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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

16 JOSE A. ARIAS, individually, and
17 acting in the interest of other current and
18 former employees,

19 Plaintiff,

20 v.

21 ANGELO DAIRY, a California business
22 organization, form unknown; LUIS M.
23 ANGELO, MARIA D. ANGELO and
24 JOE ANGELO, individuals; LUIS M.
25 ANGELO, MARIA D. ANGELO and
26 JOE ANGELO dba ANGELO DAIRY;
27 and DOES ONE through TWENTY,
28 inclusive

Defendants.

CASE NO.: **CV 028612**

COMPLAINT

**THE CASE HAS BEEN ASSIGNED TO
JUDGE CARTER P HOLLY IN
DEPARTMENT 42 FOR ALL PURPOSES
INCLUDING TRIAL**

INTRODUCTION

1. Plaintiff is a dairy worker formerly employed by Defendants LUIS M. ANGELO, MARIA D. ANGELO and JOE ANGELO dba ANGELO DAIRY, to push, milk, and care for cows. Plaintiff alleges that he has suffered injury as a result of each Defendant's failure to comply with labor laws. Each Defendant's employment practices are unlawful and contrary to the public policy of the State of California; therefore, Plaintiff brings this action under California's Unfair Competition Law (the "UCL") (Business and Professions Code §§ 17200, *et seq.*) individually and

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1 acting for the interests of other current and former employees of Defendants to enforce California
2 labor laws and regulations.

3 2. Plaintiff, for himself individually and for all others who have a common interest,
4 seeks restitution and other appropriate relief for each Defendant's failure to pay overtime wages,
5 authorize and permit rest and meal periods, maintain proper payroll records and provide itemized
6 wage statements, provide required work tools and equipment, and accrued interest and enforcement
7 of penalties pursuant to California law.

8 3. Plaintiff, for himself individually and for all others who have a common interest, also
9 seeks injunctive relief to require that each Defendant comply with all applicable California labor
10 laws in the future and to prevent each Defendant from engaging in and continuing to engage in
11 unlawful and unfair business practices.

12 **PARTIES**

13 4. Plaintiff JOSE A. ARIAS is an individual who currently resides in Fresno County
14 and, at all times material to this action, resided in San Joaquin County. Plaintiff JOSE A. ARIAS
15 was employed by Defendants in San Joaquin County from approximately November, 1995 through
16 June, 2005.

17 5. Plaintiff is informed and believes and thereon alleges that Defendant ANGELO
18 DAIRY is a business entity, form unknown. Defendant ANGELO DAIRY operates in San Joaquin
19 County producing milk at its principal place of business located at 11313 Collier Road, Acampo, San
20 Joaquin County, California.

21 6. Plaintiff is informed and believes and thereon alleges that Defendants LUIS M.
22 ANGELO, MARIA D. ANGELO and JOE ANGELO are individuals who are owners or major
23 interest holders of Defendant ANGELO DAIRY. Plaintiff further alleges that said Defendants are
24 responsible for the occurrences herein alleged and that the resulting damages were proximately
25 caused by said Defendants' conduct.

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

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

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

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

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

FACTUAL ALLEGATIONS

12. Each Defendant employed Plaintiff JOSE A. ARIAS as a milker pursuant to an oral contract of employment from approximately November, 1995 through June, 2005 to work at Defendants' dairy or work site in San Joaquin County, including the real property located at 5027
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1 W. Acampo Road, Lodi, San County, California and 11313 Collier Road, Acampo, San Joaquin
2 County, California.

3 13. Plaintiff is informed and believes and thereon alleges that in 2006 and in the four
4 years preceding the filing of this complaint, each Defendant has employed other people as milkers
5 and/or as field workers, under the same or similar circumstances as Plaintiff, to work in the same
6 dairy or work sites that the Plaintiff worked, including the real property located at 5027 W. Acampo
7 Road, Lodi, San County, California and 11313 Collier Road, Acampo, San Joaquin County,
8 California.

