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**UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF CALIFORNIA**

Daniel Montes; Maria Diaz; Octaviano  
Montalvo, on behalf of themselves and  
others similarly situated,

Plaintiffs,

v.

BEE SWEET CITRUS, INC.; and  
DOES 1-10, inclusive

Defendants.

CASE NO.

**CLASS ACTION COMPLAINT FOR:**

1. Violation of Migrant and Seasonal Agricultural Worker Protection Act
2. Violation of Cal. Lab. Code §§ 510, 1194, and 1199 for Unpaid Wages and Overtime
3. Failure to Compensate for Rest Periods under Cal. Lab. Code § 226.7
4. Failure to Reimburse Business Expenses for Tools and Equipment Under Cal. Lab. Code § 2802
5. Violation of Lab. Code § 226
6. Waiting Time Penalties Under Cal. Lab. Code § 203
7. Violation of Cal. Business & Professions Code § 17200 *et seq.*

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1 Plaintiffs Daniel Montes, Maria Diaz, and Octaviano Montalvo (“Plaintiffs”),  
2 on behalf of themselves and all others similarly situated, hereby demand a trial by  
3 jury and allege on information and belief, except for their own acts and knowledge,  
4 against Defendants BEE SWEET CITRUS, INC., and DOES 1-10 (“Defendants”)  
5 the following:

6 I.

7 **INTRODUCTION**

8 1. This is a class action by current and former employees of BEE SWEET  
9 CITRUS, INC. for recovery of unpaid wages and penalties, failure to provide paid  
10 rest breaks, failure to keep accurate records, failure to record and pay for travel and  
11 post-shift work, failure to reimburse expenses, damages under the Migrant and  
12 Seasonal Agricultural Worker Protection Act (“AWPA”), 29 U.S.C. § 1801 *et seq.*  
13 for the foregoing violations, for injunctive and declaratory relief, and for attorneys’  
14 fees and costs.

15 2. The relevant liability period is four (4) years prior to the filing of this  
16 action to the present (“the relevant period”).

17 3. Defendant BEE SWEET CITRUS, INC. is a produce company within  
18 the citrus fruits industry specializing in growing citrus commodities such as lemons,  
19 grapefruit, and oranges, among other citrus commodities, and providing packing and  
20 shipping services nationwide.

21 4. The cultivation and harvesting take place on land located primarily in  
22 or near Fresno County, Madera County, and Tulare County, California.

23 5. The named Plaintiffs and the Proposed Class members are “seasonal  
24 agricultural workers” within the meaning of the AWPA, 29 U.S.C. § 1802(10), who  
25 have worked in Defendants’ fields for Defendants, either directly or through various  
26 Farm Labor Contractors.

27 6. On behalf of themselves and the Proposed Class, Plaintiffs complain  
28 that Defendants have required their agricultural workers to perform unpaid and/or

1 undercompensated work, in violation of federal and state wage and hour laws.  
2 Plaintiffs also complain that Defendants have committed other violations of  
3 applicable law, including failing to pay minimum wages, failing to appropriately  
4 provide or compensate for mandated rest periods, failing to pay its agricultural  
5 workers the wages due at the agreed-upon wage rate for work performed and/or fruit  
6 harvested under the workers' piece rate, failing to pay workers for post-shift work,  
7 failing to pay for travel time, and failing to reimburse for tools and equipment.

8 **II.**

9 **JURISDICTION AND VENUE**

10 5. The Court has jurisdiction over Plaintiffs' federal claims pursuant to 28  
11 U.S.C. §1331 (federal question) and 29 U.S.C. §1854. The Court has supplemental  
12 jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §1367.

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

15 **III.**

16 **INTRADISTRICT ASSIGNMENT**

17 7. This case is properly assigned to the Fresno Division of this Court  
18 because the actions arose in or near Madera, California and Tulare, California and  
19 Defendants' headquarters is located in Fresno, California. (See Local Rule 3-  
20 120(d).)

21 **IV.**

22 **PARTIES**

23 8. Plaintiffs Daniel Montes, Maria Diaz, and Octaviano Montalvo are  
24 residents of Fresno County, California. Plaintiffs are or were seasonal agricultural  
25 workers, within the meaning of 29 U.S.C. §1802(10), and are or were employed by  
26 Defendants, within the meaning of 29 U.S.C. §1802(3), to work in Defendants'  
27 agricultural fields, that is, on land owned, leased, managed and/or operated,  
28 harvested or otherwise made productive by Defendants in or near Fresno, Madera

1 and Tulare counties in California at various times during the relevant period.

2 9. Plaintiff Daniel Montes is, has been, or was a non-exempt agricultural  
3 employee of Defendants. At all relevant times herein, Plaintiff Daniel Montes is,  
4 has been or was employed by Defendants as a harvest worker in Defendants' fields  
5 in or near Madera County, California.

