

1 McNICHOLAS & McNICHOLAS, LLP
2 Patrick McNicholas, Esq. (State Bar No. 125868)
3 Matthew S. McNicholas, Esq. (State Bar No. 190249)
4 E-mail: msm@mcnicholaslaw.com
5 Catherine Burke Schmidt, Esq. (State Bar No. 212827)
6 10866 Wilshire Boulevard, Suite 1400
7 Los Angeles, CA 90024-4338
8 (310) 474-1582; FAX: (310) 475-7871

9 KINGSLEY & KINGSLEY, APC
10 Eric B. Kingsley, Esq. (State Bar No. 185123)
11 E-mail: kingsleylaw@aol.com
12 Darren M. Cohen, Esq. (State Bar No. 221938)
13 16133 Ventura Blvd., Suite 1200
14 Encino, CA 91436
15 (818) 990-8300; FAX (818) 990-2903

16 BUSH GOTTLIEB SINGER LÓPEZ KOHANSKI
17 ADELSTEIN & DICKINSON
18 Ira L. Gottlieb, Esq. (State Bar No. 103236)
19 E-mail: Igottlieb@geffner-bush.com
20 David S. Adelstein, Esq. (State Bar No. 105250)
21 Jonathan Cohen, Esq. (State Bar No. 237965)
22 3500 W. Olive Ave., Suite 1100
23 Burbank, CA 91505
24 (818) 973-3200; FAX (818) 973-3201

25 LAW OFFICES OF MARCOS CAMACHO
26 Thomas Patrick Lynch, Esq. (State Bar No. 159277)
27 E-mail: mcamacho@mclawmail.com
28 P.O. Box 310
Keene, CA 93531
(661) 823-6220; FAX (661) 823-6177

Attorneys for Plaintiffs

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SANTOS R. VALENZUELA;
TRINIDAD RUIZ; MARTA R.
RINCON de DIAZ; RAMON
CERVANTES PERALES; HUGO
PEREZ RIOS; on behalf of
themselves and a class of others
similarly situated,

Plaintiffs,

vs.

GIUMARRA VINEYARDS
CORPORATION, a California
corporation; and DOE 1 to 50,
inclusive,

Defendants.

Case No. 1:05-CV-01600-AWI-DLB

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. VIOLATION OF MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT
2. COMMON LAW BREACH OF CONTRACT
3. FAILURE TO PAY WAGES AND/OR OVERTIME PURSUANT TO 29 U.S.C. § 1832(a) AND LABOR CODE §§ 201, 1194
4. FAILURE TO REIMBURSE EXPENSES IN VIOLATION OF LABOR CODE §2802 AND 29 U.S.C. § 1832(c)
5. FAILURE TO ALLOW MEAL BREAKS PURSUANT TO LABOR CODE §226.7 AND 29 U.S.C. § 1832(a)
6. FAILURE TO ALLOW REST BREAKS PURSUANT TO LABOR CODE §226.7 AND 29 U.S.C. § 1832(a)
7. FAILURE TO KEEP ACCURATE INFORMATION PURSUANT TO 29 U.S.C. § 1831(c)(1-2), CALIFORNIA LABOR CODE §226 AND IWC WAGE ORDER 14
8. WAITING TIME PENALTIES UNDER LABOR CODE §203
9. UNFAIR COMPETITION PURSUANT TO B&P §17200

DEMAND FOR JURY TRIAL

Plaintiffs SANTOS R. VALENZUELA, TRINIDAD RUIZ, MARTA R.
RINCON de DIAZ, RAMON CERVANTES PERALES, and HUGO PEREZ RIOS,

1 for themselves and all other persons similarly situated, complain of defendants
2 GIUMARRA VINEYARDS CORPORATION (hereinafter "GIUMARRA") as
3 follows:

4 **JURISDICTION AND VENUE**

5 1. The Court has jurisdiction over plaintiffs' federal claims pursuant to 28
6 U.S.C. §1331 and 29 U.S.C. §1854. The Court has supplemental jurisdiction over
7 plaintiffs' state law claims pursuant to 28 U.S.C. §1367.

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

10 **INTRADISTRICT ASSIGNMENT**

11 3. This case is properly assigned to the Fresno Division of this Court
12 because the action arose in Tulare County and Kern County, California. (See Local
13 Rule 3-120(d).)

14 **NATURE OF THE CASE**

15 4. This is a class action by current and former employees of GIUMARRA
16 for recovery of unpaid wages and penalties, restitution, attorneys' fees and costs, and
17 injunctive relief. Defendants are engaged jointly in the business of growing table
18 grapes and other agricultural commodities on land located primarily in Kern and
19 Tulare Counties, California. The named plaintiffs are seasonal farm workers who
20 have worked in defendants' vineyards, and/or packing shed. On behalf of
21 themselves and the class, plaintiffs complain that GIUMARRA has required its
22 agricultural workers to perform unpaid, off-the-clock work in violation of federal
23 and state wage and hour laws. Plaintiffs also complain, on behalf of the class, that
24 defendants have committed other violations of applicable law, including failing to
25 provide necessary work tools and failing to keep accurate records of all hours
26 worked.

