands of Class Members, worked on a straight piece rate basis during the remedial
25 period, without being paid wages for their rest periods time as required by California law.³
26 When Plaintiffs and Class Members worked under a straight piece rate contract or working
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³*Bluford, Id.*, 216 Cal. App. 4th at 872

1 arrangement, they only earned money for "pieces." Defendants did not separately pay wages for
2 rest periods time or account for the mandatory rest periods time in itemized wage statements as
3 required by California law.

4 45. Each year during the relevant period, Plaintiffs and the Class have worked under
5 employment contracts with Defendants. The parties have entered into the contracts each year,
6 and frequently more than once a year, at or near the time each of the Named Plaintiffs and other
7 workers have been hired by Defendants. The employment contracts have provided that
8 Defendants would pay Plaintiffs and other workers an hourly wage or, during the table grape
9 harvest, an hourly wage plus a modest bonus (incentive) payment based on field production.
10 During the pruning or tying season, the employment contracts provided that Defendants would
11 pay their workers on an hourly basis or piece rate. During the performance of pruning, tying,
12 girdling, or other non-harvest jobs, the employment contracts provided that Defendants would
13 pay workers either on an hourly basis or piece rate basis.

14 46. In addition, by words, conduct, practice, or custom and usage, including but not
15 limited to posting IWC Wage Order 14-2001 at the place of employment, Defendants
16 communicated that they would provide to Plaintiffs and the proposed class all necessary tools
17 and equipment. More specifically, IWC Wage Order 14-2001 states: "When tools or equipment
18 are required by the employer or are necessary to the performance of a job, such tools and
19 equipment shall be provided and maintained by the employer..." During the relevant period,
20 Plaintiffs and the Class were required to provide their own tools that are necessary to perform the
21 work required of them by Defendants. The tools required to perform the work are not provided
22 to the Plaintiffs and the Class, thus they are required to purchase said tools and have not been
23 reimbursed by Defendants.

24 47. Pursuant to California Labor Code § 2699.3(a), prior to the filing of this complaint,
25 Plaintiffs gave written notice by certified mail on July 16, 2009 to each Defendant and to the
26 Labor and Work Force Development Agency ("LWFDA") of the factual and legal basis for the
27 labor law violations alleged in this complaint. Plaintiffs will seek leave to amend this complaint,
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1 in accordance with Labor Code §§ 2699.3(a)(2)(A) and (a)(2)(C), to seek all applicable penalties
2 for violations which the LWFDA has failed to investigate and/or failed to issue a citation.

3 **FIRST CAUSE OF ACTION**

4 **VIOLATION OF MIGRANT AND SEASONAL AGRICULTURAL WORKER**
5 **PROTECTION ACT (29 U.S.C. § 1801, ET SEQ.)**

6 48. Plaintiffs incorporate every allegation in this Complaint as though fully set forth
7 herein.

8 49. Defendants intentionally violated the Migrant and Seasonal Agricultural Worker
9 Protection Act by:

10 (a) failing to pay wages when due to Plaintiffs and Class Members, as required by 29
11 U.S.C. § 1832(a);

12 (b) failing to keep accurate time and wage records for all work performed by Plaintiffs
13 and the Class Members and failing to provide them with accurate, itemized statements of each
14 pay period, as required by 29 U.S.C. § 1831(c)(1-2);

15 (c) providing to Plaintiffs and the Class Members false and misleading information
16 required to be disclosed by 29 U.S.C. § 1831(c); and

17 (d) violating the terms of the working arrangements made with Plaintiffs and Class
18 Members, in violation of 29 U.S.C. § 1832(c).

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES AND/OR OVERTIME**

21 50. Plaintiffs incorporate every allegation in this Complaint as though fully set forth
22 herein.

23 51. Further, Plaintiffs and Members of the Class were required to perform pre-shift work,
24 post-shift work and perform work at home. Much of this time would force Plaintiffs and the
25 Class to work over ten (10) hours per day or sixty (60) hours per week. None of this time,
26 overtime or otherwise, was paid.

