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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **IN AND FOR THE COUNTY OF STANISLAUS**

18 LUIS MASEDO, individually, and
19 acting in the interest of other current and
20 former employees,

21 Plaintiff,

22 v.

23 JOE SALLABERRY FARMS, a
24 California business organization form
25 unknown; JOE SALLABERRY,
26 individually and doing business as JOE
27 SALLABERRY FARMS; and DOES
28 ONE through TWENTY, inclusive

Defendants.

CASE NO.: 638260

~~PROPOSED~~ THIRD AMENDED
COMPLAINT

INTRODUCTION

1. Plaintiff is a dairy worker, formerly employed by Defendants to push, milk, and care for cows. Plaintiff alleges that he was wrongfully terminated.

2. In addition, Plaintiff seeks damages, restitution, and other appropriate relief for himself individually pursuant to California's Unfair Competition Law (the "UCL") (Business and Professions Code § 17200, *et seq.*), for each Defendant's failure to pay overtime wages, authorize and permit rest and meal periods, maintain proper payroll records and provide itemized wage statements, provide required work tools and equipment, pay all wages due, and accrued interest and

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CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY _____

DIANA GONCHAR

1 enforcement of penalties pursuant to California law.

2 3. Plaintiff also seeks injunctive relief to require that each Defendant comply with all
3 applicable California labor laws in the future and to prevent each Defendant from engaging in and
4 continuing to engage in unlawful and unfair business practices.

5 **PARTIES**

6 4. Plaintiff LUIS MASEDO is an individual who currently resides in Stanislaus County
7 and, at all times material to this action, resided in Stanislaus County. Plaintiff LUIS MASEDO was
8 employed by Defendants in Stanislaus County from approximately July 2007 through March 14,
9 2008.

10 5. Plaintiff is informed and believes and thereon alleges that Defendant JOE
11 SALLABERRY FARMS, is a business entity in Stanislaus County producing milk at its principal
12 location at 5642 S. Morgan Road, Turlock, Stanislaus County, California. Plaintiff further alleges
13 that said Defendant is responsible for the occurrences herein alleged and that the resulting damages
14 were proximately caused by said Defendant's conduct.

15 6. Plaintiff is informed and believes and thereon alleges that Defendant JOE
16 SALLABERRY, an individual, owns and operates a business entity in Stanislaus County producing
17 milk at its principal place of business located at 5642 S. Morgan Road, Turlock, Stanislaus County,
18 California. Plaintiff further alleges that Defendant JOE SALLABERRY, an individual, is the owner
19 or major interest holder of a business entity in Stanislaus County producing its milk at its principal
20 place of business located at 5642 S. Morgan Road, Turlock, Stanislaus County. Plaintiff further
21 alleges that said Defendant is responsible for the occurrences herein alleged and that the resulting
22 damages were proximately caused by said Defendant's conduct.

23 7. Each Defendant has directly or indirectly or through an agent or other person
24 exercised control over the wages, hours or working conditions of Plaintiff and other current and
25 former employees.

26 8. Each Defendant directly or indirectly or through an agent or other person engaged,
27 suffered or permitted to work Plaintiff and other current and former employees.

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1 SALLABERRY. Once Plaintiff regained consciousness, Plaintiff asked Defendant JOE
2 SALLABERRY to be sent to a doctor. Defendant JOE SALLABERRY told Plaintiff that Plaintiff
3 would be fine the next day and did not send Plaintiff to a doctor. However, due to the injury,
4 Plaintiff could not complete his shift, and had his spouse drive him to the hospital that same day,
5 where Plaintiff was diagnosed with a fractured rib.

6 14. On or about March 14, 2008, after receiving medical attention, Plaintiff LUIS
7 MASEDO returned to the work site to ask for an accident report and to get insurance information
8 from Defendant JOE SALLABERRY to cover his medical costs. Defendant JOE SALLABERRY
9 fired Plaintiff LUIS MASEDO at that moment.

10 15. Plaintiff is informed and believes and thereon alleges that in 2008 and in the four
11 years preceding the filing of this complaint, each Defendant has employed other people as milkers
12 and/or as outside workers, under the same or similar circumstances as Plaintiff, to work in the same
13 dairy or work sites that the Plaintiff worked, including the real property located at 5642 S. Morgan
14 Road, Turlock, Stanislaus County, California.

15 16. Throughout the Plaintiff's tenure with JOE SALLABERRY FARMS between
16 approximately July 2007 until March 14, 2008, each Defendant required that the Plaintiff usually
17 work two days in a row. Each workday consisted of two shifts each day with each shift lasting
18 approximately between five and one half to seven hours, with no meal periods or rest breaks during
19 each shift, resulting in a total of approximately between 11 to 13 hours of work a day. After working
20 two days in a row, Plaintiff would usually have one day off from work. Plaintiff would then
21 continue his work schedule of working two days in a row and having one day off.

22 17. During Plaintiff LUIS MASEDO'S employment with Defendants, Defendants paid
23 Plaintiff LUIS MASEDO a monthly salary of approximately \$1,816.00. The fixed monthly salary
24 did not compensate Plaintiff LUIS MASEDO for California overtime wages due to Plaintiff LUIS
25 MASEDO for all work performed.