6 10. Plaintiff Maria Diaz is, has been, or was a non-exempt agricultural  
7 employee of Defendants. At all relevant times herein, Plaintiff Maria Diaz is, has  
8 been or was employed by Defendants as a harvest worker in Defendants' fields in or  
9 near Tulare County, California.

10 11. Plaintiff Octaviano Montalvo is, has been, or was a non-exempt  
11 agricultural employee of Defendants. At all relevant times herein, Plaintiff  
12 Octaviano Montalvo is, has been or was employed by Defendants as a harvest  
13 worker in Defendants' fields in or near Tulare County, California.

14 12. Defendant BEE SWEET CITRUS, INC. is a California Corporation  
15 that maintains its executive office in Fowler, California in Fresno County. The  
16 corporate address is believed to be 416 E South Ave, Fowler, California, 93625.

17 13. Defendants employ harvest workers, such as Plaintiffs, and other  
18 employees to work in Defendants' agricultural fields in or near Fresno, Madera and  
19 Tulare counties in California.

20 14. BEE SWEET CITRUS, INC. is an "agricultural association" and an  
21 "agricultural employer" within the meaning of 29 U.S.C. §1802(1)-(2).

22 15. Defendants issue or caused to be issued, or employ Farm Labor  
23 Contractors that issue, during the relevant period issues, payroll checks or payment  
24 to Plaintiffs and all other persons similarly situated for agricultural work performed  
25 for BEE SWEET CITRUS, INC. Defendant BEE SWEET CITRUS, INC. employed  
26 and/or retained, during the relevant time period, Farm Labor Contractors for  
27 provision of agricultural labor, including but not limited to Soto Farm Labor  
28 Contractor and RT/King Harvesting. Pursuant to California Law, including but not

1 limited to California Labor Code section 2810.3, Defendant BEE SWEET CITRUS,  
2 INC. is strictly liable for failure to pay all wages due to workers hired by BEE  
3 SWEET through Farm Labor Contractors. Plaintiffs are concurrently providing  
4 notice to BEE SWEET of these violations and will amend their complaint in  
5 compliance with California Labor Code section 2810.3 as may be needed.

6 16. Defendants are, and during the relevant period have been, engaged in  
7 the business of cultivating, harvesting, packing and shipping citrus commodities as  
8 described above.

9 17. Defendants sell and ship their agricultural produce to various parts of  
10 California and other states of the United States, and throughout the world.

11 18. With respect to the events at issue in this case, Defendants acted as  
12 agents for each other and as employer of Plaintiffs and all other persons similarly  
13 situated.

14 19. Defendants are jointly liable for the wage violations alleged herein,  
15 pursuant to California law.

16 20. Plaintiffs are ignorant of the true name, capacity, relationship and  
17 extent of participation in the conduct alleged herein of the Defendants sued as DOES  
18 1 through 10, but are informed and believed that said Defendants are legally  
19 responsible for the wrongful conduct alleged herein and therefore sues these  
20 Defendants by such fictitious names. Plaintiffs will amend this complaint to allege  
21 their true names and capacities when ascertained.

22 21. Plaintiffs are informed and believe that each Defendant acted as the  
23 agent of the other Defendants, and/or carried out a joint scheme, business plan or  
24 policy, and/or the acts of each Defendant is legally attributable to the other  
25 Defendants.

26 **V.**

27 **FACTUAL BACKGROUND**

28 22. During the relevant period, Defendants have employed, as that term is

1 used in 29 U.S.C. § 1802(3), thousands of seasonal agricultural workers in pre-  
2 harvest and harvesting operations.

3 23. At all relevant times, the Proposed Class members, including Plaintiffs,  
4 are current and former employees of Defendants, and during the relevant period,  
5 were non-exempt employees within the meaning of California Labor Code §500, *et*  
6 *seq.* and the rules and regulations of the California Labor Code and the Industrial  
7 Welfare Commission (“IWC”) California Wage Orders, working in the cultivation  
8 and harvest of fruit on land owned, leased, managed and/or operated, harvested or  
9 otherwise made productive by Defendants in or near Fresno, Madera and Tulare  
10 counties in California.

11 24. During the relevant period, Plaintiffs and members of the Proposed  
12 Class have engaged in agricultural employment, as that term is used in 29 U.S.C. §  
13 1802(3), on agricultural land owned, leased, managed and/or operated, harvested or  
14 otherwise made productive by Defendants.

15 25. During the relevant period, Plaintiffs and members of the Proposed  
16 Class have entered into working arrangements with Defendants. These arrangements  
17 are formed and entered into each season, at least once (in many cases, more than  
18 once), at or near the time Plaintiffs and members of the Proposed Class are hired by  
19 Defendants.

