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13 **UNITED STATES DISTRICT COURT**

14 **CENTRAL DISTRICT OF CALIFORNIA—EASTERN DIVISION**

16 JUAN SANDOVAL, an individual; ALFONSO  
 17 MAGANA, an individual; on behalf of themselves  
 and all others similarly situated,

18 Plaintiffs,

19 Vs.

21 David M. Lanier, in his individual and official  
 22 capacity as Secretary of the California Labor and  
 Workforce Development Agency; Christine Baker,  
 23 in her individual and official capacity as the  
 Director of the Department of Industrial Relation;  
 24 Julie S. Su, in her individual and official capacity  
 as the California Labor Commissioner; and Does  
 25 1-20,

26 DEFENDANTS.

Case No.

**CLASS ACTION COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

1 PLAINTIFFS JUAN SANDOVAL and ALFONSO MAGANA, on behalf of themselves  
2 and all others similarly situated, bring this constitutional challenge of the newly enacted  
3 California Labor Code section 226.2(b) against David M. Lanier, in his official and individual  
4 capacity as Secretary of the California Labor and Workforce Development Agency; Christine  
5 Baker, in her official and individual capacity as the Director of the Department of Industrial  
6 Relation; Julie S. Su, in her official and individual capacity as the California Labor  
7 Commissioner; and Does 1-20 (hereinafter collectively “DEFENDANTS”), on behalf of  
8 themselves and on behalf of a Class of all others similarly situated. JUAN SANDOVAL,  
9 ALFONSO MAGANA, and the Class they seek to represent are hereinafter collectively referred  
10 to as “PLAINTIFFS.” The allegations of PLAINTIFFS are made on information and belief.

11 **I. NATURE OF THE ACTION**

12 1. This action is brought on behalf of PLAINTIFFS individually and as  
13 representatives of Class of non-exempt employees in the state of the State of California pursuant  
14 to FRCP Rule 23.

15 2. This lawsuit challenges California Labor Code section 226.2, adopted as AB  
16 1513 and enacted on January 1, 2016. Section 226.2 codifies that employers must piece rate  
17 employees for their rest breaks and “unproductive” time. Labor Code Section 226.2(a)(1).

18 3. Under California law, prior to the enactment of Section 226.2, employers had a  
19 duty to pay piece rate workers at least the minimum wage during their statutorily mandated rest  
20 breaks or pay employees an hour of minimum wage for missed breaks to the employees.

21 4. Labor Code Section 226.2 also provides employers with a “safe harbor” (Section  
22 226.2(b)) until July 1, 2016 should the employer make a payment to each of its employees for  
23 uncompensated or undercompensated rest periods from July 1, 2012 to December 31, 2015.

24 5. PLAINTIFFS allege that Section 226(b) sanctions wage theft. Under Labor Code  
25 Section 226.2(b), DEFENDANTS can avoid paying the full wages owed to PLAINTIFFS and  
26 the class. Section 226.2(b) extends to employers two avenues to pay workers less than the  
27 wages to which they are entitled. Sections 226.2(b)(1)(A) and 226.2(b)(1)(B) offer employers  
28 ways to pay employees less than their actual wages owed, as required by multiple provisions of

1 federal law. PLAINTIFFS contend that they have the right to more wages than Section 226.2(b)  
2 would allow them, thereby depriving them of their constitutional right to their property interest  
3 in their wages earned.

4 6. Section 226.2(b) is facially illegal, and violates the Constitution of the United  
5 States.

6 7. PLAINTIFFS contend that the safe harbor provision contained in Section  
7 226.2(b) is unconstitutional as an illegal taking under the Fifth Amendment, and violates the  
8 Supremacy and Contracts Clauses, of the Constitution of the United States.

9 **JURISDICTION, VENUE and INTRADISTRICT ASSIGNMENT**

10 8. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343  
11 over PLAINTIFFS' claims under the Constitution of the United States. The Court also has  
12 authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202.

13 9. Venue is proper in this district under 28 U.S.C. § 1391(b) as PLAINTIFFS and  
14 the Class face injury within this district, the property at issue resides in this district, a substantial  
15 part of the events giving rise to the claim occurred in this district, and all DEFENDANTS reside  
16 in the State of California.