9 14. As part of Plaintiff's oral contract of employment with each Defendant, Plaintiff
10 resided in housing provided by Defendants at Defendants' properties in San Joaquin County located
11 at 5027 W. Acampo Road, Lodi, San County, California and 11313 Collier Road, Acampo, San
12 Joaquin County, California.

13 15. Plaintiff is informed and believes and thereon alleges that currently and at all times
14 during the four years prior to the filing of this complaint, each Defendant has, and does, employ and
15 operate housing for persons who perform the same work as Plaintiff in the same dairy or work sites
16 that the Plaintiff worked, including the real property located at 5027 W. Acampo Road, Lodi, San
17 County, California and 11313 Collier Road, Acampo, San Joaquin County, California.

18 16. Plaintiff and other similarly-employed people satisfactorily performed all terms and
19 conditions of the employment contracts.

20 17. Throughout his tenure with ANGELO DAIRY, each Defendant required that Plaintiff
21 work six days a week. Plaintiff worked two shifts per day, each shift lasting between six and seven
22 and one half hours, with no meal periods or rest breaks during the shift.

23 18. During his employment by Defendants, Defendants paid Plaintiff JOSE A. ARIAS
24 an initial monthly salary of \$1,300, which increased to \$1,800 by the end of his employment with
25 the Defendants. The fixed monthly salary did not compensate Plaintiff for California overtime
26 wages due to Plaintiff for all work performed.

27 19. On information and belief, each Defendant required that other employees work
28 similar work weeks. On information and belief, each Defendant required that other employees work,

1 on average, six days a week with two daily shifts lasting approximately six to seven and one half
2 hours each shift, with no meal periods or rest breaks during the shift. On information and belief,
3 Defendants paid other workers a monthly salary that did not compensate them for California
4 overtime wages due for all work performed.

5 20. 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 overtime, and failed to allow
7 workers to take required meal and rest periods.

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

10 22. Each Defendant misrepresented to Plaintiff and, on information and belief other
11 employees, important terms and conditions of their employment, including but not limited to the
12 number of hours they would be expected to work each day and the amount of deductions or charges
13 for housing, if any.

14 23. On information and belief, each Defendant failed to provide Plaintiff and other
15 similarly-employed persons with records of the hours they worked with their hourly rate of their pay,
16 and failed to inform workers how much if anything, they were being charged for housing, all of
17 which are required by California.

18 24. Plaintiff is informed and believes and thereon alleges that each Defendant has been
19 and is charging Plaintiff and other employees for the cost of housing, and that these charges are being
20 deducted from the wages due the workers without written authorization. Neither Plaintiff nor, on
21 information and belief any other employee, ever authorized in writing or agreed that deductions for
22 housing could be taken from their wages.

23 25. Plaintiff, and on information and belief other workers, complained in good faith to
24 the Defendants about the habitability of the employee housing at ANGELO DAIRY including, but
25 not limited to, complaints about rotting walls, dirty carpets, water leakage from the roof, holes in the
26 walls, lack of window screens, windows that could not be opened and heater problems. Defendants
27 failed to repair the conditions complained by Plaintiff, and on information and belief other workers.

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

6 27. Plaintiff, and on information and belief, other similarly-employed individuals at
7 Defendants' Dairy, earn and have earned less than twice the minimum wage at all times relevant to
8 this Complaint.

9 28. Defendants fired Plaintiff JOSE A. ARIAS on or about June, 2005.

10 **ADDITIONAL FACTUAL ALLEGATIONS**

11 29. Plaintiff is an aggrieved employee as defined in Labor Code § 2699.