20 26. Under the working arrangements, which are also oral employment  
21 contracts, Defendants offer Plaintiffs and members of the Proposed Class jobs in  
22 Defendants’ agricultural operations, and Plaintiffs and members of the Proposed  
23 Class accept the job offers.

24 27. The contracts described above are and were “working arrangements”  
25 as that term is used in the AWWA, 29 U.S.C. § 1832(c), and/or agreements.

26 28. By words, conduct, practice, agreement, or custom and usage, including  
27 but not limited to posting IWC Wage Order 14 at the place of employment,  
28 Defendants communicated to Plaintiffs and members of the Proposed Class that

1 Defendants would abide by the terms contained therein.

2 29. Such posting of IWC Wage Order 14 was and is a “working  
3 arrangement” as that term is used in the AWPAs and/or an agreement.

4 30. This working arrangement requires and required Defendants to pay  
5 Plaintiffs and members of the Proposed Class their agreed-upon wages for all hours  
6 worked, to pay workers for required rest periods and to abide in all respects by IWC  
7 Wage Order 14, which formed part of the working arrangement and/or agreement.

8 31. Plaintiffs and members of the Proposed Class were not and have not  
9 been compensated by Defendants for all time worked for Defendants and Plaintiffs  
10 were not compensated according to law.

11 32. By words, conduct, practice, agreement, or custom and usage, it is  
12 understood by the parties that, consistent with federal and state law, Defendants will  
13 pay Plaintiffs and members of the Proposed Class for all work performed on the  
14 basis of an agreed-upon piece rate for certain work (“individual piece rate”).  
15 Specifically, Plaintiffs and members of the Proposed Class work on piece rate  
16 picking mandarins, grapefruit, and lemons, among other citrus commodities.

17 33. Plaintiffs and the members of the Proposed Class were not properly  
18 compensated for all hours worked because Defendants failed to pay Plaintiffs and  
19 the Proposed Class for each and every hour worked. Plaintiffs and the Proposed  
20 Class routinely worked “off the clock” and performed compensable activities before  
21 and after each working shift for which no pay was provided. Specifically, before the  
22 start of each shift, Plaintiffs and the members of the Proposed Class moved ladders  
23 from their trucks, collected the previous workday’s fallen fruit from the ground and,  
24 at various times, were scheduled to report to work at a specific time and do in fact  
25 report to work, but frequently are told by Defendants to wait approximately up to  
26 four (4) hours before they can begin harvesting. In the middle of their shifts,  
27 Defendants required Plaintiffs and the Proposed Class members to travel between  
28 fields to perform work tasks and were not compensated for this travel time. At the



1 end of each working shift, Plaintiffs and the Proposed Class were required to return  
2 the ladders back to their trucks despite them already being off the clock. As such,  
3 Defendants failed to record the travel time and waiting time, including work  
4 performed off-the-clock, and failed to compensate Plaintiff and the Proposed Class  
5 for all hours worked.

6 34. Defendants' failure to pay all appropriate compensation was knowing  
7 and willful.

8 35. Pursuant to California law, Plaintiffs and members of the Proposed  
9 Class are entitled to a paid ten (10) minute rest break for every four (4) hours worked  
10 or major fraction thereof. Plaintiffs and members of the Proposed Class consistently  
11 and regularly worked shifts exceeding 3½ hours without being provided and/or paid  
12 for rest periods.

13 36. By words, conduct, practice, agreement, or custom and usage, including  
14 but not limited to the posting of IWC Wage Order 14 at the place of employment,  
15 Defendants communicated that they would provide to Plaintiffs and members of the  
16 Proposed Class all necessary tools and equipment. More specifically, IWC Wage  
17 Order 14 states: "When tools or equipment are required by the employer or are  
18 necessary to the performance of a job, such tools and equipment shall be provided  
19 and maintained by the employer . . . ."

20 37. During the relevant period, Plaintiffs and members of the Proposed  
21 Class were required to provide their own tools that are necessary to the performance  
22 of the work required of them by Defendants. These tools include scissors, blade  
23 sharpeners, sacks, protective gloves and other items similarly indispensable to  
24 adequate job performance and fulfillment of the work for which they were/had been  
25 employed. Plaintiffs and members of the Proposed Class were required to purchase  
26 these tools necessary for work and Defendants have not reimbursed them for those  
27 expenditures. By failing to provide the tools necessary for adequate performance of  
28 the job and/or by failing to reimburse non-exempt agricultural employees' tool

1 expenses, Defendants violated IWC Wage Order 14, Section 9, California Labor  
2 Code § 2802 and 29 U.S.C. § 1832(c), and burdened Plaintiffs and members of the  
3 Proposed Class with the costs of tools.