17 **PARTIES**

18 **A. PLAINTIFFS**

19 10. PLAINTIFF JUAN SANDOVAL is a California resident. During the class  
20 period, JUAN SANDOVAL was employed as a non-exempt employee at VALLEY PRIDE,  
21 INC., MAGANA LABOR SERVICES, INC., and/or other employers listed on the Department  
22 of Industrial Relation's Election Notice List pursuant to Labor Code section 226.2(b), for piece  
23 rate work in Riverside and/or San Bernadino, California during various times during the past  
24 four years including in 2014 and 2015. PLAINTIFF JUAN SANDOVAL was hired pursuant to  
25 implied contracts of employment impliedly or explicitly promising to pay in conformance with  
26 Federal and California wage and hour requirements. As such, by operation of law and implied  
27 into any employment contract, PLAINTIFF JUAN SANDOVAL must be paid in conformance  
28 with California labor laws and therefore be paid at least. As a result of unconstitutional

1 provisions of Labor Code Section 226.2 described herein, PLAINTIFF JUAN SANDOVAL and  
2 the Class have suffered injury in fact and have lost money or property.

3 11. PLAINTIFF ALFONSO MAGANA is a California resident. During the class  
4 period, ALFONSO MAGANA was employed as a non-exempt employee at TT MIYASAKA,  
5 INC., and/or other employers listed on the Department of Industrial Relation's Election Notice  
6 List pursuant to Labor Code section 226.2(b), for piece rate work in Watsonville, California  
7 during various times during the past four years, from 2010 to 2015. PLAINTIFF ALFONSO  
8 MAGANA was hired pursuant to implied contracts of employment impliedly or explicitly  
9 promising to pay in conformance with Federal and California wage and hour requirements. As  
10 such, by operation of law and implied into any employment contract, PLAINTIFF ALFONSO  
11 MAGANA must be paid in conformance with California labor laws and therefore be paid at  
12 least. On September 30, 2015, PLAINTIFF ALFONSO MAGANA filed a class action  
13 complaint on behalf of himself and a class of similarly situated non-exempt piece rate  
14 employees in California for wages and other vested remedies in the California Superior Court  
15 for the County of Santa Cruz. As a result of unconstitutional provisions of Labor Code Section  
16 226.2 described herein, PLAINTIFF ALFONSO MAGANA and the Class have suffered injury  
17 in fact and have lost money or property.

18 12. On information and belief, PLAINTIFFS, and each member of the Class they  
19 seek to represent, are subject to Section 226.2(b).

20 **B. DEFENDANTS**

21 13. DEFENDANT DAVID M. LANIER is Secretary of the California Labor and  
22 Workforce Development Agency (hereinafter "the Secretary"). The Secretary has the power of  
23 general supervision over the operations of each department, office, and unit within the Labor  
24 and Workforce Development Agency, including the Department of Industrial Relations and the  
25 Office of the California Labor Commissioner. DEFENDANT Lanier oversees the California  
26 state departments and boards that enforce labor and occupational safety law, including Section  
27 226.2(b).

28 14. DEFENDANT CHRISTINE BAKER is the Director of the California Director of

1 Industrial Relations (hereinafter “the Director”). The Director is charged with enforcing  
2 provisions of Section 226.2(b) of the California Labor Code. The Director also has supervisory  
3 authority over the Office of the California Labor Commissioner.

4 15. DEFENDANT JULIE A. SU is the California Labor Commissioner (hereinafter  
5 “the Commissioner”). The Commissioner is charged with enforcing California wage laws,  
6 including Section 226.2(b) of the California Labor Code.

7 16. This action seeks relief against each DEFENDANT in his or her official and  
8 individual capacity.

9 **II. FACTUAL BACKGROUND**

10 17. Under California law, rest periods are compensable time. In the context of piece-  
11 rate pay, courts have held that in order to comply with this requirement, employers must provide  
12 rest-break compensation separate from piece-rate compensation. *Bluford v. Safeway*, 216  
13 Cal.App.4th 864, 871-872 (2013). Failure to do so is a violation of the minimum wage laws.  
14 (“[A] piece-rate compensation formula that does not compensate separately for rest periods does  
15 not comply with California minimum wage law.”) *Id.* at 872.

16 18. In a piece-rate system, to provide a paid rest break the employer must separately  
17 compensate for rest-break time, because piece-rate employees earn compensation for  
18 production, not for time spent on the clock. During rest breaks, piece rate workers are not  
19 engaged in production and cannot earn piece-rate wages. *Id.* at 871-872. In contrast to common  
20 piece rate practices, California requires that in a piece-rate system, rest breaks must be  
21 compensated separately.