PARTIES

1
2 5. Named plaintiffs SANTOS R. VALENZUELA, TRINIDAD RUIZ,
3 MARTA R. RINCON de DIAZ, RAMON CERVANTES PERALES, and HUGO
4 PEREZ RIOS, are residents of Kern and Tulare Counties, California. Plaintiffs are
5 or were agricultural workers, within the meaning of 29 U.S.C. §1802(10), and are or
6 were employed at GIUMARRA, within the meaning of 29 U.S.C. §1802(3), to work
7 in defendants' agricultural fields in or near Kern and Tulare Counties, California at
8 various times from four (4) years prior to the filing of this action to the present (the
9 "Relevant Period").

10 6. Plaintiff SANTOS R. VALENZUELA has worked for defendants as a
11 field worker since in or around 1999. Each year during the Relevant Period,
12 GIUMARRA hired him at the beginning of the grape pruning season, around late
13 December or early January, and discharged him at the end of the grape harvest
14 season, around November. GIUMARRA also discharged him and rehired him, from
15 time to time, between the various stages of each table grape season (e.g., pruning,
16 tying, and harvesting) during the Relevant Period.

17 7. Plaintiff TRINIDAD RUIZ has worked for defendants as a field worker
18 since in or around 2001. Each year during the Relevant Period, GIUMARRA hired
19 him at the beginning of the grape pruning season, around late December or early
20 January, and discharged him at the end of the grape harvest season, around
21 November. GIUMARRA also discharged and rehired him, from time to time,
22 between the various stages of each table grape season (e.g., pruning, tying, and
23 harvesting) during the Relevant Period.

24 8. Plaintiff MARTA R. RINCON de DIAZ has worked for defendants as a
25 field worker since in or around 2003. Each year during the Relevant Period,
26 GIUMARRA hired her at the beginning of the grape pruning season, around late
27 December or early January, and discharged her after the end of either the grape
28 harvest season or around November or December. GIUMARRA also discharged her

1 and rehired her, from time to time, between the various stages of each table grape
2 season (e.g., pruning, tying, and harvesting) during the Relevant Period.

3 9. Plaintiff RAMON CERVANTES PERALES has worked for defendants
4 as a field worker since in or around 2001. Each year during the Relevant Period,
5 GIUMARRA hired him at the beginning of the grape pruning season, around late
6 December or early January, and discharged him after the end of either the grape
7 harvest season or around November or December. GIUMARRA also discharged
8 him and rehired him, from time to time, between the various stages of each table
9 grape season (e.g., pruning, tying, and harvesting) during the Relevant Period.

10 10. Plaintiff HUGO PEREZ RIOS has worked for defendants as a field
11 worker since in or around 2003. Each year during the Relevant Period, GIUMARRA
12 hired him at the beginning of the grape pruning season, around late December or
13 early January, and discharged him after the end of either the grape harvest season or
14 around November or December. GIUMARRA also discharged him and rehired him,
15 from time to time, between the various stages of each table grape season (e.g.,
16 pruning, tying, and harvesting) during the Relevant Period.

17 11. Defendant GIUMARRA is a California Corporation that maintains its
18 executive office in Kern County, California.

19 12. Defendants are, and during the Relevant Period have been, engaged
20 jointly in the business of cultivating, harvesting, packing, and shipping crops
21 including table grapes, on agricultural land located in, or near, Kern and Tulare
22 Counties, California.

23 13. With respect to the events at issue in this case, defendants acted as
24 agents for each other and as joint employers of plaintiffs and the class.

25 14. As joint employees of plaintiffs and the class, defendants are jointly and
26 severally liable for the violations of law described in this complaint.
27
28

FACTUAL BACKGROUND

1
2 15. Plaintiffs and the Class are, and at all times pertinent hereto, have been
3 non-exempt employees within the meaning of the California Labor Code §500, et
4 seq., and the implementing rules and regulations of the IWC California Wage
5 Orders. Defendants hire table grape workers who work in GIUMARRA's vineyards,
6 including pruners/tyers and pickers/packers, as well as workers employed to work in
7 the packing shed and cold storage areas.

8 16. Plaintiffs and the members of the Class were not compensated for all
9 time worked as a condition of their employment. Specifically, plaintiffs and the
10 class members were not compensated for: (1) pre-shift work; (2) post-shift work; (3)
11 work performed at home; (4) time stopped from working during the day. As a result,
12 plaintiffs and the members of the Class were not compensated for all the hours
13 worked. Further, in some instances, plaintiffs and the members of the Class are
14 entitled to overtime compensation that was either not paid or not paid at the correct
15 overtime rate. Finally, during the harvest season, defendant had a habit and practice
16 of skimming the number of boxes picked/packed to avoid payment of a promised,
17 agreed upon bonus. GIUMARRA's failure to pay this compensation was knowing
18 and willful.

