

Kyle Todd, Esq. (State Bar No. 286370)  
kyle@kyletodd.com  
Alfredo Nava, Esq. (State Bar No. 282698)  
anava@kyletodd.com  
**KYLE TODD, P.C.**  
611 Wilshire Boulevard, Suite 315  
Los Angeles, California 90017  
T: (323) 208-9171  
F: (323) 693-0822  
E: kyle@kyletodd.com

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Amanda Toste  
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By: Nengsy Moua, Deputy

Attorney for Plaintiff JOSE PENA, as an individual and on behalf of all aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF MERCED**

21CV-01925

JOSE PENA, as an individual and on behalf of  
all aggrieved employees,

Plaintiff,

v.

N & S TRACTOR CO., a California corporation;  
and DOES 1 through 100, inclusive,

Defendants.

**COMPLAINT**

**REPRESENTATIVE COMPLAINT  
FOR CIVIL PENALTIES FOR  
VIOLATIONS OF THE CALIFORNIA  
LABOR CODE UNDER PRIVATE  
ATTORNEYS GENERAL ACT (CAL.  
LAB. CODE § 2699, *ET SEQ.*)**

**DEMAND FOR JURY TRIAL**

Plaintiff JOSE PENA ("PLAINTIFF"), as an individual, and on behalf of all other  
aggrieved employees, complains and alleges on information and belief the following against N&S  
TRACTOR CO., a California corporation and DOES 1 through 100, inclusive (collectively and  
hereinafter referred to as "DEFENDANTS"):

**PRELIMINARY STATEMENT**

1. PLAINTIFF brings this representative action under the Labor Code Private Attorneys  
General Act of 2004, codified as California Labor Code section 2698, *et seq.* ("PAGA").  
PLAINTIFF, under PAGA, brings this action on behalf of himself and all other aggrieved  
employees who are or have been employed by DEFENDANTS as employees within the State of  
California during the statute of limitations' period ("AGGRIEVED EMPLOYEES").

3. During the RELEVANT TIME PERIOD, DEFENDANTS have had a consistent policy of, *inter alia*: (1) failing to pay AGGRIEVED EMPLOYEES for all hours worked; (2) failing to pay AGGRIEVED EMPLOYEES for all overtime hours worked; (3) failing to reimburse AGGRIEVED EMPLOYEES for all necessary business expenditures incurred; (4) failing to provide AGGRIEVED EMPLOYEES with uninterrupted, off-duty meal periods and failing to provide AGGRIEVED EMPLOYEES with the requisite missed meal period premium; (5) failing to provide AGGRIEVED EMPLOYEES with rest periods and failing to provide AGGRIEVED EMPLOYEES with the requisite missed rest period premium; (6) providing AGGRIEVED EMPLOYEES with inadequate and inaccurate wage statements; (7) failing to pay employees by the appropriate pay period; and (8) failing to provide AGGRIEVED EMPLOYEES with paid sick days.

4. This case arises out of DEFENDANTS' wanton disregard for California labor laws. PLAINTIFF was employed by DEFENDANTS in Merced, California. DEFENDANTS also operate facilities in Colusa, California, Dos Palos, California, Stockton, California, Stratford, California, Turlock, California, Willows, California, and Yuba City, California and employ other AGGRIEVED EMPLOYEES at these facilities.

5. PLAINTIFF was a field technician at DEFENDANTS' agri-business facility in Merced, California. His duties included going out to repair equipment rented from DEFENDANTS' facilities, as well as repairing equipment onsite at DEFENDANTS' facilities.

6. Throughout PLAINTIFF's employment with DEFENDANTS, DEFENDANTS failed to adequately compensate him for both regular and overtime hours. In particular, PLAINTIFF and other AGGRIEVED EMPLOYEES were loaded with so much work in response to DEFENDANTS' "busy" season that his hours would skyrocket from a 5-day workweek, to a 6 or 7-day workweek. In addition, PLAINTIFF and other AGGRIEVED EMPLOYEES were expected

1 and instructed to complete service calls on his way home from DEFENDANTS' offices. These  
2 service calls added anywhere from two to four hours to what was already an eight hour shift for  
3 PLAINTIFF and other AGGRIEVED EMPLOYEES. These overtime hours remain  
4 uncompensated. DEFENDANTS have not paid minimum wages for all time worked.

5 7. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with  
6 uninterrupted meal and rest breaks, or premium payments in lieu thereof, by DEFENDANTS.