4 38. As mentioned above, during the relevant period, Defendants required  
5 Plaintiffs and the Proposed Class to travel between fields to perform work tasks.  
6 Because Defendants did not provide buses or other transportation to workers so that  
7 they could travel from field to field in the middle of their shifts, Plaintiffs and the  
8 Proposed Class used their own vehicles to travel from field to field. Defendants did  
9 not reimburse Plaintiffs and the Proposed Class for their vehicle use for travel  
10 between Defendants' fields during the course of a work shift, in violation of  
11 California law.

12 39. Defendants have failed to issue accurate itemized wage statements that  
13 comply with Cal. Lab. Code § 226(a)(1)-(9). Defendants' failure to issue accurate  
14 wage statements was knowing and intentional as required by Cal. Lab. Code §  
15 226(e).

16 40. During the relevant period, Plaintiffs and members of the Proposed  
17 Class have quit their employment during or between the various tree fruit seasons,  
18 or have been laid off or discharged, either permanently or for the duration of the  
19 season, at the end of or during each season.

20 41. Defendants have failed to pay Plaintiffs and members of the Proposed  
21 Class all wages owed to them at the time they quit or are laid off or discharged.

22 42. The alleged conduct constitutes unlawful and unfair business practices  
23 under Cal. Business and Professions Code §17200, *et seq.*

24 43. During the relevant period, Defendants violated the AWPAs by [1]  
25 violating the "working arrangements" it had with the Proposed Class members per  
26 29 U.S.C. §1832(c) regarding rest periods, [2] for failing to pay all wages owed as  
27 required by 29 U.S.C. §1832(a), and [3] for failing to accurately record the number  
28 of hours worked, the total pay period earnings, and the net pay as required by 29

1 U.S.C. §1831(c)(1)(C), (D), and (F), and (c)(2).

2 44. As a result, Plaintiffs are entitled to damages pursuant to the AWPA's  
3 private right of action provision, 29 U.S.C. §1854, for these violations.

4 **VI.**

5 **CLASS ACTION ALLEGATIONS**

6 45. Plaintiffs bring this action on behalf of themselves and all others  
7 similarly situated as a Class Action pursuant to F.R.C.P. 23(a) and 23(b)(3).  
8 Plaintiffs seek to represent a Proposed Class defined as follows:

9  
10 All persons who are employed or have been employed by  
11 BEE SWEET CITRUS, INC., in the state of California,  
12 and who have worked one or more shifts as a harvest  
13 worker since four (4) years prior to the filing of this action  
14 to the present. (the "Proposed Class")

15 46. Plaintiffs reserve the right to amend or modify the Class description  
16 with greater specificity or further division into subclasses or limitation to particular  
17 issues.

18 **A. Numerosity**

19 47. The potential number of Proposed Class members is so numerous that  
20 joinder of all members of the Proposed Class is impracticable. While the precise  
21 number of Proposed Class members is not yet determined, Plaintiffs are informed  
22 and believe that Defendants, during the relevant period, employed over 500-1,000  
23 agricultural workers that meet the Class definition.

24 48. Plaintiffs allege that Defendants' employment records would provide  
25 information as to the number and location of all members of the Proposed Class.  
26 Joinder of all members of the Proposed Class is not practicable.

27 **B. Commonality**

28 49. There are questions of law and fact common to the Proposed Class that  
predominate over any questions affecting only individual members of the Proposed

1 Class. These common questions of law and fact include, without limitation:

2 (a) Whether Defendants violated the AWPAA, 29 U.S.C. §1801 *et seq.*, by  
3 failing to pay Members of the Proposed Class all wages due at rates agreed upon  
4 through contract or working arrangement for all work performed, including hours  
5 worked, piece rate wages earned, and for rest periods;

6 (b) Whether Defendants paid all wages, at rates agreed upon through  
7 contract or working arrangement, due for all hours worked, including wages for all  
8 work performed on a piece rate, pursuant to Cal. Lab. Code §§510, 1194 and 1199;

9 (c) Whether Defendants failed to record and pay for time spent by  
10 agricultural employees waiting before harvest work could commence, travel time  
11 between fields, or after harvest work finished;

12 (d) Whether Defendants failed to provide paid rest periods (and/or failed  
13 to pay rest period penalties) pursuant to IWC Wage Order 14-2001 and Cal. Lab.  
14 Code §226.7;

15 (e) Whether Defendants violated the AWPAA, Labor Code §221 and/or  
16 Labor Code §223 by failing to pay members of the Proposed Class for rest periods  
17 when they worked shifts lasting 3 1/2 hours or longer;