19 17. Plaintiffs and the members of the class were regularly required by
20 GIUMARRA to work in excess of three and one-half hours (3 1/2) without being
21 provided a rest period and were regularly required to work in excess of five (5) and
22 ten (10) hours per day, without being provided a first and second meal period,
23 respectively.

24 18. Further, defendants failed to properly reimburse and/or deducted the
25 cost of expenses incurred as a condition of their employment. These expenses
26 include, but are not limited to: gloves, clippers, sharpeners, knives, umbrellas, tables,
27 kneepads, pillows, trays, stools, and cleaning supplies.

1 19. During the pruning and tying season, plaintiffs were paid on a piece rate
2 basis and rarely, if ever, were paid minimum wage.

3 20. Plaintiffs and the class are covered by California Industrial Welfare
4 Commission Occupational Wage Order No. 14-2001, California Industrial Welfare
5 Commission in No. 14 (Title 8 Cal. Code of Reg. § 11050). Defendants posted
6 Industrial Welfare Commission ("IWC") Wage Order 14-2001 at their place of
7 employment.

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

13 **CLASS ACTION ALLEGATIONS**

14 22. Plaintiffs bring this action on behalf of themselves and all others
15 similarly situated as a Class Action pursuant to Rule 23(a) and 23(b)(3) of the
16 F.R.C.P. The plaintiffs satisfy the requirements of Rule 23(a) and (b)(3) for the
17 prosecution of this action as a class action. Plaintiffs seek to represent two classes
18 composed of and defined as follows:

19 (a) All persons who are employed or have been employed, and who
20 have worked one or more shifts as non-exempt hourly and/or piece rate workers at
21 GIUMARRA VINEYARDS CORPORATION in the State of California since four
22 (4) years prior to the filing of this action.

23 (b) All persons who are employed or have been employed, and who
24 have worked one or more shifts as non-exempt hourly packing shed workers at
25 GIUMARRA VINEYARDS CORPORATION in the State of California since four
26 (4) years prior to the filing of this action.

27 23. Plaintiffs reserve the right to amend or modify the class description with
28 greater specificity or further division into subclasses or limitation to particular issues.

1 **A. Numerosity**

2 24. The potential members of the Class as defined are so numerous that
3 joinder of all the members of the Class is impracticable. While the precise number
4 of Class Members has not been determined at this time, plaintiffs are informed and
5 believe that defendants during the relevant time periods employed, between 1,000 -
6 3,000 agricultural workers.

7 25. Plaintiffs allege defendants' employment records would provide
8 information as to the number and location of all Class Members. Joinder of all
9 members of the proposed Class is not practicable.

10 **B. Commonality**

11 26. There are questions of law and fact common to the Class that
12 predominate over any questions affecting only individual Class Members. These
13 common questions of law and fact include, without limitation:

14 (1) Whether defendant violated the Migrant And Seasonal
15 Agricultural Worker Protection Act 29 U.S.C. § 1801 et seq. ("AWPA") by failing to
16 pay wages due to class members for all hours worked;

17 (2) Whether defendants failed to pay wages and/or overtime wages
18 for all hours worked;

19 (3) Whether defendants violated 29 U.S.C. §1832(c), IWC Wage
20 Order 14-2001 or other IWC Wage Orders or the working arrangements with
21 Plaintiffs by failing to reimburse, or unlawfully deducting, out of pocket expenses
22 for tools used as a requirement of employment;

23 (4) Whether defendants violated 29 U.S.C. §§ 1832(a) and 1832(c),
24 Labor Code §§ 226.7 and 512, IWC Wage Order 14-2001, or other IWC Wage
25 Orders by failing to provide meal periods before the fifth hour of employment and
26 failing to compensate said employees one (1) hour's wages in lieu of meal periods;

27 (5) Whether defendants violated 29 U.S.C. §§ 1832(a) and 1832(c),
28 Labor Code §§ 226.7 and 512, IWC Wage Order 14-2001, or other IWC Wage

1 Orders by failing to provide daily rest periods for every four (4) hours or major
2 fraction thereof worked and failing to compensate said employees one (1) hour's
3 wages in lieu of rest periods;

4 (6) Whether defendants paid minimum wages for all hours worked;

5 (7) Whether defendants paid all piece rate/bonuses for work
6 performed;

7 (8) Whether defendants violated 29 U.S.C. §§1832(a) and 1832(c),
8 §§201-203 of the Labor Code by failing to pay wages due and owing at the time of
9 discharge of any Class member;

10 (9) Whether defendants violated §17200, et seq., of the Business &
11 Professions Code by failing to pay wages and violating the terms of the working
12 arrangement with Plaintiffs or by engaging in any other acts previously alleged; and

13 (10) Whether plaintiffs and the members of the class are entitled to
14 equitable relief pursuant to Business & Professions Code §17200, et. seq.