7 8. Further, DEFENDANTS provide employees with inadequate wage statements as  
8 required by Labor Code Section 226. These statements do they do not accurately record and itemize  
9 the actual time work done by PLAINTIFF and other AGGRIEVED EMPLOYEES, failing to  
10 provide several of the required, accurate items of information as set forth in Labor Code Section  
11 226(a), such as but not limited to: 1) gross wages earned; 2) net wages earned; 3) total hours  
12 worked; and 4) all applicable hourly rates in effect during the representative time period, including  
13 the amount of hours worked at such rates.

14 9. DEFENDANTS do not provide accurately calculated paid sick days or required sick  
15 day pay for sick days used by PLAINTIFF and other AGGRIEVED EMPLOYEES.

16 10. DEFENDANTS do not timely pay PLAINTIFF and other AGGRIEVED  
17 EMPLOYEES by the appropriate pay period.

18 11. DEFENDANTS do not reimburse PLAINTIFF and other AGGRIEVED  
19 EMPLOYEES for all necessary business expenditures incurred by PLAINTIFF and other  
20 AGGRIEVED EMPLOYEES.

21 12. Despite actual knowledge of these facts and legal mandates, DEFENDANTS have and  
22 continue to enjoy an advantage over their competition and a resultant disadvantage to their workers  
23 by electing not to sufficiently compensate PLAINTIFF for all time he worked, by failing to provide  
24 legally required meal and rest breaks, by not inadequately compensating for overtime work, and  
25 by failing to reimburse for all necessary business expenditures.

26 13. PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS'  
27 officers knew of these facts and legal mandates yet, nonetheless, repeatedly authorized and/or  
28 ratified the violation of the laws cited herein.

1 14. Through this lawsuit, PLAINTIFF seeks compensation for penalties under PAGA for  
2 numerous violations of the law. This action only seeks relief to the full extent permitted by the  
3 PAGA statute. This action does not seek any relief that is not permitted by the PAGA. Nothing in  
4 the allegations of the complaint should be construed as Plaintiff seeking, on behalf of himself and  
5 all aggrieved employees, any relief or penalties that are not provided for by the PAGA and related  
6 statutes.

7 **JURISDICTION AND VENUE**

8 15. The Court has personal jurisdiction over DEFENDANTS because they are residents  
9 and/or doing business in the state of California.

10 16. Venue is proper in this Court in accordance with Section 395(a) of the California  
11 Code of Civil Procedure because DEFENDANTS, or some of them, reside and/or are doing  
12 business in Merced County. Moreover, DEFENDANTS employed PLAINTIFF and other  
13 aggrieved employees in Merced County and the harms occurred in Merced County.

14 **PARTIES**

15 17. PLAINTIFF JOSE PENA is a resident of Merced County, California.

16 18. PLAINTIFF is informed and believes and based thereon alleges that Defendant  
17 N&S TRACTOR CO. is a California corporation which, at all times relevant herein, employed  
18 California persons in the County of Merced in the State of California.

19 19. Whenever in this Complaint reference is made to DEFENDANTS, such allegations  
20 shall be deemed to mean the acts of all defendants acting individually, jointly, and/or severally.

21 20. PLAINTIFF is informed and believes, and on that basis alleges, that N&S  
22 TRACTOR CO. and DOES 1 through 100 constitute an integrated enterprise based on their  
23 interrelation of operations, common management, centralized control of labor relations, and  
24 common ownership and financial control. Specifically, PLAINTIFF is informed and believe and  
25 thereon alleges that each of the DEFENDANTS operate according to uniform policies and  
26 procedures for controlling the work of PLAINTIFF and other AGGRIEVED EMPLOYEES;  
27 DEFENDANTS operate as an interrelated operation; DEFENDANTS are operated by a small  
28 group of shared officers and directors; and each of the DEFENDANTS share and control the

1 management of the network of facilities in which PLAINTIFF and other AGGRIEVED  
2 EMPLOYEES work. Thus, adherence to the fiction of the separate existence of each defendant  
3 here would permit abuse, sanction, fraud, and promote injustice.

4 21. The true names and capacities of defendants named herein as DOES 1-100,  
5 inclusive, whether individual, corporate, associate, or otherwise, are unknown to PLAINTIFF, who  
6 therefore sues these defendants by such fictitious names. PLAINTIFF will amend this Complaint  
7 to show true names and capacities of these defendants when they are ascertained.