26 18. On information and belief, each Defendant required that other employees work
27 similar work weeks as Plaintiff. On information and belief, each Defendant required that other
28 employees work, on average, two days in a row and then one day off, with two daily shifts lasting

1 approximately five and a half to seven hours each, with no meal periods or rest breaks during each
2 shift, resulting in a total of approximately 11 to 13 hours of work a day. On information and belief,
3 Defendants paid other workers a monthly salary that did not compensate them for California
4 minimum overtime wages due for all work performed.

5 19. Plaintiff is informed and believes and thereon alleges that, at all times material to this
6 action, each Defendant has continuously failed to pay its dairy workers California overtime wages
7 and failed to allow workers to take required meal and rest periods.

8 20. Each Defendant failed to provide Plaintiff with records of the hours that he worked
9 or the hourly rate of pay, of which are required by California and federal law.

10 21. On information and belief, each Defendant failed to provide other similarly-employed
11 persons with records of the hours they worked or with their hourly rate of their pay.

12 22. At all times relevant to this action, each Defendant required that Plaintiff, and, on
13 information and belief, other similarly-employed people, spend their own money and time to acquire
14 and maintain tools and equipment necessary to the performance of their job, including, but not
15 limited to, work boots, gloves and clothing. Defendants have not reimbursed Plaintiff and/or on
16 information and belief, other workers, for these expenditures.

17 23. Plaintiff and, on information and belief, other similarly-employed individuals at
18 Defendants' Dairy, earn and have earned less than two times the minimum wage at all times relevant
19 to this Complaint.

20
21 **FIRST CAUSE OF ACTION**
22 **Wrongful Termination in Violation of Public Policy**
23 **Plaintiff, individually, Against All Defendants)**

24 24. Plaintiff incorporates by reference paragraphs 1 through 23 as if fully set forth herein,
25 and further alleges that:

26 25. Cal. Lab. Code § 132a states that "there should not be discrimination against workers
27 who are injured in the course and scope of their employment" Cal. Lab. Code § 6310(a)(1) further
28 states that an employee cannot be discharged or discriminated against because the employee "made
any oral or written complaint to... his or her employer." Plaintiff was injured while he was working

1 for Defendants. Plaintiff complained to Defendants that he was injured on the job and that he was
2 entitled to see a doctor. Plaintiff was immediately terminated upon his return from a doctor's visit.
3 Plaintiff was wrongfully terminated because of the workplace injury he suffered.

4 26. It is the public policy of the State of California that employers shall not retaliate
5 against employees who exercise any right afforded him or her by law. This public policy is essential,
6 significant, and well-established in Cal. Lab. Code § 132a and is designed to benefit employees and
7 the public at large.

8 27. In addition, it is the public policy of the State of California that employers shall not
9 discharge or discriminate against employees who make a complaint to their employer regarding
10 health and safety issues. This public policy is essential, significant, and well-established in Cal. Lab.
11 Code § 6310(a)(1) and is designed to benefit employees and the public at large.

12 28. Defendants violated the public policies of the State of California by terminating
13 Plaintiff's employment in retaliation for exercising rights to make himself, his co-workers, and the
14 public safer.

15 29. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff
16 has been deprived of wages and other benefits in an amount to be proven at trial.

17 30. Defendants committed the alleged acts with malice and with the wrongful intent to
18 injure Plaintiff. Because the acts taken towards Plaintiff were carried out by Defendants' managerial
19 employee acting in deliberate, callous and intentional manner with a desire to injure and damage to
20 Plaintiff, Plaintiff is entitled to recover punitive damages.

21 31. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
22 suffered and continues to suffer humiliation, anxiety, embarrassment, anger, loss of enjoyment of
23 life, emotional distress, and mental and physical pain and anguish, all to Plaintiff's damage in an
24 amount according to proof.

25 32. Plaintiff is entitled to recover interest, including prejudgment interest, at the legal rate
26 in an amount according to proof.

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1 33. Plaintiff has incurred, continues to incur, and is entitled to recover legal expenses and
2 attorneys fees as authorized by law for the LAW OFFICES OF CORREN & CORREN and
3 CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

4 **SECOND CAUSE OF ACTION**
5 **(Wrongful Termination; Cal. Lab. Code § 6310(a)(1)**
6 **Plaintiff, individually, Against All Defendants)**

7 34. Plaintiff incorporates by reference paragraphs 1 through 23 as if fully set forth herein
8 and further alleges that:

9 35. Cal. Lab. Code § 6310(a)(1) states that an employee cannot be discharged or
10 discriminated against because the employee “made any oral or written complaint to... his or her
11 employer.” Plaintiff was injured while he was working for Defendants. Plaintiff complained to
12 Defendants that he was injured on the job and that he was entitled to see a doctor. Plaintiff
13 was immediately terminated upon his return from a doctor’s visit. Plaintiff was wrongfully
14 terminated because of the workplace injury he suffered.

15 36. Plaintiff was terminated in violation of Cal. Lab. Code § 6310(a)(1) for complaining
16 to his employer about a health and safety issue after having been injured on the job.

17 37. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff
18 has been deprived of wages and other benefits in an amount to be proven at trial.