15 **C. Typicality**

16 27. The claims of the named plaintiffs are typical of the claims of the class.
17 Plaintiffs and all members of the class sustained injuries and damages arising out of
18 and caused by defendants' common course of conduct in violation of laws,
19 regulations that have the force and effect of law and statutes as alleged herein.

20 **D. Adequacy of Representation**

21 28. Plaintiffs will fairly and adequately represent and protect the interests of
22 the members of the class. Counsel who represent plaintiffs are competent and
23 experienced in litigating large employment class actions.

24 **E. Superiority of Class Action**

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

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

6 **FACTS**

7 31. During the Relevant Period, GIUMARRA has cultivated, harvested,
8 packed, and shipped agricultural commodities, including table grapes, on agricultural
9 land located in or near Kern and Tulare Counties, California, for fresh market sale.
10 GIUMARRA sells and ships its agricultural produce to various parts of California
11 and other states of the United States.

12 32. During the Relevant Period GIUMARRA has employed, as that term is
13 used in 29 U.S.C. §1892(3), hundreds of seasonal agricultural workers in its pruning,
14 tying, thinning, harvesting, and field packing and packaging operations.

15 33. During the Relevant Period, many of defendants' field laborers have
16 quit their employment during or between the various table grape seasons. During the
17 Relevant Period, Defendant GIUMARRA effectively discharged plaintiffs and the
18 class they represent at the end of each season in or around November or December of
19 each year.

20 34. During the Relevant Period, named plaintiffs and the class they
21 represent have engaged in agricultural employment, as that term is used in 29 U.S.C.
22 §1802(3), on agricultural land owned or operated by defendants.

23 35. During the Relevant Period, plaintiffs and the class they represent have
24 entered into working arrangements with defendants. These arrangements are formed
25 and entered into each season, at least once and in many cases more than once each
26 year, at or near the time each of the named plaintiffs and other workers are hired by
27 defendants. Under the working arrangements, which are also oral employment
28 contracts, defendants offer plaintiffs and other agricultural workers jobs in its

1 agricultural operations, and plaintiffs and other agricultural workers accept the job
2 offers. By words, conduct, practice, or custom and usage, it is understood by the
3 parties that defendants will pay the named plaintiffs and other workers for all work
4 performed, consistent with federal and state law, as follows: a stated hourly wage
5 throughout each season; and, during the table grape harvest season, in addition to the
6 stated hourly wage, a stated bonus (incentive) payment based on production in the
7 fields. In addition, by words, conduct, practice, or custom and usage, including but
8 not limited to posting the IWC Wage Orders at the place of employment, defendants
9 communicated that they would reimburse plaintiffs and the class they represent for
10 all expenses incurred in the discharge of their duties. More specifically, the IWC
11 Wage Orders posted at the place of employment stated:

12 No employer shall make any deduction from the wage or require any
13 reimbursement from an employee for any cash shortage, breakage, or
14 loss of equipment, unless it can be shown that the shortage, breakage,
15 or loss is caused by a dishonest or willful act, or by the gross
negligence of the employee...

16 When tools or equipment are required by the employer or are
17 necessary to the performance of a job, such tools and equipment shall
18 be provided and maintained by the employer...

19 (IWC Wage Order No. 14-2001 §§ 8 and 9(B)) Said contracts and said provision of
20 the IWC Wage Orders are and were working arrangements as that term is used in the
21 Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §1932(c). Said
22 contracts required defendants to pay plaintiffs and class members their agreed-upon
23 wages for all hours worked. Said provision of the IWC Orders required defendants
24 to reimburse plaintiffs and class members their job related tools and equipment.

25 36. During the Relevant Period, defendants have failed to pay all wages due
26 to their agricultural workers and have failed to keep accurate time records.
27 Specifically, defendants have failed to pay their field workers in the table grape
28 operations for time at the beginning of the work day during which plaintiffs and their

1 co-workers have been subject to defendants' control and/or have been suffered or
2 permitted to work. Defendants' agricultural workers have performed "off-the-
3 clock," unpaid, and unrecorded work. Workers have spent this time organizing
4 materials and equipment essential for the harvest, including tables, wheelbarrows,
5 trays, packing material, bags, boxes, and other materials. At times due to rain, wet
6 fields, or other reasons, plaintiffs and the class were not permitted to start work, but
7 were made to wait for the conditions to change.

8 37. During the Relevant Period, defendants' foremen have conducted
9 "schooling" or training of defendants' grape workers 10-15 minutes before the
10 official, recorded start time, one or more times during each table grape season.

11 38. During the Relevant Period, defendants' agricultural workers performed
12 work "off the clock" at the end of the day, to clean up or finish packing boxes. This
13 time was unrecorded and not paid.

14 39. During the Relevant Period, defendants' agricultural workers worked
15 over ten (10) hours per day, but were not paid this "overtime" at all or not at
16 premium rates.