27 52. By common conduct, practice, custom, or usage, including by the posting of IWC
28 Wage Order 14-2001, it has been agreed that Defendants would pay Plaintiffs and Class

1 Members their agreed-upon wages for all hours worked, including wages due for mandatory rest
2 period time while employees worked on a piece rate basis as required by California law.

3 53. Defendants have breached the employment contracts by failing to pay Plaintiffs and
4 Class Members wages earned and due, causing damages to Plaintiffs and the Class.

5 54. Additionally, Labor Code § 1194(a) provides that it is unlawful to pay less than the
6 minimum wage established by law. Defendants' failure to pay the sums as identified above and
7 required by the Wage Orders, violates the provisions of Labor Code § 1194(a) and is therefore
8 unlawful. Liquidated damages are also to be awarded in this instance, equal to the unpaid
9 minimum wages.

10 55. As a result of the unlawful acts of Defendants, Plaintiffs and Class Members have
11 been deprived of wages and/or overtime in amounts to be determined at trial and are entitled to
12 recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs, pursuant
13 to Labor Code §§ 1194.2(a) and/or 218.5.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE EXPENSES FOR TOOLS AND EQUIPMENT IN**
16 **VIOLATION OF 29 U.S.C. § 1832(c) AND CAL. LABOR CODE § 2802**

17 56. Plaintiffs incorporate every allegation in this Complaint as though fully set forth
18 herein.

19 57. By words, conduct, practice, or custom and usage, including but not limited to
20 posting IWC Wage Order 14-2001 at the place of employment, Defendants communicated that
21 they would provide to Plaintiffs and the proposed class all necessary tools and equipment.
22 However, during the relevant time period, Plaintiffs and Members of the Class have been
23 required by Defendants to purchase tools and equipment in order to perform their job duties for
24 Defendants. Plaintiffs and members of the Class are required to purchase, including but not
25 limited to: gloves, shears, sharpeners, knives and holsters. At all relevant times, Defendants
26 failed to pay any amounts for these tools and equipment or to provide such tools and equipment
27 to Plaintiffs and the proposed class.

1 58. California Labor Code § 2802 provides that an employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties. Pursuant to Labor Code § 2802 and pursuant
4 to the working arrangement with Defendants as alleged hereinabove, Plaintiffs and the proposed
5 class are entitled to reimbursement of all tool expenses they incurred throughout the duration of
6 their employment.

7 59. Plaintiffs and the proposed class seek reimbursement of said expenses in an amount
8 to be shown at trial, plus attorneys' fees, interest and costs.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO KEEP ACCURATE INFORMATION AND TO PROVIDE ACCURATE**
11 **STATEMENTS OF ALL HOURS WORKED AND WAGES EARNED IN VIOLATION**
12 **OF CALIFORNIA LABOR CODE § 226 AND IWC WAGE ORDER 14-2001**

13 60. Plaintiffs incorporate every allegation in this Complaint as though fully set forth
14 herein.

15 61. In pertinent part, Wage Order 14, paragraph 14 (a) provides, and during the relevant
16 period, provided that every employer shall keep accurate information with respect to each
17 employee including the following: time records showing when the employee begins and ends
18 each work period, total hours worked in the payroll period, and when a piece rate or incentive
19 plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided
20 to employees.

21 62. Each pay period during the relevant period, Defendants have violated IWC Wage
22 Order 14 by failing to keep accurate information with respect to, among other things, when
23 Plaintiffs have begun each work period and total hours worked, and when Plaintiff and Class
24 members were to be paid for rest periods while working on a piece rate basis.

25 63. In pertinent part, California Labor Code § 226(a) provides, and during the relevant
26 period provided: Every employer shall, semimonthly or at the time of each payment of wages,
27 furnish each of his or her employees...an accurate itemized statement in writing showing (1)
28 gross wages earned, (2) total hours worked by the employee,...(3) the number of piece-rate units

1 earned and any applicable piece rate if the employee is paid on a piece-rate basis ...(5) net wages
2 earned...(9) all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.