19 38. Defendants committed the alleged acts with malice and with the wrongful intent to
20 injure Plaintiff. Because the acts taken towards Plaintiff were carried out by Defendants’ managerial
21 employee acting in deliberate, callous and intentional manner with a desire to injure and damage to
22 Plaintiff, Plaintiff is entitled to recover punitive damages.

23 39. As a direct, foreseeable, and proximate result of Defendant’s conduct, Plaintiff has
24 suffered and continues to suffer humiliation, anxiety, embarrassment, anger, loss of enjoyment of
25 life, emotional distress, and mental and physical pain and anguish, all to Plaintiff’s damage in an
26 amount according to proof.

27 40. Plaintiff is entitled to recover interest, including prejudgment interest, at the legal rate
28 in an amount according to proof.

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1 41. Plaintiff has incurred, continues to incur, and is entitled to recover legal expenses and
2 attorneys fees as authorized by law for the LAW OFFICES OF CORREN & CORREN and
3 CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

4 **THIRD CAUSE OF ACTION**
5 **(Physical Disability Discrimination)**
6 **Plaintiff, individually, Against All Defendants**

7 42. Plaintiff incorporates by reference paragraphs 1 through 23 as if fully set forth herein, and
8 further allege that:

9 43. At all times herein mentioned, California Government Code sections 12940 et seq. were
10 in full force and effect and were binding on the Defendant. These sections required the Defendant to
11 refrain from discriminating against Plaintiff on the basis of a physical disability or perceived physical
12 disability, among other things. Within the time provided by law, Plaintiff filed a complaint with the
13 California Department of Fair Employment and Housing, in full compliance with these sections, and
14 received a right-to-sue letter (herein attached as Exhibit "1").

15 44. Plaintiff believes and thereon alleges that Plaintiff's physical disability or perceived
16 physical disability was a factor in Defendant's decision to discriminate against and not employ Plaintiff.
17 Such discrimination is in violation of California Government Code sections 12940 et seq. and has resulted
18 in damage and injury to Plaintiff as alleged herein.

19 45. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
20 suffered substantial losses in earnings, bonuses, and other employment benefits, including but not limited
21 to expenses incurred in obtaining substitute employment, all to Plaintiff's damage in an amount according
22 to proof.

23 46. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff was
24 compelled to and did employ health providers to examine, treat and care for Plaintiff. Plaintiff has
25 incurred liability therefore in an amount according to proof. Plaintiff is informed and believes and on
26 such information and belief alleges that Plaintiff will necessarily by reason of said Defendant's conduct,
27 require additional health provider services and incur additional liability for health provider services in an
28 amount according to proof.

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1 47. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
2 suffered and continues to suffer humiliation, anxiety, embarrassment, anger, loss of enjoyment of life,
3 emotional distress, and mental and physical pain and anguish, all to Plaintiff's damage in an amount
4 according to proof.

5 48. The Defendant committed the acts alleged herein maliciously, fraudulently, and
6 oppressively, and with the wrongful intention of injuring Plaintiff, and acted with an improper and evil
7 motive amounting to malice. As a result of the Defendant's conduct, Plaintiff is entitled to recover
8 punitive damages in an amount commensurate with the Defendant's wealth.

9 49. Plaintiff is entitled to recover interest, including prejudgment interest, at the legal rate in
10 an amount according to proof.

11 50. Plaintiff has incurred, continues to incur, and is entitled to recover legal expenses and
12 attorneys fees as authorized by law for the LAW OFFICES OF CORREN & CORREN and
13 CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

14 **FOURTH CAUSE OF ACTION**
15 **(Violation of Government Code §12940(m))**
16 **Plaintiff, individually, Against All Defendants**

17 51. Plaintiff incorporates by reference paragraphs 1 through 23 as if fully set forth herein, and
18 further allege that:

19 52. At all times herein mentioned, California Government Code §12940(m) was in full force
20 and effect and was binding on the Defendant. This section required the Defendant to make reasonable
21 accommodation for Plaintiff's known physical disability and/or perceived physical disability so long as
22 such accommodation would not produce undue hardship for the Defendant or to its operation. Within the
23 time provided by law, Plaintiff filed a complaint with the California Department of Fair Employment and
24 Housing, in full compliance with these sections, and received a right-to-sue letter (herein attached as
25 Exhibit "1").

26 53. Plaintiff believes and thereon alleges that Defendant failed to accommodate Plaintiff's
27 known physical disability and/or perceived physical disability even though such accommodation would
28 not produce undue hardship for the Defendant or to its operation. Such action, or failure to act, is in

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1 violation of California Government Code §§12940(m) and has resulted in damage and injury to Plaintiff
2 as alleged herein.

3 54. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
4 suffered substantial losses in earnings, bonuses, and other employment benefits, including but not limited
5 to expenses incurred in obtaining substitute employment, all to Plaintiff's damage in an amount
6 according to proof.

7 55. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff was
8 compelled to and did employ health providers to examine, treat and care for Plaintiff. Plaintiff has
9 incurred liability therefore in an amount according to proof. Plaintiff is informed and believes and on
10 such information and belief alleges that Plaintiff will necessarily by reason of said Defendant's conduct,
11 require additional health provider services and incur additional liability for health provider services in an
12 amount according to proof.