17 40. During the Relevant Period, defendants regularly disciplined its
18 employees by requiring them to be in a "time out." Typically, the slowest worker(s)
19 each day, or others who violated work rules (e.g. lateness, not cleaning trays, etc.),
20 would be required to sit out without pay for several hours. At this time, these
21 individuals would be under the control of the employer, but not paid.

22 41. During the Relevant Period, defendants regularly allowed workers to
23 work through their meal breaks, yet did not compensate them for the time spent
24 working.

25 42. During the Relevant Period, defendants required plaintiffs to clean their
26 trays at home. This required the transportation of the trays to and from home, as
27 well as the washing and drying of the trays. All of this time was uncompensated.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

43. During the Relevant Period, defendants required plaintiffs in the packing shed to wait if grapes were not available to pack. This time was unpaid.

44. During the Relevant Period, defendants required plaintiffs to work for one or more shifts without any pay.

45. During the Relevant Period, defendants have failed to provide to all of their agricultural workers tools necessary to perform their work. Workers have been required to purchase tools themselves without reimbursement and/or defendants unlawfully deducted these amounts from their wages.

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

46. Plaintiffs incorporate paragraphs 1 through 45 as though fully set forth herein.

47. Defendants intentionally violated the Migrant and Seasonal Agricultural Worker Protection Act (“AWPA”) by:

(a) failing to pay wages when due to plaintiffs and class members, as required by 29 U.S.C. §1832(a);

(b) failing to post a notice setting forth the rights and protections provided by the Act, as required by 29 U.S.C. §1831(b);

(c) failing to keep accurate time and wage records for all work performed by plaintiffs and class members, and failing to provide them with accurate, itemized statements of each pay period, as required by 29 U.S.C. §1831(c)(1-2);

(d) providing to plaintiffs and class members false and misleading information required to be disclosed by 29 U.S.C. §1831(c) and

(e) violating the terms of the working arrangements made with named plaintiffs and class members, in violation of 29 U.S.C. §1832(c).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SECOND CAUSE OF ACTION
COMMON LAW BREACH OF CONTRACT
FAILURE TO PAY WAGES FOR ALL HOURS WORKED
VIOLATION OF 29 U.S.C. §1832(a) & (c)**

48. Plaintiffs incorporate paragraphs 1 through 47 as though fully set forth herein.

49. Each year during the Relevant Period, plaintiffs and the class they represent have entered into oral employment contracts with defendants. The parties have entered into the contracts each year, and frequently more than once a year, at or near the time each of the named plaintiffs and other workers have been hired by defendants. The contracts have provided that defendants would pay plaintiffs and other workers an hourly wage or, during the table grape harvest, an hourly wage plus a modest bonus (incentive) payment based on field production. During the pruning or tying season, the contracts provided that defendants would pay plaintiffs and the class on a piece rate basis.

50. By words, conduct, practice, or custom or usage, it has been understood and agreed by the parties that defendants would pay the named plaintiffs and class members their agreed-upon wages for all hours worked. In addition, by words, conduct, practice, or custom and usage, including but not limited to posting the IWC Wage Orders at their place of employment, defendants communicated to plaintiffs and the class they represent that they would either provide them with the tools necessary in the performance of their job or would reimburse expenses in direct consequence of the discharge of their duties.

51. Plaintiffs have performed their obligations under the working arrangement and oral employment contracts with defendants by providing agricultural labor to defendants.

52. Defendants have violated 29 U.S.C. §1832(a) and breached the employment contracts by failing to pay plaintiffs and class members wages earned and violated 29 U.S.C. § 1832(c) and breached the employment contracts by failing

1 to reimburse expenses incurred in direct consequence of the discharge of their duties
2 causing damages to plaintiffs and the class.

3 **THIRD CAUSE OF ACTION**
4 **FAILURE TO PAY WAGES AND/OR OVERTIME**
5 **VIOLATION OF 29 U.S.C. § 1832(a) AND LABOR CODE §§ 201, 1194**

6 53. Plaintiffs incorporate paragraphs 1 through 52 as though fully set forth
7 herein.

8 54. By their policy of requiring non-exempt employees to work in excess of
9 ten (10) hours in a workday and/or sixty (60) hours in a workweek without
10 compensating such employee at the rate of time and one-half (1 1/2) as alleged
11 above, defendants willfully violated the provisions of Labor Code §1194 and have
12 failed to pay wages in accordance with 29 U.S.C. §1832(a) of AWP.A.

13 55. Further, plaintiffs and members of the Class were required to perform
14 pre-shift work, post-shift work, perform work during the statutory mandated breaks,
15 and perform work at home. Much of this time would force plaintiffs and the class
16 over ten (10) hours per day or sixty (60) hours per week. None of this time, overtime
17 or otherwise, was paid.

18 56. During the pruning or tying season, plaintiffs and the class were paid on
19 a piece rate basis. During this time it was difficult, if not possible, to make minimum
20 wage. Rarely, if ever, were minimum wages paid to the workers.