22 19. Section 226.2 codified California’s already existing piece rate obligations to pay  
23 minimum wage for rest breaks. “Employees shall be compensated for rest and recovery periods  
24 and other nonproductive time separate from any piece-rate compensation.” Cal. Labor Code  
25 § 226.2(a)(1).

26 20. Section 226.2(b) also provides employers with an “affirmative defense” to claims  
27 for “recovery of wages” among other liabilities (hereinafter “safe harbor” provision). Under this  
28 provision, employers can make payments to each of its piece rate employees for uncompensated

1 or undercompensated rest periods and nonproductive time from July 1, 2012 to December 31,  
2 2015. Section 226.2(b) presents employers with two options to avail themselves of this  
3 affirmative defense. First, under Section 226.2(b)(1)(A), employers can pay the “actual sums  
4 due together with accrued interest.” Second, under Section 226(b)(1)(B), employers can pay less  
5 than actual sums due by paying the employee “an amount equal to 4 percent of that employee’s  
6 gross earnings.”

7 21. Under both options, employees would receive nothing for any lost wages prior to  
8 July 1, 2012.

9 22. Further, should the employer choose this safe harbor option, they must also:  
10 (a) give notice to the Department of Industrial Relations by no later than July 1, 2016 of its  
11 election to make payments to its current and former employees pursuant to the new statute;  
12 (b) the payments must be completed by December 15, 2016, among other obligations. Cal.  
13 Labor Code § 226.2(b).

14 23. PLAINTIFFS allege the safe harbor provision in Labor Code section 226.2(b) is  
15 unconstitutional on various grounds, including as an unlawful taking of private property under  
16 the Fifth Amendment of the Constitution of the United States without just compensation. The  
17 California Supreme Court has held that unlawfully withheld wages are property of the  
18 employee. See *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163, 173 (2000).  
19 Moreover, in *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103-04 (2007), the  
20 California Supreme Court held that payments for missed rest breaks constitute wages. Here,  
21 with the safe harbor provision, DEFENDANTS allow employers to pay PLAINTIFFS and the  
22 Class only a fraction of what is actually owed to them for their rest breaks as piece rate workers.  
23 Thus, DEFENDANTS illegally shift property from workers to their employers without justly  
24 compensating the employees. Even worse, the employers illegally withheld the wages in the  
25 first place, and now Labor Code section 226(b) is allowing them to keep these ill-gotten monies,  
26 a constitutionally-prohibited taking of private property.

27 24. PLAINTIFFS further allege that Section 226(b) violates the Contracts Clause of  
28 the Constitution of the United States. Labor Code section 226.2(b) violates the Contracts Clause

1 because it purports to eliminate already-earned minimum wages, which is a contractual  
2 obligation of the employer. The Class' right to the appropriate hourly wage is a contractual  
3 obligation because, "[t]he contract of employment must be held to have been made in the light  
4 of, and to have incorporated, the provisions of existing law." See *Lockheed Aircraft Corp. v.*  
5 *Superior Court* (1946) 28 Cal.2d 481, 487.

6 25. PLAINTIFFS further allege that Labor Code section 226.2(b) violates the  
7 Federal Supremacy Clause of the Constitution of the United States.

8 26. As a result of DEFENDANTS' enforcement of the unconstitutional provisions of  
9 Section 226.2(b), PLAINTIFFS and the Class have suffered and continue to suffer irreparable  
10 harm in the form of various constitutional violations, deprivations of property, and deprivations  
11 of other protected interests.

12 27. If Section 226.2(b) is not enjoined, PLAINTIFFS and the Class will continue to  
13 suffer irreparable injury of wages earned but unpaid.

14 28. By enforcing Section 226.2(b) and thereby denying piece rate workers just  
15 compensation for their hours worked, DEFENDANTS are denying PLAINTIFFS and the Class  
16 rights secured to them under the Constitution of the United States and laws of the State of  
17 California.

18 29. PLAINTIFFS and the Class are entitled to a declaration and injunction that  
19 Labor Code section 226.2(b) is unconstitutional on the grounds that it constitutes an unlawful  
20 taking in violation of the Fifth Amendment, an unlawful interference with the Contracts Clause,  
21 and conflicts with federal law.

22 30. On June 29, 2016, VALLEY PRIDE, INC. submitted its notice of election to the  
23 Department of Industrial Relations pursuant to Section 226.2(b). On June 13, 2016, MAGANA  
24 LABOR SERVICES, INC. submitted its notice of election to the Department of Industrial  
25 Relations pursuant to Section 226.2(b). On June 13, 2016, TT MIYASAKA, INC. submitted its  
26 notice of election to the Department of Industrial Relations pursuant to Section 226.2(b).