13 56. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
14 suffered and continues to suffer humiliation, anxiety, embarrassment, anger, loss of enjoyment of life,
15 emotional distress, and mental and physical pain and anguish, all to Plaintiff's damage in an amount
16 according to proof.

17 57. The Defendant committed the acts alleged herein maliciously, fraudulently, and
18 oppressively, and with the wrongful intention of injuring Plaintiff, and acted with an improper and evil
19 motive amounting to malice. As a result of the Defendant's conduct, Plaintiff is entitled to recover
20 punitive damages in an amount commensurate with the Defendant's wealth.

21 58. Plaintiff is entitled to recover interest, including prejudgment interest, at the legal rate in
22 an amount according to proof.

23 59. Plaintiff has incurred, continues to incur, and is entitled to recover legal expenses and
24 attorneys fees as authorized by law for the LAW OFFICES OF CORREN & CORREN and
25 CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

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FIFTH CAUSE OF ACTION
(Violation of Government Code §12940(n))
Plaintiff, individually, Against All Defendants

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3 60. Plaintiff incorporates by reference paragraphs 1 through 23 as if fully set forth herein, and
4 further allege that:

5 61. At all times herein mentioned, California Government Code §12940(n) was in full force
6 and effect and was binding on the Defendant. This section required the Defendant to engage in a timely,
7 good faith, interactive process with the Plaintiff to determine effective, reasonable accommodations, if
8 any, in response to a request for reasonable accommodation by the Plaintiff for Plaintiff's known physical
9 disability and/or perceived physical disability. Within the time provided by law, Plaintiff filed a
10 complaint with the California Department of Fair Employment and Housing, in full compliance with
11 these sections, and received a right-to-sue letter (herein attached as Exhibit "1").

12 62. Plaintiff believes and thereon alleges that Defendant failed to engage in a timely, good
13 faith, interactive process with the Plaintiff to determine effective, reasonable accommodations, if any, in
14 response to a request for reasonable accommodation by the Plaintiff for Plaintiff's known physical
15 disability and/or perceived physical disability. Such action, or failure to act, is in violation of California
16 Government Code §§129409(n) and has resulted in damage and injury to Plaintiff as alleged herein.

17 63. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
18 suffered substantial losses in earnings, bonuses, and other employment benefits, including but not limited
19 to expenses incurred in obtaining substitute employment, all to Plaintiff's damage in an amount
20 according to proof.

21 64. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff was
22 compelled to and did employ health providers to examine, treat and care for Plaintiff. Plaintiff has
23 incurred liability therefore in an amount according to proof. Plaintiff is informed and believes and on
24 such information and belief alleges that Plaintiff will necessarily by reason of said Defendant's conduct,
25 require additional health provider services and incur additional liability for health provider services in an
26 amount according to proof.

27 65. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
28 suffered and continues to suffer humiliation, anxiety, embarrassment, anger, loss of enjoyment of life,

1 emotional distress, and mental and physical pain and anguish, all to Plaintiff's damage in an amount
2 according to proof.

3 66. The Defendant committed the acts alleged herein maliciously, fraudulently, and
4 oppressively, and with the wrongful intention of injuring Plaintiff, and acted with an improper and evil
5 motive amounting to malice. As a result of the Defendant's conduct, Plaintiff is entitled to recover
6 punitive damages in an amount commensurate with the Defendant's wealth.

7 67. Plaintiff is entitled to recover interest, including prejudgment interest, at the legal rate in
8 an amount according to proof.

9 68. Plaintiff has incurred, continues to incur, and is entitled to recover legal expenses and
10 attorneys fees as authorized by law for the LAW OFFICES OF CORREN & CORREN and
11 CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

12 **SIXTH CAUSE OF ACTION**
13 **(Failure to Pay Overtime –**
14 **Cal. Lab. Code § 1194 and 1198;**
15 **Cal. Code Regs., Tit. 8, § 11140; IWC Wage Order 14(3))**
16 **Plaintiff, individually, Against All Defendants**

17 69. Plaintiff incorporates by reference paragraphs 1 through 23 as if fully set forth herein, and
18 further alleges that:

19 70. At all times relevant to this action, Plaintiff worked as a dairy worker in Defendants' dairy
20 in Stanislaus County more than ten (10) hours in a workday, and/or more than sixty (60) hours in a
21 workweek.

22 71. At all times relevant to this action, each Defendant failed to pay Plaintiff premium
23 overtime wages for all hours worked in excess of the ten (10) hours in a workday and/or sixty (60) hours
24 in a workweek, in violation of Industrial Welfare Commission Wage Order 14, 8 California Code of
25 Regulations § 11140 and California Labor Code § 1194.

26 72. As a result of each Defendant's failure to provide Plaintiff with overtime pay in
27 accordance with California law, Plaintiff was deprived of wages due to him in amounts to be proven at
28 time of trial.

73. Plaintiff is entitled to recover interest, including prejudgment interest, at the legal rate in
an amount according to proof.