21 57. Labor Code §1194.2(a) provides that it is unlawful to pay less than the
22 minimum wage established by law. Defendants' failure to pay the sums as identified
23 above, and required by the Wage Orders, violates the provisions of Labor Code
24 §1194.2(a) and also violates 29 U.S.C. § 1832(a) of AWP.A and is therefore
25 unlawful. Liquidated damages are also to be awarded in this instance, equal to the
26 unpaid minimum wages.

27 58. As a result of the unlawful acts of defendants, plaintiffs and the class
28 they seek to represent have been deprived of wages and/or overtime in amounts to be

1 determined at trial, and are entitled to recovery of such amounts, plus interest and
2 penalties thereon, attorneys' fees, and costs, pursuant to Labor Code §§ 1194 and/or
3 218.5.

4 **FOURTH CAUSE OF ACTION**
5 **FAILURE TO REIMBURSE EXPENSES IN**
6 **VIOLATION OF 29 U.S.C. § 1832(c) AND LABOR CODE § 2802**

7 59. Plaintiffs incorporate paragraph 1 through 58 as though fully set forth
8 herein.

9 60. Plaintiffs and members of the Class are required by GIUMARRA to
10 purchase tools in order to perform their job duties for defendants. Plaintiffs and
11 members of the Class are required to purchase, including but not limited to: gloves,
12 clippers, sharpeners, knives, umbrellas, tables, knee pads, pillows, trays, and
13 cleaning supplies. At all relevant times, defendants paid plaintiffs his or her wages
14 but failed to pay any amounts for these tools.

15 61. Moreover, defendants deducted the alleged cost of trays and other tools
16 used at work from plaintiffs' and class members' initial wage payments. These costs
17 were deducted for conduct other than dishonest or willful acts, or gross negligence.
18 Plaintiffs and the class they seek to represent were never notified that deductions
19 would be taken for ordinary use, damage, or loss of trays or other equipment.

20 62. Pursuant to Labor Code §2802 and pursuant to the working arrangement
21 with defendants as alleged in paragraph 35 hereinabove, plaintiffs are entitled to
22 reimbursement of all tool expenses they incurred throughout the duration of their
23 employment.

24 63. Plaintiffs and the Class seek reimbursement of said expenses in an
25 amount to be shown at trial, plus attorneys fees, interest and costs.

26
27
28 ///

1 **FIFTH CAUSE OF ACTION**
2 **FAILURE TO ALLOW MEAL BREAKS**
3 **PURSUANT TO 29 U.S.C. § 1832(a) AND LABOR CODE § 226.7**

4 64. Plaintiffs incorporate paragraphs 1 through 63 as though fully set forth
5 herein.

6 65. Labor Code §226.7 requires an employer to pay an additional hour of
7 wages for each meal period the employer fails to provide. Employees are entitled to
8 a meal period of at least thirty (30) minutes per five (5) hour work period, and two
9 thirty (30) minute meal periods for work periods over ten (10) hours.

10 66. Defendants failed to provide plaintiffs and others with timely meal
11 breaks of not less than thirty (30) minutes as required by the Labor Code during the
12 Relevant Period.

13 67. Pursuant to Labor Code §226.7, plaintiffs are entitled to damages in an
14 amount equal to one (1) hour of wages per missed meal breaks in a sum to be proven
15 at trial. Furthermore, defendants' failure to pay wages pursuant to Labor Code §
16 226.7 constitutes a violation of 29 U.S.C. § 1832(a) of AWPA.

17 **SIXTH CAUSE OF ACTION**
18 **FAILURE TO ALLOW REST BREAKS**
19 **PURSUANT TO 29 U.S.C. § 1832(a), AND LABOR CODE § 226.7**

20 68. Plaintiffs incorporate paragraphs 1 through 67 as though fully set forth
21 herein.

22 69. Labor Code §226.7 requires an employer to pay an additional hour (1)
23 of compensation for each rest period the employer fails to provide. Employees are
24 entitled to a paid ten (10) minute rest break for every four (4) hours worked.
25 Plaintiffs and the class consistently worked over four (4) hours per shift with no rest
26 breaks.

27 70. Defendants failed to provide plaintiffs and others with rest breaks of not
28 less than ten (10) minutes as required by the Labor Code during the Relevant Period.

1 71. Pursuant to Labor Code §226.7, plaintiffs are entitled to damages in an
2 amount equal to one (1) hour of wages per missed rest break in a sum to be proven at
3 trial. Furthermore, defendants' failure to pay wages pursuant to Labor Code § 226.7
4 constitutes a violation of 29 U.S.C. § 1832(a) of AWP.

5 **SEVENTH CAUSE OF ACTION**
6 **FAILURE TO KEEP ACCURATE INFORMATION AND**
7 **TO PROVIDE ACCURATE STATEMENTS OF ALL HOURS**
8 **WORKED AND WAGES EARNED IN VIOLATION OF**
9 **29 U.S.C. § 1831(c)(1-2), CALIFORNIA LABOR CODE § 226 AND IWC**
10 **WAGE ORDER 14**

11 72. Plaintiffs incorporate paragraphs 1 through 71 as though fully set forth
12 herein.