12 30. Each Defendant committed the following violations of the California Labor Code
13 against Plaintiff, and, on information and belief, against other current or former employees while
14 they were employed by each Defendant:

- 15 a. Each Defendant violated Labor Code §§ 210, 221, 1194, 558, and 1198 and
16 8 Cal. Code of Regulations § 11140 by failing to pay Plaintiff and, on
17 information and belief, other current and former employees of each
18 Defendant, all wages due for all hours worked.
- 19 b. Each Defendant violated Labor Code § 226 by failing to provide Plaintiff
20 and, on information and belief, other current and former employees of each
21 Defendant with an accurate itemized statement in writing providing required
22 information regarding (1) gross wages earned, (2) total hours worked by the
23 employee,... (4) all deductions, provided that all deductions made on written
24 orders of the employee may be aggregated and shown as one item, (5) net
25 wages earned, (6) the inclusive dates of the period for which the employee is
26 paid, (7) the name of the employee and his or her social security number, (8)
27 the name and address of the legal entity that is the employer, and (9) all
28 applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee with each
periodic payment of wages made by each Defendant to Plaintiff and, on
information and belief, other current and former employees of each
Defendant.
- 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
Plaintiff and, on information and belief, other current and former employees
of each Defendant all wages due on the date of the employee's involuntary

1. termination or within 72 hours of receipt of notice of employee's voluntary
2. termination.

3. e. Each Defendant violated Labor Code §§ 226.7 and 558 by failing to provide
4. 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.

5. f. Each Defendant violated provisions of IWC Wage Order 14 by failing to pay
6. overtime for all hours worked; failing to authorize and permit meal and rest
7. periods specified by the Wage Order; charging or deducting amounts in
8. excess of the maximum allowable amounts for employer provided housing;
9. failing to provide and maintain necessary tools and equipment; failing to keep
accurate information with 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.

10. 31. Pursuant to Labor Code § 2699.3(a) prior to the filing of this complaint, Plaintiff gave
11. written notice by certified mail to each Defendant and the Labor and Work Force Development
12. Agency of the factual and legal basis for the labor law violations alleged in this complaint.

13. 32. Plaintiff will amend this complaint, if appropriate, in accordance with Labor Code
14. §§ 2699.3 (a)(2)(A) and (a)(2)(C) to seek all applicable penalties for violations which the Labor and
15. Work Force Development Agency has failed to investigate and/or failed to issue a citation.

16. **FIRST CAUSE OF ACTION**
17. **(Failure to Pay Overtime –**
18. **Violation of Cal. Lab. Code § 1194;**
19. **Cal. Code Regs., tit. 8, § 11140; IWC Wage Order 14)**
20. **Plaintiff, individually, Against All Defendants**

21. 33. Plaintiff incorporates by reference paragraphs 1 through 32 as if fully set forth herein,
22. and further alleges that:

23. 34. At all times relevant to this action, Plaintiff worked as a dairy worker in Defendants'
24. dairy in San Joaquin County more than ten (10) hours in a workday, and/or more than sixty (60)
25. hours in a workweek.

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

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

4 **SECOND 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)**
9 **Plaintiff, individually, Against All Defendants**

10 37. Plaintiff incorporates by reference paragraphs 1 through 36 as if fully set forth herein,
11 and further alleges that:

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

15 39. 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
17 neither provided nor authorized and permitted to take these rest periods and is entitled to be paid one
18 additional hour of pay per day at his regular rate of compensation as additional wages for the denied
19 rest periods.

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

24 41. Under California law, on and after January 1, 2001, Plaintiff is entitled to be paid one
25 additional hour of pay per day at his regular rate of compensation as additional wages for each denied
26 rest period.

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

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1 50. Industrial Welfare Commission Wage Order 14, 8 California Code of Regulations §
2 11140 and Labor Code §§ 1174 and 226 require that each Defendant keep written daily records of
3 each of its employee's hours of work and meal breaks and to maintain such records for at least three
4 years; and to provide each employee with each periodic wage payment a writing setting forth, among
5 other things, the dates of labor for which payment of wages is made, the total hours of work for
6 which payment of wages is made, the gross and net wages paid, all deductions from those wages,
7 and the name and address of the employer.

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

12 52. During Plaintiff's employment, each Defendant knowingly and intentionally failed
13 to provide Plaintiff with itemized wage statements of each periodic wage payment as required by
14 California law.