1 74. Plaintiff has incurred, continues to incur, and is entitled to recover legal expenses and
2 attorneys fees as authorized by law for the LAW OFFICES OF CORREN & CORREN and
3 CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

4 **SEVENTH CAUSE OF ACTION**
5 **(Failure to Provide Rest Breaks –**
6 **Violation of Cal. Lab. Code § 226.7;**
7 **Cal. Code Regs., Tit. 8, § 11140;**
8 **IWC Wage Order 14 (12))**
9 **Plaintiff, individually, Against All Defendants**

10 75. Plaintiff incorporates by reference paragraphs 1 through 23 as if fully set forth herein, and
11 further alleges that:

12 76. Industrial Welfare Commission Wage Order 14, 8 California Code of Regulations §
13 11140, applies to employees working in Defendants' dairy in Stanislaus County, which provides that
14 employers shall authorize and permit all employees to take required rest periods.

15 77. California law, including without limitation Labor Code § 226.7, requires that each
16 Defendant provide Plaintiff all rest periods specified in the applicable wage order. Plaintiff was neither
17 provided nor authorized and permitted to take these rest periods and is entitled to be paid one additional
18 hour of pay per day at his regular rate of compensation as additional wages for the denied rest periods.

19 78. At all relevant times while Plaintiff was employed as dairy workers at Defendants' dairy,
20 each Defendant failed and refused to provide the required paid rest periods to Plaintiff, and/or each
21 Defendant failed to properly execute the rest period requirements of the law and suffered or permitted
22 Plaintiff to continue working through his rest periods in violation of the law.

23 79. Under California law, Plaintiff is entitled to be paid one additional hour of pay per day
24 at his regular rate of compensation as additional wages for each denied rest period.

25 80. As a direct and proximate result of each Defendant's actions as alleged herein, Plaintiff
26 suffered losses in amounts to be determined at trial.

27 81. Plaintiff is entitled to recover interest, including prejudgment interest, at the legal rate in
28 an amount according to proof.

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1 82. Plaintiff has incurred, continues to incur, and is entitled to recover legal expenses and
2 attorneys fees as authorized by law for the LAW OFFICES OF CORREN & CORREN and
3 CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

4 **EIGHTH CAUSE OF ACTION**
5 **(Failure to Provide Meal Periods –**
6 **Violation of Cal. Lab. Code § 226.7;**
7 **Cal. Code Regs., Tit. 8, § 11140;**
8 **IWC Wage Order 14(11))**
9 **Plaintiff, individually, Against All Defendants**

10 83. Plaintiff incorporates by reference paragraphs 1 through 23 as if fully set forth herein, and
11 further alleges that:

12 84. Each Defendant violated Industrial Welfare Commission Wage Order 14, 8 California
13 Code of Regulations § 11140, which provides that: "Every employer shall authorize and permit all
14 employees after a work period of not more than five (5) hours to take a meal period of not less than thirty
15 minutes, except that when a work period of not more than six (6) hours will complete the day's work the
16 meal period may be waived by mutual consent of employer and employee."

17 85. California law, including without limitation Labor Code § 226.7, requires that each
18 Defendant provide Plaintiff with meal periods and authorizes that such meal periods can be mandated in
19 the applicable wage order.

20 86. At all relevant times while Plaintiff was employed as a dairy worker, each Defendant
21 failed and refused to provide meal periods to Plaintiff.

22 87. Under California law, Plaintiff is entitled to be paid one additional hour of pay per day
23 at their regular rate of compensation as additional wages for each denied meal period.

24 88. As a direct and proximate result of each Defendant's actions as alleged herein, Plaintiff
25 suffered losses in amounts to be determined at trial.

26 89. Plaintiff is entitled to recover interest, including prejudgment interest, at the legal rate in
27 an amount according to proof.

28 90. Plaintiff has incurred, continues to incur, and is entitled to recover legal expenses and
attorneys fees as authorized by law for the LAW OFFICES OF CORREN & CORREN and
CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

NINTH CAUSE OF ACTION
(Failure to Maintain Time Records, Provide Itemized Statements–
Violation of Cal. Lab. Code §§ 226 and 1174;
Cal. Code Regs., Tit. 8, § 11140;IWC Wage Order 14(7))
Plaintiff, individually, Against All Defendants

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4 91. Plaintiff incorporates by reference paragraphs 1 through 23 as if fully set forth herein, and
5 further alleges that:

6 92. Industrial Welfare Commission Wage Order 14, 8 California Code of Regulations §
7 11140 and Labor Code §§ 1174 and 226 require that each Defendant keep written daily records of each
8 of its employee's hours of work and meal breaks and to maintain such records for at least three years; and
9 to provide each employee with each periodic wage payment a writing setting forth, among other things,
10 the dates of labor for which payment of wages is made, the total hours of work for which payment of
11 wages is made, the gross and net wages paid, all deductions from those wages, and the name and address
12 of the employer.

13 93. Plaintiff is informed and believes and therefore alleges that, during Plaintiff's
14 employment, each Defendant knowingly and intentionally failed to keep and maintain written records of
15 the daily hours Plaintiff worked and the meal breaks Plaintiff took as required by California law.

16 94. During Plaintiffs' employment, each Defendant knowingly and intentionally failed to
17 provide Plaintiff with itemized wage statements of each periodic wage payment as required by California
18 law.

19 95. As a direct and proximate result of each Defendant's actions as alleged herein, Plaintiff
20 was injured and suffered losses in amounts to be determined at trial.