4 64. Each pay period during the relevant period, Defendants have violated § 226 by
5 failing to provide to Plaintiffs and the Class Members accurate statements showing, among other
6 things, hours worked and wages earned. In addition, as set forth above and in the Fifth Cause of
7 Action, Defendants failed to separately and properly pay for rest periods and account for rest
8 periods paid where employees were working under a straight piece rate contract or working
9 arrangement.

10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO COMPENSATE FOR REST BREAKS PURSUANT TO LABOR CODE**

12 **§226.7 AND WAGE ORDER 14-2001 (8 C. C. R. § 11140)**

13 65. Plaintiffs incorporate each and every allegation set forth in all of the foregoing
14 paragraphs as if fully set forth herein.

15 66. Labor Code §226.7 and IWC Wage Order 14-2001 require an employer to provide
16 pay for rest periods time to piece rate employees.⁴ Where an employer fails to provide a rest
17 period in accordance with any California state law, the employer shall pay the employee one
18 additional hour of pay for each workday on which a violation occurred. Plaintiffs and Class
19 Members were entitled to a paid ten (10) minute rest break for every four (4) hours worked or
20 major fraction thereof, where total daily work time exceeded 3½ hours. Defendants failed to pay
21 this hourly pay to its piece rate workers.

22 67. Piece rate Plaintiffs and Class Members were not provided rest periods in accordance
23 with California state law. Piece rate work by Plaintiffs and Class Members consistently exceeded
24 a total daily work time of 3½ hours. Plaintiffs and Class Members were not compensated for any
25 rest periods time while working under a straight piece rate contract or working arrangement
26 during the relevant period. Employee pay stubs and employer records do not reflect separate
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⁴*Bluford, Id.*, 216 Cal. App. 4th at 872

1 payment for rest periods time where employees worked under a straight piece rate contract or
2 working arrangement.

3 68. Pursuant to Labor Code §226. 7, Plaintiffs and Class Members are entitled to
4 damages of premium pay in an amount equal to one (1) hour of wages for each workday on
5 which such a violation occurred, in a sum to be proven at trial.

6 **SIXTH CAUSE OF ACTION**

7 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

8 69. Plaintiffs incorporate every allegation in this Complaint as though fully set forth
9 herein.

10 70. Numerous Members of the Class are no longer employed by Defendants. They were
11 either fired or quit Defendants' employ, or they were laid off at the end of each harvest season.
12 Many were employed for a season and were terminated at the conclusion of the season. In each
13 case, Defendants failed to pay employees all wages due them upon their permanent or seasonal
14 separation from employment.

15 71. Defendants' failure to pay wages as alleged above was willful in that Defendants,
16 and each of them, knew wages to be due but failed to pay them, thus entitling Plaintiffs and the
17 Class to penalties under Labor Code § 203, which provides that an employee's wages shall
18 continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

19 72. Defendants have failed to pay Plaintiffs and Class Members a sum certain at the time
20 of termination or lay off within seventy-two (72) hours of their resignation and have failed to pay
21 those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203,
22 Plaintiffs and Class Members are entitled to a penalty in the amount of Plaintiffs' daily wage
23 multiplied by thirty (30) days for each time they were terminated, seasonally laid off and/or quit,
24 and were not paid all wages earned.

25 **SEVENTH CAUSE OF ACTION**

26 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

27 73. Plaintiffs incorporate every allegation in this Complaint as though fully set forth
28 herein.

1 74. Plaintiffs bring this claim pursuant to Business & Professions Code § 17200, et seq.
2 The conduct of all Defendants as alleged in this Complaint has been, and continues to be, unfair,
3 unlawful, and harmful to Plaintiffs, the general public, and the Class. Plaintiffs seek to enforce
4 important rights affecting the public interest within the meaning of Cal. Code of Civil Procedure
5 § 1021.5.

6 75. Plaintiffs are "persons" within the meaning of Business & Professions Code § 17204
7 and therefore have standing to bring this cause of action for injunctive relief, restitution, and
8 other appropriate equitable relief.

9 76. Business & Profession Code § 17200, et seq. prohibits unlawful and unfair business
10 practices.