27 **III. CLASS ACTION ALLEGATIONS**

28 31. This is a Class Action pursuant to Rule 23 of the Federal Rules of Civil

1 Procedure to vindicate the rights afforded by the Constitution of the United States, and is  
2 brought on behalf of PLAINTIFFS and a Class comprised of all California non-exempt piece  
3 rate workers who will have wages and other vested remedies for their rest breaks unlawfully  
4 denied as a result of the enactment, implementation, and/or enforcement of Labor Code section  
5 226.2(b).

6 32. On information and belief, the legal and factual issues are common to the Class  
7 and affect all members of the Class. PLAINTIFFS reserve the right to amend or modify the  
8 class description with greater specificity or further division into subclasses or limitation to  
9 particular issues.

10 33. The potential members of the Class as defined are so numerous that joinder of all  
11 the members of the Class is impracticable. While the precise number of Class Members has not  
12 been determined at this time, PLAINTIFFS are informed and believe, and based thereon allege,  
13 that tens of thousands of piece rate workers in California will be affected by DEFENDANTS’  
14 enforcement of the safe harbor provision of Section 226.2(b).

15 34. There are questions of law and fact common to the Class predominating over any  
16 questions affecting only individual Class Members, including whether Section 226.2(b) violates  
17 the constitutional guarantees under the Takings Clause of the Fifth Amendment, the Contracts  
18 Clause of Article I, and the Supremacy Clause of the Constitution of the United States.

19 35. The claims of the named PLAINTIFFS are typical of the claims of the Class.  
20 PLAINTIFFS and all members of the Class sustained injuries and damages arising out of and  
21 caused by DEFENDANTS’ common course of conduct in federal law.

22 36. PLAINTIFFS will fairly and adequately represent and protect the interests of the  
23 members of the Class. PLAINTIFFS have no interests which are adverse to the Class. Counsel  
24 who represent PLAINTIFFS is competent and experienced in litigating large wage-related class  
25 actions.

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



1 individual members of the Class. Each member of the Class has been damaged and is entitled to  
2 recovery by reason of DEFENDANTS’ unlawful policy and/or practices described here.

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

7 **IV. CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **(Violation of the Takings Clause - Fifth Amendment of the U.S. Constitution)**

10 39. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth  
11 herein.

12 40. PLAINTIFFS and the Class have a property interest in the wages owed to them  
13 for hours worked.

14 41. DEFENDANTS have taken PLAINTIFFS’ and the Class’ property.

15 42. DEFENDANTS have taken PLAINTIFFS’ and the Class’ property and given it  
16 to PLAINTIFFS’ employers. DEFENDANTS have shifted property from one set of private  
17 individuals to another group.

18 43. DEFENDANTS’ acts are an illegal per se taking of property.

19 44. DEFENDANTS’ acts are an illegal ad hoc taking of property.

20 45. DEFENDANTS’ acts are an illegal taking of property without any public  
21 purpose.

22 46. The safe harbor provision of Labor Code section 226.2(b) is an unconstitutional  
23 taking of the Plaintiffs’ and Class’ property without compensation.

24 47. PLAINTIFFS and the Class seek equitable relief to enjoin Section 226.2(b)  
25 against DEFENDANTS in their official capacity.

26 48. PLAINTIFFS and the Class seek injunctive and declaratory relief against  
27 DEFENDANTS in their official capacity. PLAINTIFFS and the Class also seek compensatory  
28 damages for economic harms resulting from DEFENDANTS’ wage theft in their individual

1 capacities.

2 **SECOND CAUSE OF ACTION**

3 **(Violation of the Contracts Clause - Article I, Section 10 of the U.S. Constitution)**

4 49. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth  
5 herein.

6 50. The Contract Clause of the United States and California Constitutions limit the  
7 power of the States to modify contracts, both their own and those of private parties. According  
8 to the United States Constitution, “[n]o State shall ... pass any ... [l]aw impairing the  
9 Obligation of Contracts ...” U.S. Const., art. I, § 10, cl. 1. According to the California  
10 Constitution, a “law impairing the obligation of contracts may not be passed.” Cal. Const., art. I,  
11 § 9.

12 51. DEFENDANTS have violated the Contracts Clause, Article I, Section 10, of the  
13 Constitution of the United States with the safe harbor provisions of Labor Code section  
14 226.2(b).