21 96. Plaintiff is entitled to recover interest, including prejudgment interest, at the legal rate in
22 an amount according to proof.

23 97. Plaintiff has incurred, continues to incur, and is entitled to recover legal expenses and
24 attorneys fees as authorized by law for the LAW OFFICES OF CORREN & CORREN and
25 CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

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TENTH CAUSE OF ACTION
(Failure to Provide Tools and Equipment –
Violation of Cal. Code Regs., Tit. 8, § 11140;
IWC Wage Order 14(9))
Plaintiff, individually, Against All Defendants

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4 98. Plaintiff incorporates by reference paragraphs 1 through 23 as if fully set forth herein, and
5 further alleges that:

6 99. At all times relevant to this action, each Defendant was required to provide and maintain
7 tools and equipment necessary to the performance of the job for Plaintiff, including, but not limited to,
8 work boots, gloves and clothing, pursuant to Industrial Welfare Commission Wage Order 14, 8 California
9 Code of Regulations § 11140.

10 100. At all times relevant to this action, each Defendant failed to provide and maintain tools
11 and equipment, such as work boots, clothing and gloves, for Plaintiff pursuant to Industrial Welfare
12 Commission Wage Order 14, 8 California Code of Regulations § 11140.

13 101. As a direct result of Defendants' failure to comply with the above-referenced section of
14 Wage Order 14, 8 California Code of Regulations § 11140, Plaintiff expended funds to pay for
15 necessary protective clothing and equipment that were, in effect, an offset against wages due to him and
16 was injured and is entitled to recover those expenditures in an amount to be proven at trial.

17 102. Plaintiff is entitled to recover interest, including prejudgment interest, at the legal rate in
18 an amount according to proof.

19 103. Plaintiff has incurred, continues to incur, and is entitled to recover legal expenses and
20 attorneys fees as authorized by law for the LAW OFFICES OF CORREN & CORREN and
21 CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

22 **ELEVENTH CAUSE OF ACTION**
23 **(Failure to Pay all Wages Due Upon Discharge –**
24 **Violation of Cal. Lab. Code §§ 201 and 202)**
Plaintiff, individually, Against All Defendants

25 104. Plaintiff incorporates by reference paragraphs 1 through 23 as if fully set forth herein, and
26 further allege that:

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1 105. Pursuant to California Labor Code §§ 201 and 202, terminated employees are entitled
2 to be paid all wages due upon termination in the event of a discharge or voluntary termination with
3 requisite notice, or within 72 hours of termination in the event of a voluntary termination without notice.

4 106. At all times relevant to this action, Plaintiff was discharged from his employment with
5 each Defendant within the meaning of California Labor Code §§ 201 or 202.

6 107. At all times relevant to this action, each Defendant has willfully failed to pay Plaintiff
7 premium overtime wages and other wages due. Accordingly, pursuant to California Labor Code §§ 201
8 and 202, payment of these wages were due to Plaintiff on the date of termination.

9 108. By willfully failing to pay wages due in accordance with California Labor Code § 201
10 or 202, as applicable, all Defendants are liable for penalties pursuant to California Labor Code § 203.

11 109. Pursuant to California Labor Code § 203, Plaintiff is entitled to waiting time penalties of
12 up to 30 days wages, for each occurrence, in an amount to be proven at trial.

13 110. Plaintiff is entitled to recover interest, including prejudgment interest, at the legal rate in
14 an amount according to proof.

15 111. Plaintiff has incurred, continues to incur, and is entitled to recover legal expenses and
16 attorneys fees as authorized by law for the LAW OFFICES OF CORREN & CORREN and
17 CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

18
19 **TWELFTH CAUSE OF ACTION**
20 **(Unlawful Competition in Violation of**
Bus. & Profs. Code §§ 17200, *et seq.*)
Plaintiff, individually, Against All Defendants

21 112. Plaintiff incorporates by reference paragraphs 1 through 111 as if fully set forth herein,
22 and further alleges that:

23 113. Plaintiff sues for his own interest pursuant to Business and Professions Code §§ 17200
24 *et seq.*

25 114. Plaintiff was not paid wages owed for all hours worked, including, but not limited to, the
26 hours he worked beyond ten (10) hours in a workday, and/or more than sixty (60) hours in a workweek
27 in violation of IWC Order No. 14, 8 Cal. Code of Regs. § 11140 and Cal. Labor Code § 1194; he was not
28 compensated for mandatory meal and rest periods in violation of with IWC Order No. 14, §§ (11) and 12,

1 8. Cal. Code of Regulations §§11140; and he was not paid all wages due upon his discharge in violation
2 of Labor Code §§201 or 202 . As a direct and proximate result of the acts and/or omissions of the
3 Defendants the Plaintiff has been deprived of wages in an amount to be proven at trial.

4 115. The Defendants, by the acts and/or omissions alleged herein have committed and are
5 committing unlawful and unfair competition.

6 116. The Defendants, by the acts and/or omissions alleged herein have injured and are injuring
7 the interests of the general public in that other employers who have been or currently employing workers
8 and attempting to do so in honest compliance with applicable wage and hour laws (including the laws
9 violated by the Defendants) are at an unfair competitive disadvantage as a result of the Defendants'
10 conduct.