18 (f) Whether Defendants owe premium pay to members of the Proposed  
19 Class under Labor Code §226.7;

20 (g) Whether Defendants violated Labor Code Cal. Lab. Cde §2802 by  
21 failing to reimburse members of the Proposed Class for the costs of their purchases  
22 of tools that were required and necessary for the adequate performance of assigned  
23 work or jobs in Defendant's agricultural operations; and/or whether Defendant's  
24 violated 29 U.S.C. §1832(c) by failing to provide tools needed to perform work;

25 (h) Whether Defendants violated Cal. Lab. Code §226, IWC Wage Order  
26 14, and/or 29 U.S.C. § 1831(c) by failing to keep accurate information or failing to  
27 provide accurate wage statements of all hours worked and wages earned;

28 (i) Whether Defendants violated Cal. Lab. Code §§201-203 by failing to

1 pay compensation due and owing at the time that any Proposed Class member's  
2 employment with Defendants ended, whether at the end of a season or permanently;

3 (j) Whether Defendants violated §17200 *et seq.* of the Business &  
4 Professions Code by engaging in the acts previously alleged; and

5 (k) Whether members of the Proposed Class are entitled to equitable relief  
6 pursuant to Cal. Business and Professions Code § 17200, *et seq.*

7 **C. Typicality**

8 50. The claims of the named Plaintiffs are typical of the claims of the  
9 Proposed Class.

10 51. Plaintiffs are members of the Proposed Class. Plaintiffs were formerly  
11 employed by Defendants and were subjected to the same unlawful practices as other  
12 members of the Proposed Class. Plaintiffs and other members of the Class suffered  
13 the same injuries and seek the same relief.

14 **D. Adequacy of Representation**

15 52. Plaintiffs will fairly and adequately represent and protect the interests  
16 of all Proposed Class members.

17 53. Counsel for Plaintiffs are competent and experienced in litigating large  
18 employment class actions.

19 **E. Predominance and Superiority of Class Action**

20 54. A class action is superior to other available means for the fair and  
21 efficient adjudication of this controversy. Individual joinder of all Proposed Class  
22 members is not practicable, and questions of law and fact common to the proposed  
23 class predominate over any questions affecting only individual members of the  
24 proposed class.

25 55. Class action treatment will allow those similarly situated persons to  
26 litigate their claims in the manner that is most efficient and economical for the parties  
27 and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be  
28 encountered in the management of this action that would preclude its maintenance

1 as a class action.

2 56. Class action treatment will allow a large number of similarly situated  
3 agricultural employees to prosecute their common claims in a single forum,  
4 simultaneously, efficiently, and without the unnecessary duplication of effort and  
5 expense that numerous individual actions would require. Further, the monetary  
6 amounts due to many individual class members are likely to be relatively small, and  
7 the burden and expense of individual litigation would make it difficult or impossible  
8 for individual members of the Class to seek and obtain relief. A class action will  
9 serve an important public interest by permitting employees harmed by Defendants’  
10 unlawful practices to effectively pursue recovery of the sums owed to them.

11 **VII.**

12 **FIRST CAUSE OF ACTION**

13 **Violation of the Migrant and Seasonal Agricultural Worker Protection Act**

14  **(“AWPA”), 29 U.S.C. §§ 1801-1872**

15 57. Plaintiffs incorporate each and every allegation set forth in all of the  
16 foregoing paragraphs as if fully set forth herein.

17 58. 29 U.S.C. § 1854 provides:

18 Any person aggrieved by a violation of this chapter or any  
19 regulation under this chapter by a farm labor contractor,  
20 agricultural employer, agricultural association, or other  
21 person may file suit in any district court of the United  
22 States having jurisdiction of the parties, without respect to  
23 the amount in controversy and without regard to the  
24 citizenship of the parties and without regard to exhaustion  
of any alternative administrative remedies provided  
herein.<sup>1</sup>

25 59. The AWPA is applicable to this action. Defendants intentionally  
26 violated the AWPA by:

27 <sup>1</sup> See also 29 U.S.C. § 1871: “This chapter is intended to supplement State law, and compliance  
28 with this chapter shall not excuse any person from compliance with appropriate State law and  
regulation.”

1 (a) failing to pay wages when due to Plaintiffs and Proposed Class  
2 members, as required by 29 U.S.C. §1832(a);

3 (b) violating the terms of the working arrangements made with  
4 Plaintiffs and Proposed Class members in regards to rest periods, in  
5 violation of 29 U.S.C. §1832(c); and

6 (c) failing to accurately record the number of hours worked, the total  
7 pay period earnings, and the net pay as required by 29 U.S.C.  
8 §1831(c)(1)(C), (D), and (F).