15 52. DEFENDANTS substantially impair the rights and responsibilities of contracting  
16 parties.

17 53. DEFENDANTS lacks an important public purpose for the safe harbor provision.

18 54. DEFENDANTS acts are not necessary and appropriate to the public purpose.

19 55. PLAINTIFFS and the Class allege that Labor Code section 226.2(b) substantially  
20 impairs the contractual obligations between employers and piece rate employees in the state of  
21 California by eliminating (a) employer obligations to pay minimum wages already accrued  
22 before July 1, 2012, (b) all employer obligations to pay the rest period wages required by Labor  
23 Code section 226.7, and (c) all employer obligations to pay liquidated damages under Labor  
24 Code section 1194.2.

25 56. PLAINTIFFS and the Class seek injunctive and declaratory relief against  
26 DEFENDANTS in their official capacity. PLAINTIFFS and the Class also seek compensatory  
27 damages for economic harms resulting from DEFENDANTS’ wage theft in their individual  
28 capacities.

1 **THIRD CAUSE OF ACTION**

2 **(Violation of the Federal Supremacy Clause, Article VI, Clause 2 of the U.S. Constitution)**

3 57. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth  
4 herein.

5 58. The Supremacy Clause, Article VI, Clause 2, of the Constitution of the United  
6 States, provides that the United States “Constitution and the Laws of the United States which  
7 shall be made in pursuance thereof ... shall be the supreme law of the law.”

8 59. The State of California’s actions in providing immunity under Labor Code  
9 section 226.2(b) to agricultural employers from full payment of wages and interest, conflicts  
10 with, frustrates, and serves as an obstacle to the Federal Statutory provisions designed to protect  
11 farmworkers under the Agricultural Workers Protection Act, 29 U.S.C. 1801 *et seq.* (hereinafter  
12 “AWPA”). Sections 1822(c) and 1832(c) make it a violation of Federal law for an agricultural  
13 employer to violate the terms of any working arrangement made with farmworkers.

14 60. The working arrangements made between employers and piece rate agricultural  
15 workers during the time period 2010 through 2015 include all of the wage requirements, and  
16 interest available under California law.

17 61. The Supremacy Clause and AWPA prevent the State of California from altering  
18 post hoc the working arrangements that were entered into, completed, and are now enforceable  
19 under AWPA.

20 62. Permitting the State of California to retroactively alter the terms and conditions  
21 of employment for farmworkers by permitting agricultural employers to commit wage theft  
22 against their piece rate workers conflicts with AWPA, frustrates AWPA’s purpose, and serves  
23 as an obstacle to Federal agricultural labor law.

24 63. The Supremacy Clause, Article VI, Clause 2, of the Constitution of the United  
25 States mandates that federal law preempts state law where state law conflict or interferes with  
26 federal law.

27 64. The safe harbor provisions of Labor Code section 226.2(b), which excuses  
28 agricultural employers from paying wages, interest, penalties, and other remedies that were part

1 of the working arrangement at the time that the work was completed, conflicts with AWWPA and  
2 is thus preempted.

3 65. PLAINTIFFS and the Class seek injunctive and declaratory relief against  
4 DEFENDANTS in their official capacity. PLAINTIFFS and the Class also seek compensatory  
5 damages for economic harms resulting from DEFENDANTS' wage theft in their individual  
6 capacities.

7 **V. PRAYER**

8 WHEREFORE, PLAINTIFFS pray for judgment as follows:

9 A. A preliminary and permanent injunction enjoining DEFENDANTS, their  
10 officials, agents, employees, assigns, and all persons acting in concert or participating with them  
11 from implementing or enforcing the safe harbor provision of Labor Code section 226.2(b);

12 B. A declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that the safe harbor  
13 provision of Labor Code section 226.2(b) is unlawful and invalid;

14 C. Compensatory damages for economic harms suffered individually by  
15 PLAINTIFFS and the Class from the wage theft resulting from the enactment, implementation,  
16 and/or enforcement of Labor Code section 226.2(b);

17 D. Restitution of fees and other costs wrongfully obtained individually from  
18 PLAINTIFFS and the Class;

19 E. An order awarding PLAINTIFFS costs of suit, and reasonable attorneys' fees and  
20 expenses pursuant to 42 U.S.C. § 1988 and any other applicable law; and

21 F. Such other and further relief as the Court deems equitable, just, and proper.

22 Dated: November 4, 2016.

**MALLISON & MARTINEZ**  
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23  
24  
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