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

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18 **FIFTH CAUSE OF ACTION**
19 **(Failure to Provide Tools and Equipment –**
20 **Violation of Cal. Code Regs., tit. 8, § 11140;**
 IWC Wage Order 14)
21 **Plaintiff, individually, Against All Defendants**

22 54. Plaintiff incorporates by reference paragraphs 1 through 53 as if fully set forth herein,
23 and further alleges that:

24 55. At all times relevant to this action, each Defendant did not pay twice the minimum
25 wage to Plaintiff. At all times relevant to this action, each Defendant was required to provide and
26 maintain tools and equipment necessary to the performance of the job, including, but not limited to,
27 work boots, clothing and gloves, for Plaintiff pursuant to Industrial Welfare Commission Wage
28 Order 14, 8 California Code of Regulations § 11140.

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

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

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9 **SIXTH CAUSE OF ACTION**
10 **(Failure to Pay all Wages Due Upon Discharge –**
 Violation of Cal. Lab. Code §§ 201, 202, and 203)
11 **Plaintiff, individually, Against All Defendants**

12 58. Plaintiff incorporates by reference paragraphs 1 through 57 as if fully set forth herein,
13 and further alleges that:

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

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

20 61. At all times relevant to this action, each Defendant has willfully failed to pay Plaintiff
21 premium overtime wages and other wages due. Accordingly, pursuant to California Labor Code §§
22 201 and 202, payment of these wages were due to Plaintiff on the date of termination.

23 62. By willfully failing to pay wages due in accordance with California Labor Code § 201
24 or 202, as applicable, all Defendants did and do violate California Labor Code § 203.

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

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SEVENTH CAUSE OF ACTION
(Tortious Breach of Warranty of Habitability)
Plaintiff, individually, and for the interest of other
current and former employees, Against All Defendants

64. Plaintiff incorporates by reference paragraphs 1 through 63 as if fully set forth herein, and further alleges that:

65. Defendants, as owners or operators of residential dwellings in California, owed and owe a duty to the Plaintiff to maintain safe and habitable residential rental units.

66. Defendants have breached their duty by intentionally failing to properly inspect, repair and maintain the property as fit for human habitation as required by State Housing Law.

67. Defendants' provision of the premises to their employees and maintaining the premises in a dangerous condition, unfit for human habitation and Defendants' continued failure to make repairs is intentional, wilful, fraudulent, oppressive, malicious and despicable.

68. Plaintiff, as a direct and proximate result of Defendants' breach of the warranty of habitability, has suffered damages in an amount to be proven at trial. Plaintiff, is entitled to punitive damages in an amount sufficient to punish and deter Defendants from such conduct in the future.

EIGHTH CAUSE OF ACTION
(Breach of Contract)
Plaintiff, individually, and for the interest of other
current and former employees, Against All Defendants

69. Plaintiff incorporates by reference paragraphs 1 through 68 as if fully set forth herein, and further alleges that:

70. Defendants, as owners and operators of residential dwellings in California, owed and owe a duty the Plaintiff to maintain habitable premises.

71. During Plaintiff's tenancy, Plaintiff repeatedly notified Defendants of the defective and dangerous conditions described in the complaint, which include, but are not limited to complaints about rotting walls, dirty carpets, water leakage from the roof, holes in the walls, lack of window screens, windows that could not be opened and heater problems.

72. Defendants have breached their duty by failing to repair defective and dangerous conditions described in this complaint after being notified by the Plaintiff.

1 73. Plaintiff has sustained general damages, as a proximate result of Defendants' breach
2 of their implied warranty of habitability and their failure to repair the defective and dangerous
3 conditions or to have them repaired within a reasonable time nor at all, in an amount to be proven
4 at trial.

5 **NINTH CAUSE OF ACTION**
6 **(Restitution and Injunctive Relief and For an Accounting —**
7 **Business and Professions Code §§ 17200, *et seq.*)**
8 **Plaintiff, individually, and for the interest of other**
9 **current and former employees, Against All Defendants**

10 74. Plaintiff incorporates by reference paragraphs 1 through 73 as if fully set forth herein,
11 and further alleges that:

12 75. By this cause of action, Plaintiff is seeking to enforce important rights affecting the
13 public interest. Plaintiff sues for his own interest and for the interest of others previously, currently
14 and hereafter employed by each Defendant to perform the work described herein.