11 77. Wage and hour laws express fundamental public policies. Paying employees the
12 proper wages and/or overtime, including paying piece-rate employees for mandatory rest periods,
13 is a fundamental public policy of this state and of the United States. Labor Code § 90.5(a)
14 articulates the public policies of this state to vigorously enforce minimum labor standards, to
15 ensure that employees are not required or permitted to work under substandard and unlawful
16 conditions, and to protect law-abiding employers and their employees from competitors who
17 lower their costs by failing to comply with minimum labor standards.

18 78. Defendants have violated statutes, regulations and public policies. Through the
19 conduct alleged in this Complaint, Defendants, and each of them, have acted contrary to these
20 public policies, have violated specific provisions of the Labor Code and have engaged in other
21 unlawful and unfair business practices in violation of Business & Profession Code § 17200, et
22 seq., depriving Plaintiffs, all persons similarly situated, and all interested persons, of rights,
23 benefits, and privileges guaranteed to all employees under the law.

24 79. Defendants' conduct, as alleged herein and above, constitutes unfair competition in
25 violation of § 17200, et.seq., of the Business & Professions Code.

26 80. Defendants, by engaging in the conduct alleged, either knew or in the exercise of
27 reasonable care should have known that the conduct was unlawful, and have violated § 17260,
28 et.seq., of the Business & Professions Code.

1 81. As a proximate result of the above mentioned acts of Defendants, Plaintiffs and
2 others similarly situated have been damaged.

3 82. Unless restrained by this Court, Defendants will continue to engage in the unlawful
4 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make
5 such orders or judgments, including the appointment of a receiver, as may be necessary to
6 prevent the use or employment, by Defendants or their agents or employees, of any unlawful or
7 deceptive practices prohibited by the Business & Professions Code, and/or, including, but not
8 limited to, disgorgement of ill-gotten gain which may be necessary to restore Plaintiffs and the
9 Class Members to the money Defendants have unlawfully failed to pay.

10 **RELIEF REQUESTED**

11 WHEREFORE, Plaintiffs pray for the following relief:

- 12 1. For compensatory damages in the amount of Plaintiffs' and each Class Member's unpaid
13 wages and unpaid overtime, from at least four (4) years prior to the filing of this action to
14 the present as may be proven;
- 15 2. For liquidated damages pursuant to Labor Code § 1194.2(a) in an amount equal to the
16 minimum wage compensation unlawfully unpaid from four (4) years prior to the filing of
17 this action to the present, as may be proven;
- 18 3. For penalties pursuant to Labor Code § 203 for all Plaintiffs and Class Members who
19 were terminated or resigned equal to their daily wage times thirty (30) days for each time
20 they left Defendants' employ;
- 21 4. An award of prejudgment and post judgment interest;
- 22 5. An order enjoining Defendants and their agents, servants, and employees, and all persons
23 acting under, in concert with, or for them (a) from failing to pay wages for all hours
24 worked; (b) from failing to properly reimburse employees for expenses; (c) from failing
25 to provide rest periods in accordance with California law⁵, including failing to pay wages
26 for mandatory rest periods; (d) failing to provide wage statements that comport with IWC

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28 ⁵*Bluford*, 216 Cal. App. 4th at 872

1 14-2001 and Labor Code § 226; and, (e) from failing to pay all bonuses and minimum
2 wages as agreed;

3 6. For penalties pursuant to Labor Code § 226.

4 7. For restitution for unfair competition pursuant to Business & Professions Code § 17200,
5 including disgorgement or profits, in an amount as may be proven;

6 8. An award of liquidated damages under Labor Code § 1194.2 (a);

7 9. For premium pay for unpaid rest periods pursuant to Labor Code 226.7;

8 10. An award providing for payment of costs of suit;

9 11. An award of attorneys' fees; and

10 12. Such other and further relief as this Court may deem proper and just.

11
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13 Dated this 17th day of November, 2016.

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16 MARTINEZ AGUILASOCHO & LYNCH, APLC

17
18 By: /s/ Mario Martinez

19 MARIO MARTINEZ, ESQ.

20 Attorneys for Plaintiffs

21 SABAS ARREDONDO, et. al