13 73. In pertinent part, 29 U.S.C. § 1831(c) provides, and during the Relevant
14 Period provided:

15 Each farm labor contractor, agricultural employer, and
16 agricultural association which employs any seasonal
17 agricultural worker shall--

18 (1) with respect to each such worker, make, keep, and preserve
19 records for three years of the following information:

20 (A) the basis on which wages are paid;

21 (B) the number of piecework units earned, if paid on a
22 piecework basis;

23 (C) the number of hours worked;

24 (D) the total pay period earnings;

25 (E) the specific sums withheld and the purpose of each
26 sum withheld; and

27 (F) the net pay; and
28

1 (2) provide to each such worker for each pay period, an
2 itemized written statement of the information required by
3 paragraph (1) of this subsection.

4 74. Each pay period during the Relevant Period, defendants have violated
5 29 U.S.C. § 1831(c) by failing to keep accurate information with respect to, among
6 other things, total number of hours worked and the total pay period earnings by the
7 named plaintiffs and class members.

8 75. In pertinent part, Wage Order 14, paragraph 14 (a) provides, and during
9 the Relevant Period provided:

10 Every employer shall keep accurate information with
11 respect to each employee including the following:...

12 (3) Time records showing when the employee begins
13 and ends each work period...(5) Total hours worked in the
14 payroll period...(6) When a piece rate or incentive plan is in
15 operation, piece rates or an explanation of the incentive
16 plan formula shall be provided to employees...

17 76. Each pay period during the Relevant Period, defendants have violated
18 IWC Wage Order 14 by failing to keep accurate information with respect to, among
19 other things, when the named plaintiffs and class members have begun each work
20 period and total hours worked.

21 77. In pertinent part, California Labor Code §226(a) provides, and during
22 the Relevant Period provided:

23 Every employer shall, semimonthly or at the time of each
24 payment of wages,...furnish each of his or her
25 employees...an itemized statement in writing showing (1)
26 gross wages earned, (2) total hours worked by the
27 employee...(3) the number of piece-rate units earned and
28 any applicable piece rate if the employee is paid on a piece-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

rate basis...(5) net wages earned,...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

78. Each pay period during the Relevant Period, defendants have violated §226 by failing to provide to plaintiffs and class members accurate statements showing, among other things, hours worked and wages earned.

**EIGHTH CAUSE OF ACTION
WAITING TIME PENALTIES UNDER LABOR CODE §203**

79. Plaintiffs incorporate paragraphs 1 through 78 as though fully set forth herein.

80. Numerous members of the class are no longer employed by defendants. They were either fired or quit defendants' employ. Many were employed for a season and were terminated at the conclusion of the season. Defendants discharged Plaintiffs and the class they represent seasonally in either November or December each year.

81. The defendant's failure to pay wages, as alleged above was willful in that defendants and each of them knew wages to be due but failed to pay them, thus entitling plaintiffs and the class to penalties under Labor Code §203, which provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

82. Defendants have failed to pay plaintiffs and the class they represent and others a sum certain at the time of discharge, termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code §203, plaintiffs are entitled to a penalty in the amount of plaintiffs' and the class they represent and others daily

1 wage multiplied by thirty (30) days for each time they were discharged, terminated
2 and/or quit and were not paid all wages earned.

3
4 **NINTH CAUSE OF ACTION**
5 **UNFAIR COMPETITION PURSUANT TO**
6 **BUSINESS & PROFESSIONS CODE §17200**

7 83. Plaintiffs incorporate paragraphs 1 through 82 as though fully set forth
8 herein.

9 84. This is a Representative Private Attorney General Action and Class
10 Action for Unfair Business Practices. SANTOS R. VALENZUELA, TRINIDAD
11 RUIZ, MARTA R. RINCON de DIAZ, RAMON CERVANTES PERALES, and
12 HUGO PEREZ RIOS on their own behalf and on behalf of the general public, and on
13 behalf of others similarly situated, bring this claim pursuant to Business &
14 Professions Code §17200, et seq. The conduct of all defendants as alleged in this
15 Complaint has been, and continues to be, unfair, unlawful, and harmful to plaintiffs,
16 the general public, and the class. Plaintiffs seek to enforce important rights affecting
17 the public interest within the meaning of Code of Civil Procedure §1021.5.

18 85. Plaintiffs are a "person" within the meaning of Business & Professions
19 Code §17204, and therefore have standing to bring this cause of action for injunctive
20 relief, restitution, and other appropriate equitable relief.

21 86. Business & Profession Code §17200, et seq. prohibits unlawful and
22 unfair business practices.