15 76. On information and belief, Plaintiff alleges that each Defendant hired Plaintiff and
16 other current and former employees pursuant to oral contracts of employment entered into in San
17 Joaquin County, and that Plaintiff and such other employees worked for each Defendant as dairy
18 workers.

19 77. Plaintiff suffered injury-in-fact and has lost money as a result of Defendants' unfair
20 competition alleged herein.

21 78. Plaintiff alleges that this action complies with Section 382 of the Code of Civil
22 Procedure. The allegations in this complaint are of a common or general interest to Plaintiff and
23 approximately 20 other workers employed by Defendants during the relevant time period.
24 Accordingly, class certification is not superior to other representative relief within the meaning of,
25 and available under, Section 382 of the Code of Civil Procedure. Plaintiff therefore seeks
26 representative relief within the meaning of Section 382 without seeking class certification.

27 79. Each Defendant did and does commit unlawful business practices in violation of
28 California's Business and Professions Code § 17200 *et seq* by:

- a. failing to credit their employees including Plaintiff for all hours worked, in
 violation of IWC Wage Order 14; 8 Cal. Code Regs. §§ 11140;

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- 1 b. failing to pay their employees including Plaintiff premium overtime wages,
2 in violation of IWC Wage Order 14; 8 Cal. Code Regs. §§ 11140 and Cal.
3 Labor Code § 1194;
4 c. failing to pay their employees including Plaintiff wages when due, in
5 violation of Cal. Labor Code § 210;
6 d. failing to pay their former employees including Plaintiff wages due upon
7 termination or discharge as required by Cal. Labor Code §§ 201, 202, and
8 203.
9 e. failing to authorize or permit rest periods, in violation of Cal. Labor Code §
10 226.7; 8 Cal. Code Regs. §§ 11140; IWC Wage Order 14;
11 f. failing to authorize or permit meal periods, in violation of Cal. Labor Code
12 §§ 226.7; 8 Cal. Code Regs. §§ 11140; IWC Wage Order 14; and
13 g. improperly deducting or offsetting wages due without written authorization
14 in violation of Cal. Labor Code §§ 221, 224; 8 Cal. Code Regs. §§ 11140;
15 IWC Wage Order 14.

16 80. Each of the Defendants, by the acts and omissions alleged herein, has committed and
17 is committing unlawful and unfair competition.

18 81. As a result of each Defendant's unlawful business practices, Plaintiff and other
19 similarly-employed people are entitled to restitution of unpaid wages, premium overtime wages and
20 other restitution in an amount that cannot be ascertained without an accounting to determine, among
21 other things, the numbers of hours worked by Plaintiff and other similarly-employed people. Such
22 amounts can only be determined by an accounting of each Defendant's books and records for the
23 four-year time period preceding the filing of this complaint.

24 82. The appointment of a receiver is necessary to perform an accounting and to restore
25 to Plaintiff and other current and former employees money acquired by means of each Defendant's
26 unfair competition.

27 83. Plaintiff also seeks a preliminary and permanent injunction ordering each Defendant
28 to cease the unlawful and unfair business practices as heretofore alleged. Plaintiff is informed and
29 believes that each Defendant continues to violate the above-referenced statutes and regulations and
30 unless enjoined from doing so by this court, will continue to do so to the detriment of the Plaintiff,
31 other current and future employees and competing, law abiding dairy employers. Each Defendant's

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1 unlawful business practices present a continuing threat to Plaintiff and others and cause irreparable
2 harm that cannot be adequately remedied at law.