9 60. Accordingly, Plaintiffs are entitled to damages pursuant to 29 U.S.C.  
10 §1854(c)(1)-(2):

11 (1) If the court finds that the respondent has intentionally violated any  
12 provision of this chapter or any regulation under this chapter, it may  
13 award damages up to and including an amount equal to the amount of  
14 actual damages, or statutory damages of up to \$500 per Plaintiff per  
15 violation, or other equitable relief, except that (A) multiple infractions  
16 of a single provision of this chapter or of regulations under this chapter  
17 shall constitute only one violation for purposes of determining the  
18 amount of statutory damages due a Plaintiff; and (B) if such complaint  
19 is certified as a class action, the court shall award no more than the  
20 lesser of up to \$500 per Plaintiff per violation, or up to \$500,000 or  
21 other equitable relief.

22 (2) In determining the amount of damages to be awarded under  
23 paragraph (1), the court is authorized to consider whether an attempt  
24 was made to resolve the issues in dispute before the resort to litigation.

25 **VIII.**

26 **SECOND CAUSE OF ACTION**

27 **Violation of Wage Order 14-2001 and Cal. Lab. Code §§ 510, 1194, and 1199**

28 **for Unpaid Wages and Overtime**

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

62. Wage Order 14-2001 and Cal. Lab. Code §§ 510, 1194, and 1199

1 require that an employee be paid all wages owed, including the applicable overtime  
2 hourly rates, for all hours worked.

3 63. Moreover, pursuant to Cal. Lab. Code § 510(a) and Wage Order 14-  
4 2001(3)(A)(3) overtime hours must be compensated at: (a) One and one-half (1.5)  
5 times the employee's regular rate of pay for all hours worked in excess of certain  
6 hours (depending on recent amendments) up to and including 12 hours in any  
7 workday, and for the first eight (8) hours worked on the seventh (7th) consecutive  
8 day of work in a workweek; and (b) Double the employee's regular rate of pay for  
9 all hours worked in excess of 12 hours in any workday and for all hours worked in  
10 excess of eight (8) hours on the seventh (7th) consecutive day of work in a  
11 workweek.

12 64. Plaintiffs and the members of the Proposed Class were not properly  
13 compensated for all hours worked because Defendants failed to pay Plaintiffs and  
14 the Proposed Class for each and every hour worked. Plaintiffs and the Proposed  
15 Class routinely worked "off the clock" and performed compensable activities before,  
16 during, and after each working shift for which no pay was provided.

17 65. Specifically, before the start of each shift, Plaintiffs and the members  
18 of the Proposed Class moved ladders from their trucks, collected the previous  
19 workday's fallen fruit from the ground and, at various times, were scheduled to  
20 report to work at a specific time and do in fact report to work, but frequently are told  
21 by Defendants to wait approximately up to four (4) hours before they can begin  
22 harvesting. In the middle of their shifts, Defendants required Plaintiffs and the  
23 Proposed Class members to travel between fields to perform work tasks and were  
24 not compensated for this travel time. At the end of each working shift, Plaintiffs and  
25 the Proposed Class were required to return the ladders back to their trucks despite  
26 them already being off the clock.

27 66. Defendants failed to record the travel time and waiting time, including  
28 work performed off-the-clock, and failed to compensate Plaintiff and the Proposed



1 Class for all hours worked.

2 67. Accordingly, Plaintiffs are entitled to unpaid wages and civil penalties  
3 pursuant to Wage Order 14-2001(20)(A).

4 68. As a result of the unlawful acts of Defendants, including the failure to  
5 pay for nonproductive work and compensable activities, Plaintiffs and Proposed  
6 Class members have been deprived of wages and/or overtime, in amounts to be  
7 determined at trial, and are thus entitled to recovery of such amounts, plus interest  
8 and liquidated damages, attorneys' fees and costs.

9 **IX.**

10 **THIRD CAUSE OF ACTION**

11 **Failure to Provide Rest Breaks Under Wage Order 14-2001(12) and Cal. Lab.**

12 **Code §226.7**

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

15 70. Labor Code §226.7 and IWC Wage Order 14-2001 require an employer  
16 to provide paid rest periods or to pay an additional hour (1) of compensation for each  
17 paid rest period the employer fails to provide. Employees are entitled to a paid ten  
18 (10) minute rest break for every four (4) hours worked or major fraction thereof.

19 71. During the relevant period, Plaintiffs and members of the Proposed  
20 Class consistently worked over 3 1/2 hours without being provided with paid rest  
21 breaks while working on a piece rate basis as matter of common policy and practice.

22 72. Thus, each Proposed Class member is entitled to damages in an amount  
23 equal to one (1) hour of wages per missed paid rest period in a sum to be proven at  
24 trial. *See* Wage Order 14-2001(12)(B) and Cal. Lab. Code § 226.7(c).