23 87. Wage and hour laws express fundamental public policies. Providing
24 employees with meal and/or rest breaks and paying the proper wages and/or
25 overtime is a fundamental public policy of this State and of the United States. Labor
26 Code §90.5(a) articulates the public policies of this State to enforce vigorously
27 minimum labor standards, to ensure that employees are not required or permitted to
28 work under substandard and unlawful conditions, and to protect law-abiding

1 employers and their employees from competitors who lower their costs by failing to
2 comply with minimum labor standards.

3 88. Defendants have violated statutes including but not limited to 29 U.S.C.
4 §§ 1831(c) § 1832(a), and § 1832(c) and various sections of the Labor Code and
5 public policies. Through the conduct alleged in this Complaint, defendants, and each
6 of them, have acted contrary to these public policies, have violated specific
7 provisions of AWPAs, the Labor Code, and have engaged in other unlawful and
8 unfair business practices in violation of Business & Profession Code §17200, et seq.,
9 depriving plaintiffs, and all persons similarly situated, and all interested persons, of
10 rights, benefits, and privileges guaranteed to all employees under law.

11 89. Defendants' conduct, as alleged hereinabove, constitutes unfair
12 competition in violation of §17200, et. seq., of the Business & Professions Code.

13 90. Defendants, by engaging in the conduct herein alleged, by not
14 providing: wages; overtime wages; proper breaks or an additional hour's wage;
15 accurate time records; or reimbursement for job related tools and equipment, either
16 knew or in the exercise of reasonable care should have known that the conduct was
17 unlawful. As such it is a violation of §17200, et. seq., of the Business & Professions
18 Code.

19 91. As a proximate result of the above mentioned acts of defendants,
20 plaintiffs and others similarly situated have been damaged in a sum as may be
21 proven.

22 92. Unless restrained by this Court, defendants will continue to engage in
23 the unlawful conduct as alleged above. Pursuant to the Business & Professions Code
24 this Court should make such orders or judgments, including the appointment of a
25 receiver, as may be necessary to prevent the use or employment, by defendants, their
26 agents or employees, of any unlawful or deceptive practice prohibited by the
27 Business & Professions Code, and/or, including, but not limited to, disgorgement of
28

1 ill gotten gain which may be necessary to restore plaintiffs and the class members to
2 the money defendants have unlawfully failed to pay.

3 **RELIEF REQUESTED**

4 WHEREFORE, plaintiffs pray for the following relief:

5 1. For compensatory damages in the amount of plaintiffs' and each Class
6 members' unpaid wages and unpaid overtime, from at least four (4) years prior to the
7 filing of this action to the present as may be proven;

8 2. For compensatory damages in the amount of plaintiffs' and each Class
9 members' unreimbursed expenses from at least four (4) years prior to the filing of
10 this action to the present as may be proven;

11 3. For compensatory damages in the amount of plaintiff's and each class
12 members' hourly wage for each meal period missed or taken late from at least four
13 (4) years prior to the filing of this action to the present as may be proven;

14 4. Statutory damages of up to \$500 per plaintiff per violation under 29
15 U.S.C. § 1854(c);

16 5. For liquidated damages pursuant to Labor Code § 1194.2(a) in an
17 amount equal to the minimum wage compensation unlawfully unpaid from four (4)
18 years prior to the filing of this action to the present, as may be proven;

19 6. For compensatory damages in the amount of plaintiffs' and each class
20 members' hourly wage for each shift where rest period(s) were missed from at least
21 four (4) years prior to the filing of this action to the present as may be proven;

22 7. For penalties pursuant to Labor Code § 203 for all employees who were
23 terminated or resigned equal to their daily wage times thirty (30) days for each time
24 they left defendant;

25 8. An award of prejudgment and post judgment interest;

26 9. An order enjoining defendant and their agents, servants, and employees,
27 and all persons acting under, in concert with, or for them (a) from failing to pay
28 wages for all hours worked; (b) from failing to provide meal and/or rest periods

1 and/or compensating one hours pay in lieu of each missed meal/rest period; (c) from
2 failing to properly reimbursing employees for expenses; and (d) from failing to pay
3 all bonuses and minimum wages as agreed;

4 10. For penalties pursuant to Labor Code § 226;

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

8 12. An award of liquidated damages under Labor Code § 1194.2;

9 13. An award providing for payment of costs of suit;

10 14. An award of attorneys' fees; and

11 15. Such other and further relief as this Court may deem proper and just.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs hereby demand trial of their claims by jury to the extent authorized
14 by law.

15 Dated: April 18, 2008

16 McNICHOLAS & McNICHOLAS, LLP
17 in association with KINGSLEY &
18 KINGSLEY, APC, and BUSH GOTTLIEB
19 SINGER LÓPEZ KOHANSKI
20 ADELSTEIN & DICKINSON and
21 LAW OFFICES OF MARCOS CAMACHO

22 By. /s/ Matthew S. McNicholas
23 Matthew S. McNicholas
24 Catherine Burke Schmidt
25 Attorneys for Plaintiffs and the
26 Proposed Class
27
28