3 **TENTH CAUSE OF ACTION**
4 **(Enforcement of Penalties --**
5 **Business and Professions Code Section 17202)**
6 **Plaintiff, individually, and for the interest of other**
7 **current and former employees, Against All Defendants**

8 84. Plaintiff incorporates by reference paragraphs 1 through 83 as if fully set forth herein,
9 and further alleges that:

10 85. Plaintiff and similarly-employed people have been discharged by each Defendant, or
11 they have resigned their employment within the meaning of California Labor Code §§ 201 and 202.
12 However, they have not been paid their regular or overtime wages in accordance with the provisions
13 thereof, nor have they been compensated for the wages earned while working during mandatory paid
14 rest periods or meal periods.

15 86. As a result of each Defendant's willful failure to pay Plaintiff and each similarly-
16 employed person all wages due in accordance with Labor Code § 201 and/or 202, Plaintiff and each
17 similarly-employed person are entitled, pursuant to Labor Code § 203, to penalties in an amount
18 equal to thirty (30) times their daily rate of pay pursuant to California law. Plaintiff and each
19 similarly-employed person are entitled to enforce such penalties in an amount to be proven at trial,
20 pursuant to Business and Professions Code § 17202.

21 87. Plaintiff and each similarly-employed person are entitled to Labor Code § 226
22 penalties for each failure to provide a wage statement in compliance with the provision of that
23 section in an amount of \$50 for the first violation and \$100 for each subsequent violation, per
24 employee, per pay period, in an amount not to exceed \$4,000 per employee. Plaintiff and each
25 similarly-employed person are entitled to enforce such penalties in an amount to be proven at trial,
26 pursuant to Business and Professions Code § 17202.

27 88. To the extent that the remedy provided by Labor Code § 226.7 is a penalty, Plaintiff
28 and each similarly-employed person are entitled to Labor Code § 226.7 penalties in the nature of one
hour's wages for each day a required rest period was denied. Plaintiff and each similarly-employed

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1 person are entitled to enforce such penalties in an amount to be proven at trial, pursuant to Business
2 and Professions Code § 17202.

3 89. Failure to enforce the penalties due as alleged herein would promote unfair
4 competition.

5 **PRAYER FOR RELIEF**

6 Wherefore, Plaintiff respectfully prays judgment against Defendants and each of them as
7 follows:

8 As to the First Cause of Action:

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

10 As to the Second Cause of Action:

11 1. For an award, commencing January 1, 2001, of an amount equal to one hour of additional
12 wages at the applicable hourly rate of pay for each workday that the rest period was not
13 provided.

14 As to the Third Cause of Action:

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

17 As to the Fourth Cause of Action:

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

22 As to the Fifth Cause of Action:

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

25 As to the Sixth Cause of Action:

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

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1 As to the Seventh Cause of Action:

- 2 1. General damages.
- 3 2. Damage to personal property and economic loss in an amount to be proven at trial.
- 4 3. Punitive damages in an amount necessary to punish Defendants.

5 As to the Eighth Cause of Action:

- 6 1. General damages.
- 7 2. Damage to personal property and economic loss in an amount to be proven at trial.

8 As to the Ninth Cause of Action:

- 9 1. For a preliminary and permanent injunction ordering Defendants to cease the unlawful and
- 10 unfair business practices as heretofore alleged.
- 11 2. For the appointment of a receiver and an accounting.
- 12 3. For restitution to Plaintiffs and other similarly employed people in amounts to be proven at
- 13 trial.

14 As to the Tenth Cause of Action:

- 15 1. For enforcement and award of penalties to Plaintiffs and other similarly-employed people in
- 16 amounts to be proven at trial.

17 As to All Causes of Action:

- 18 1. For costs of suit herein generally and pursuant to California Code of Civil Procedure §
- 19 1021.5.
- 20 2. For an award of pre-judgment interest as authorized under the law.
- 21 3. For an award of post-judgment interest as authorized under the law.
- 22 4. For such other and further relief as this court deems just and proper.
- 23

24 **DATED:** February 15, 2006

**CALIFORNIA RURAL LEGAL ASSISTANCE
INC.**

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27 By: 

Blanca A. Baniuelos
Attorney for Plaintiff

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