11 117. The Plaintiff is entitled to restitution of his wages and the economic value of benefits
12 unlawfully denied him by the Defendants in an amount to be determined at trial. In addition, the Plaintiff
13 is entitled to and Plaintiff seeks a preliminary and permanent injunction enjoining the Defendants from
14 failing to pay wages for all hours worked, provide mandatory rest and meal periods, and pay all wages
15 due upon discharge as required by law.

16 118. Plaintiff is entitled to recover interest, including prejudgment interest, at the legal rate in
17 an amount according to proof.

18 119. Plaintiff has incurred, continues to incur, and is entitled to recover legal expenses and
19 attorneys fees as authorized by law for the LAW OFFICES OF CORREN & CORREN and
20 CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

21 **THIRTEENTH CAUSE OF ACTION**
22 **(Violations of Labor Code Private Attorneys General Act-**
23 **Cal. Lab. Code §§ 2698 *et seq.*)**
24 **Plaintiff, individually and for the interest of other current**
25 **and former employees, Against All Defendants**

26 120. Plaintiff incorporates by reference paragraph 1 through 140 as if fully set forth herein,
27 and further alleges that:

28 121. By this cause of action, Plaintiff is seeking to enforce important rights affecting the
public interest.

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1 122. Plaintiff submits this First Amended Complaint to include allegations to Labor Code
2 §§ 2698 *et seq.* (The Private Attorney General Act). Labor Code § 2699.3(a)(2)(C) provides that
3 notwithstanding any other provision of law, plaintiffs may as a matter of right amend an existing
4 complaint to add a cause of action arising under §§ 2698 *et seq.*

5 123. Plaintiff is an aggrieved employee as defined by Labor Code § 2699(a). Plaintiff
6 brings this cause of action on behalf of himself and other current and other former aggrieved
7 employees affected by the labor law violations alleged in this complaint. Each Defendant committed
8 the following violation of the California Labor code against Plaintiff and, on information and belief,
9 against other current or former employees while they were employed by each Defendant:

- 10 a. Each Defendant violated Labor Code §§ 205, 221, 1194, 558, and 1198 and 8
11 Cal. Code of Regulations § 11140 by failing to pay Plaintiff and, on
12 information and belief, other current and former employees of each
13 Defendant, all wages due for all hours worked.
- 14 b. Each Defendant violated Labor Code § 226 by failing to provide Plaintiff and,
15 on information and belief, other current and former employees of each
16 Defendant with an accurate itemized statement in writing providing required
17 information regarding (1) gross wages earned, (2) total hours worked by the
18 employee,... (4) all deductions, provided that all deductions made on written
19 orders of the employee may be aggregated and shown as one item, (5) net
20 wages earned, (6) the inclusive dates of the period for which the employee is
21 paid, (7) the name of the employee and his or her social security number, (8)
22 the name and address of the legal entity that is the employer, and (9) all
23 applicable hourly rates in effect during the pay period and the corresponding
24 number of hours worked at each hourly rate by the employee with each
25 periodic payment of wages made by each Defendant to Plaintiff and, on
26 information and belief, other current and former employees of each
27 Defendant.
- 28 c. Each Defendant violated Labor Code § 1174 by failing to maintain payroll
records showing the hours worked daily by and the wages paid to Plaintiff
and, on information and belief, other current and former employees of each
Defendant.
- d. Each Defendant violated Labor Code §§ 201 and 202 by failing to pay
Plaintiffs and, on information and belief, other current and former employees
of each Defendant all wages due on the date of the employee's involuntary
termination or within 72 hours of receipt of notice of employee's voluntary
termination.
- e. Each Defendant violated Labor Code §§ 226.7 and 558 by failing to provide
to Plaintiff and, on information and belief, other current and former employees
of each Defendant all rest periods and meal periods in accordance with IWC
Wage Order 14.
- f. Each Defendant violated provisions of IWC Wage Order 14 by failing to pay
overtime for all hours worked; failing to authorize and permit meal and rest

1 periods specified by the Wage Order; failing to provide and maintain
2 necessary tools and equipment; failing to keep accurate information with
3 respect to hours worked, including the beginning and ending of each work
period, meal periods, and split shift periods, total wages paid, total hours
worked and applicable rates of pay.

4 124. Labor Code § 2699(f) provides:

5 For all provisions of this code except those for which a civil penalty is specifically
6 provided, there is established a civil penalty for a violation of those provisions, as
7 follows:...(2) If, at the time of the alleged violation, the person employees one or more
8 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
employee per pay period for the initial violation and two hundred dollars (\$200) for
each aggrieved employee per pay period for each subsequent violation.

9 Plaintiff seeks civil penalties as provided under applicable Labor Code sections for violations of the
10 Labor Code alleged herein pursuant to Labor Code § 2699(a). To the extent that any violation alleged
11 herein does not carry a penalty, Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for
12 Plaintiff and other current and former employees for violations of those sections.

13 125. Plaintiff seeks penalties on behalf of himself, other aggrieved employees, and the
14 State, as provided by Labor Code § 2699(l), including but not limited to penalties due pursuant to
15 Labor Code § 558(a) as a result of Defendants' violations of the provisions of Wage Order 14 and
16 failure to pay all wages due.