25 ///

X.

**FOURTH CAUSE OF ACTION**

**Failure to Reimburse Business Expenses Pursuant to Cal. Lab. Code § 2802**

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

74. IWC Wage Order 14 provides that tools or equipment required by the employer or necessary to the performance of a job shall be provided and maintained by the employer.

75. California Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. Plaintiffs and members of the Proposed Class are entitled to reimbursement of all tool and vehicle expenses they incurred throughout the duration of their employment.

76. By failing to provide Plaintiffs and members of the Proposed Class with the necessary tools to perform their jobs, Defendants violated IWC Wage Order 14, and burdened Plaintiffs with the cost of tools such as scissors, blade sharpeners, sacks, protective gloves and other items similarly indispensable to Plaintiffs' adequate job performance.

77. Defendants also required Plaintiffs and the Proposed Class to travel between fields to perform work tasks. Because Defendants did not provide buses or other transportation to workers so that they could travel from field to field in the middle of their shifts, Plaintiffs and the Proposed Class used their own vehicles to travel from field to field. Defendants did not reimburse Plaintiffs and the Proposed Class for their vehicle use for travel between Defendants' fields during the course of a work shift, in violation of California law.

78. Plaintiffs and members of the Proposed Class seek reimbursement of said expenses in an amount to be shown at trial, plus attorneys' fees, interest and costs.

**XI.**

**FIFTH CAUSE OF ACTION**

**Violation of Cal. Lab. Code § 226**

1  
2  
3  
4 79. Plaintiffs incorporate each and every allegation set forth in all of the  
5 foregoing paragraphs as if fully set forth herein.

6 80. In pertinent part, IWC Wage Order 14, paragraph 7(A) provides, and  
7 during the relevant period provided, that every employer shall keep accurate  
8 information with respect to each employee including time records showing when the  
9 employee begins and ends each work period and total hours worked in the payroll  
10 period. When a piece rate or incentive plan is in operation, piece rates or an  
11 explanation of the incentive plan formula shall be provided to employees.

12 81. In each pay period during the relevant period, Defendants have violated  
13 IWC Wage Order 14 by failing to record accurate information with respect to, among  
14 other things, when Plaintiffs and members of the Proposed Class have begun and  
15 ended each work shift and the total hours worked.

16 82. On various occasions, Plaintiffs and members of the Proposed Class  
17 received no wage statements at all, and were paid in cash. When Plaintiffs or the  
18 Proposed Class did receive wage statements, they were issued wage statements that  
19 failed to failed to comply with Cal. Lab. Code § 226(a).

20 83. Defendants' failure to issue accurate wage statements was knowing and  
21 intentional as required by Cal. Lab. Code § 226(e).

22 84. Thus, Plaintiffs are entitled to penalties under Cal. Lab. Code § 226(e):  
23 An employee suffering injury as a result of a knowing and intentional failure by an  
24 employer to comply with subdivision (a) is entitled to recover the greater of all actual  
25 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs  
26 and one hundred dollars (\$100) per employee for each violation in a subsequent pay  
27 period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is  
28 entitled to an award of costs and reasonable attorney's fees.

1 **XII.**

2 **SIXTH CAUSE OF ACTION**

3 **Waiting Time Penalties Under Labor Code § 203**

4 85. Plaintiffs incorporate each and every allegation set forth in all of the  
5 foregoing paragraphs as if fully set forth herein.

6 86. Cal. Labor Code § 203(a) provides: If an employer willfully fails to  
7 pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5,  
8 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits,  
9 the wages of the employee shall continue as a penalty from the due date thereof at  
10 the same rate until paid or until an action therefor is commenced; but the wages shall  
11 not continue for more than 30 days.

12 87. Members of the Proposed Class, including Plaintiffs, no longer work  
13 for Defendants.

14 88. Furthermore, Defendants' work is seasonal. This means that Plaintiffs  
15 and all Proposed Class members did not receive all wages owed when they were  
16 discharged, laid off, or quit each season.

17 89. By willfully failing to pay wages due to Proposed Class members,  
18 including Plaintiffs, when they were discharged, laid off, or quit, in accordance with  
19 Cal. Lab. Code §§201, 202, and 205.5, Defendants violated Cal. Lab. Code §203.

20 90. Thus, the wages of Proposed Class members, including Plaintiffs,  
21 should continue as a penalty for an additional 30 days. *See* Cal. Lab. Code § 203(a).

22 **XIII.**

23 **SEVENTH CAUSE OF ACTION**

24 **Violation of Cal. Business & Professions Code § 17200, et seq.**

25 91. Plaintiffs incorporate each and every allegation set forth in all of the  
26 foregoing paragraphs as if fully set forth herein.

