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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF STANISLAUS**

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

Plaintiff,

v.

JOE SALLABERRY FARMS, a  
California business organization form  
unknown; JOE SALLABERRY,  
individually and doing business as JOE  
SALLABERRY FARMS; and DOES  
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

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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 9. Plaintiff is informed and believes and thereon alleges that at all times material to this  
2 action, each Defendant has been and is doing business in Stanislaus County and has been and is  
3 employing people to perform agricultural labor in this county.

4 10. Plaintiff is ignorant of the true names or capacities of the Defendants sued herein  
5 under the fictitious names of DOES ONE through TWENTY, inclusive, and therefore sues said  
6 Defendants under such fictitious names. Plaintiff will amend this complaint to allege the true names  
7 or capacities of said Defendants once they have been ascertained. Plaintiff is informed and believes  
8 and thereon alleges that each of the Defendants are responsible in some manner for the occurrences  
9 herein alleged and that the damages herein alleged were actually and proximately caused by their  
10 conduct.

11 11. Plaintiff is informed and believes and thereon alleges that at all times mentioned  
12 herein, each Defendant was acting as the agent of every other Defendant, and all acts alleged to have  
13 been committed by any Defendants were committed on behalf of every other Defendant; and, at all  
14 times mentioned herein, each alleged act was committed by each Defendant, and/or agent, servant,  
15 or employee of each Defendant, and each Defendant directed, authorized or ratified each such act.  
16 Plaintiff is informed and believes and thereon alleges that each Defendant, and each of them, was  
17 the agent, employee, coconspirator, business affiliate, subsidiary, parent entity, owner and/or joint  
18 venturer of each other Defendant, and each of them; and, in doing the things alleged herein, was  
19 acting at least in part within the course and scope of such agency, employment, conspiracy, joint  
20 employer, alter ego status, and/or joint venture and with the permission and consent of each of the  
21 other Defendants.

22 **FACTUAL ALLEGATIONS**

23 12. Each Defendant employed Plaintiff LUIS MASEDO as a milker from approximately  
24 July 2007 until March 14, 2008 to work at Defendants' dairy or work site in Stanislaus County,  
25 including the real property located at 5642 S. Morgan Road, Turlock, Stanislaus County, California.

26 13. On or about March 13, 2008, Plaintiff LUIS MASEDO was injured while working  
27 for Defendants. While Plaintiff LUIS MASEDO was unconscious on the floor as a result of being  
28 kicked by a cow, his co-worker, Adrian (last name unknown), called Defendant JOE

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**  
**Plaintiff, individually, Against All Defendants)**

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

25 25. Cal. Lab. Code § 132a states that "there should not be discrimination against workers  
26 who are injured in the course and scope of their employment" Cal. Lab. Code § 6310(a)(1) further  
27 states that an employee cannot be discharged or discriminated against because the employee "made  
28 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**

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

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

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

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

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

65. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has 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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1                                    **TENTH CAUSE OF ACTION**  
2                                    **(Failure to Provide Tools and Equipment –**  
3                                    **Violation of Cal. Code Regs., Tit. 8, § 11140;**  
4                                    **IWC Wage Order 14(9))**  
5                                    **Plaintiff, individually, Against All Defendants**

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

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

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

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

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

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

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

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

///  
///



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. & Prof. 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.

///

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.**

14   
15 \_\_\_\_\_  
16 Esmeralda Zendejas  
17 Attorney for Plaintiff

18 Date: July 22, 2010

**LAW OFFICES OF CORREN & CORREN**

19   
20 \_\_\_\_\_  
21 Adam Blair Corren (signature authorized)  
22 Attorney for Plaintiff  
23  
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