17 126. Pursuant to Labor Code § 2699.3(a) prior to the filing of this complaint, Plaintiff
18 gave written notice by certified mail to each Defendant and the Labor and Work Force Development
19 Agency (LWDA) of the factual and legal basis for the labor law violations alleged in this complaint.
20 LWDA has 30 calendar days to notify the Plaintiff that it does not intend to investigate the alleged
21 violations and 33 calendar days to notify the Plaintiff that it does intend to investigate the alleged
22 violations. The 33 calendar days have expired and LWDA has not provided Plaintiff with notice that
23 it intends to investigate the allegations, as such Plaintiff amends this complaint in accordance with the
24 provisions of Labor Code § 2699.3(a)(2)(C).

25 **PRAYER FOR RELIEF**

26 Wherefore, Plaintiff respectfully prays for judgment against Defendants and each of them as
27 follows:

28 ///

1 As to the First Cause of Action:

- 2 1. An order of reinstatement and an award of reimbursement for lost wages and benefits, in an
3 amount to be proven at trial.
- 4 2. General Damages in an amount to be proven at trial.
- 5 3. Punitive Damages in an amount to be proven at trial.

6 As to the Second Cause of Action:

- 7 1. An order of reinstatement and an award for lost wages and work benefits; in an amount to be
8 proven at trial.
- 9 2. General Damages in an amount to be proven at trial.
- 10 3. Punitive Damages in an amount to be proven at trial.

11 As to the Third Cause of Action:

- 12 1. An order of reinstatement and an award of reimbursement for lost wages and benefits, in an
13 amount to be proven at trial.
- 14 2. General Damages in an amount to be proven at trial.
- 15 3. Punitive Damages in an amount to be proven at trial.

16 As to the Fourth Cause of Action:

- 17 1. An order of reinstatement and an award of reimbursement for lost wages and benefits, in an
18 amount to be proven at trial.
- 19 2. General Damages in an amount to be proven at trial.
- 20 3. Punitive Damages in an amount to be proven at trial.

21 As to the Fifth Cause of Action:

- 22 1. An order of reinstatement and an award of reimbursement for lost wages and benefits, in an
23 amount to be proven at trial.
- 24 2. General Damages in an amount to be proven at trial.
- 25 3. Punitive Damages in an amount to be proven at trial.

26 As to the Sixth Cause of Action:

- 27 1. For an award of all unpaid overtime wages in an amount to be proved at trial.

28 ///

1 As to the Seventh Cause of Action:

- 2 1. For an award, of an amount equal to one hour of additional wages at the applicable hourly rate
3 of pay for each workday that the rest period was not provided.

4 As to the Eighth Cause of Action:

- 5 1. For an award, of an amount equal to one hour of additional wages at the applicable hourly rate
6 of pay for each workday that the meal period was not provided.

7 As to the Ninth Cause of Action:

- 8 1. For an award for actual damages for defendants' failure to provide itemized wage statements in
9 an amount to be proved at trial or statutory amounts, or in the alternative \$50.00 for the first
10 violation and \$100.00 for each subsequent violation up to a maximum of \$4,000.00, per each
11 Plaintiff.

12 As to the Tenth Cause of Action:

- 13 1. For an award of the actual cost of the tools and equipment provided and/or maintained for all
14 applicable time periods.

15 As to the Eleventh Cause of Action:

- 16 1. For an award of waiting time penalties in an amount equal to 30 times the daily rate of pay,
17 according to proof at trial.

18 As to the Twelfth Cause of Action:

- 19 1. A preliminary and permanent injunction ordering Defendants to cease the unlawful and unfair
20 business practices as heretofore alleged.
21 2. For restitution to Plaintiff in an amount to be proven at trial.

22 As to the Thirteenth Cause of Action:

- 23 1. For all provisions of this code violation as described above except for which a civil penalty is
24 specifically provided, a civil penalty of one hundred dollars (\$100) for each aggrieved employee
25 per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
26 employee per pay period for each subsequent violation.
27 2. For all provisions of this code violated as described above for which a civil penalty is specifically
28 provided, civil penalties for each aggrieved employee as specifically provided by statute.

1 3. For violations of the provisions of the Wage Orders, civil penalties for each aggrieved employee
2 as provided by Labor Code § 558, including but not limited to an amount sufficient to recover
3 unpaid wages due each aggrieved employee.

4 As to All Causes of Action:

- 5 1. For costs of suit herein generally and pursuant to California Code of Civil Procedure § 1021.5.
6 2. For an award of pre-judgment interest as authorized under the law.
7 3. For an award of post-judgment interest as authorized under the law.
8 4. For an award of attorneys fees as authorized by law for the LAW OFFICES OF CORREN &
9 CORREN and CALIFORNIA RURAL LEGAL ASSISTANCE, INC.
10 5. For such other and further relief as this court deems just and proper.
11


12 Date: July 22, 2010

**CALIFORNIA RURAL LEGAL ASSISTANCE
INC.**

13
14 
15 _____
16 Esmeralda Zendejas
Attorney for Plaintiff

17 Date: July 22, 2010

LAW OFFICES OF CORREN & CORREN

18 
19 _____
20 Adam Blair Corren (signature authorized)
21 Attorney for Plaintiff
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