27 92. California Business and Professions Code § 17200, *et seq.*, provides  
28 that "unfair competition shall mean and include any unlawful, unfair, or fraudulent

1 business act or practice....”

2 93. Plaintiffs bring this action on behalf of themselves, the Proposed Class  
3 members, and the general public pursuant to § 17204 of the California Business &  
4 Professions Code.

5 94. In California, there is a fundamental and substantial public policy  
6 protecting an employee’s rest periods and wages, as well as ensuring that an  
7 employee’s wage statements are accurate.

8 95. The following practices of Defendants are unlawful and unfair business  
9 practices under California Business & Professions Code § 17200 *et seq.*:

10 a. underpaying workers, including Plaintiffs, in violation of the  
11 AWPAs, 29 U.S.C. § 1832(c); California Labor Code §§ 200, 205.5, 221, 223, 1194,  
12 1197; IWC Wage Order 14 and IWC Wage Order 13; and fundamental public policy  
13 of the State of California;

14 b. failing to provide paid rest periods to workers, including  
15 Plaintiffs;

16 c. retaining the benefit of the labor performed by workers,  
17 including Plaintiffs, without reasonable compensation;

18 d. retaining the benefit of the labor performed by workers,  
19 including Plaintiffs, without providing compensation according to agreed-upon  
20 wages, crew piece rates or other agreed-upon and/or contractually established rates  
21 in violation of California Labor Code § 205.5;

22 e. failing to promptly pay all wages due to workers, including  
23 Plaintiffs, as mandated by the AWPAs, 29 U.S.C. § 1832(c), and California Labor  
24 Code §§ 201, 202 and 205.5, when those workers were discharged, laid off or quit;

25 f. failing to record and pay for travel time; and

26 g. failing to reimburse employees for expenses incurred in the  
27 performance of their jobs;

28 96. The unlawful and unfair acts described herein present a continuing

1 threat to the general public which cannot be adequately remedied at law. Plaintiffs  
2 are informed and believes that such conduct will continue unless enjoined by this  
3 Court pursuant to § 17203 of the Business and Professions Code.

4 97. The statute of limitations period under the Business and Professions  
5 Code § 17208 is four (4) years. Accordingly, Plaintiffs seek relief for the period  
6 going back four years prior to the filing of this Complaint and continuing to the  
7 present until judgment is entered.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for judgment against Defendants, jointly and  
10 severally liable, as follows:

11 1. Damages in an amount equal to all unpaid wages owed to Plaintiffs and  
12 members of the Proposed Class for four years prior to the filing of this Complaint,  
13 including but not limited to Labor Code § 226.7 premium pay in an amount equal to one  
14 (1) hour of wages per missed paid rest break in a sum to be proven at trial;

15 2. Restitution of unpaid wages of Plaintiffs and members of the Proposed Class,  
16 under Business & Professions Code § 17200 et seq., for four years prior to the filing of this  
17 Complaint;

18 3. Liquidated damages pursuant to California Labor Code § 1194 for four years  
19 prior to the filing of this Complaint;

20 4. Monetary damages to Plaintiffs and members of the Proposed Class pursuant  
21 to the AWP, 29 U.S.C. § 1854(c), in an amount equal to their actual damages or their  
22 statutory damages, whichever is greater;

23 5. An award of statutory waiting-time penalties equal to 30 days' wages,  
24 pursuant to California Labor Code § 203, each time Plaintiffs or members of the Proposed  
25 Class were discharged, quit, or permanently laid off, including but not limited to each time  
26 an employee was discharged because of an end-of-season layoff, in accordance with  
27 California Labor Code Sections 201, 202 and 205.5, for four years prior to the filing of the  
28 Complaint;



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Daniel Montes; Maria Diaz; Octaviano Montalvo, on behalf of themselves and others similarly situated,

(b) County of Residence of First Listed Plaintiff Fresno (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Tel: (818) 990-8300 Fax: (818) 990-2903

Kingsley & Kingsley, APC Eric B. Kingsley, Esq., SBN-185123, Kelsey M. Szamet, Esq., SBN-260264 16133 Ventura Blvd., Suite 1200, Encino, CA 91436

DEFENDANTS

BEE SWEET CITRUS, INC.; and DOES 1-10, inclusive

County of Residence of First Listed Defendant Fresno (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): AWP, 29 U.S.C. Code Sections 1801-1872

Brief description of cause: Violation of Federal and State wage and hour laws

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE August 18, 2020 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



Case 1:20-cv-01162-NONE-EPG Document 1-1 Filed 08/18/20 Page 2 of 2  
**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Bee Sweet Citrus Failed to Pay Harvest Workers Proper Wages, Class Action Alleges](#)

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