8 22. At all times mentioned herein, DEFENDANTS, and each of them, were the agents,  
9 representatives, employees, successors, assigns, parents, subsidiaries, and/or affiliates, each of the  
10 other, and at all times pertinent hereto were acting within the course and scope of their authority as  
11 such agents, representatives, employees, successors, assigns, parents, subsidiaries and/or affiliates.  
12 PLAINTIFF also alleges that DEFENDANTS were, at all times relevant hereto, the alter egos of  
13 each other. Wherever reference is made to DEFENDANTS herein, it is intended to include all of  
14 the named DEFENDANTS as well as the DOE defendants. Each of the fictitiously named DOE  
15 defendants is responsible for the occurrences herein alleged and proximately caused PLAINTIFF'S  
16 damages as well as damages of AGGRIEVED EMPLOYEES.

### 17 **FACTS**

18 23. PLAINTIFF and the other AGGRIEVED EMPLOYEES work or worked for  
19 DEFENDANTS at DEFENDANTS' facilities. PLAINTIFF and the AGGRIEVED EMPLOYEES  
20 regularly performed overtime work, but are not paid all of their wages and certainly not at least at  
21 the one and a half times regular rate of pay for all overtime hours worked. PLAINTIFF, for  
22 example, was loaded with so much work in response to DEFENDANTS' "busy" season that his  
23 hours would skyrocket from a five day workweek, to a six or seven day workweek. In addition,  
24 PLAINTIFF and other AGGRIEVED EMPLOYEES would be expected and instructed to complete  
25 service calls on their way home from DEFENDANTS' offices. These service calls added anywhere  
26 from two to four hours, to what was already an eight hour shift for PLAINTIFF and other aggrieved  
27 employees. These overtime hours remain uncompensated in accordance to law. In subjecting  
28 PLAINTIFF and AGGRIEVED EMPLOYEES to these conditions, DEFENDANTS have created

1 policies that violate Labor Code sections 216, 11984, 1194.2, and 1197. In turn, DEFENDANTS  
2 also violated section Labor Code section 204 by not paying all wages due by the appropriate pay  
3 period.

4 24. DEFENDANTS also do not provide rest periods to PLAINTIFF and the  
5 AGGRIEVED EMPLOYEES as required by California law. This is due to DEFENDANTS' policy  
6 of understaffing its facilities and overloading its employees with so much work that they cannot  
7 take rest periods. PLAINTIFF and AGGRIEVED EMPLOYEES were not provided with premium  
8 pay for any of these missed rest periods. This was done in violation of Cal. Labor Code section  
9 226.7, which prohibits an employer from requiring work during rest periods or from failing to  
10 provide the required rest periods.

11 25. In addition, PLAINTIFF and the AGGRIEVED EMPLOYEES were routinely  
12 prevented from taking uninterrupted, thirty-minute meal periods before the conclusion of the fifth  
13 hour of work due to DEFENDANTS' policy of overloading its employees with so much work that  
14 they could not take meal periods. DEFENDANTS would thus fail to relieve PLAINTIFF and the  
15 AGGRIEVED EMPLOYEES from all duty for a thirty-minute, off-duty meal period for each five  
16 hours of work as required by law. PLAINTIFF and AGGRIEVED EMPLOYEES were not paid  
17 meal break premiums for these meal period violations. This was done in violation of Cal. Labor  
18 Code section 512, which requires a 30-minute, off-duty meal period to be provided to any employee  
19 working more than five hours.

20 26. Further, because DEFENDANTS do not account for all wages due to employees,  
21 they necessarily do not pay all wages due upon termination and within 72 hours of resignation for  
22 its former employees – thereby incurring waiting time penalties under Cal. Labor Code section  
23 203.

24 27. Further, DEFENDANTS do not provide PLAINTIFF and AGGRIEVED  
25 EMPLOYEES with the required paid sick days required under Cal. Labor Code section 246.

26 28. Furthermore, DEFENDANTS do not reimburse PLAINTIFF and AGGRIEVED  
27 EMPLOYEES for all necessary business expenditures, including but not limited to the use and  
28

1 purchase of tools necessary to perform required or necessary work, such as meters, hand tools, and  
2 electric tools.

3 29. Finally, DEFENDANTS provide employees with inadequate wage statements.  
4 These wage statements fail to accurately itemize and provide all of the required items of  
5 information under Labor Code Section 226(a), including but not limited to: 1) gross wages earned;  
6 2) net wages earned; 3) total hours worked during the time period; and 4) all applicable hourly rates  
7 in effect during the time period, including but not limited to all of the hours worked at the respective  
8 hourly rates. Thus, DEFENDANTS failed to provide accurate and itemized statements in violation  
9 of Cal. Labor Code section 226 and the applicable IWC Wage Order.

10 30. As a direct and proximate result of DEFENDANTS' Labor Code violations, as set  
11 forth herein, PLAINTIFF is entitled to recover civil penalties (pursuant to California Labor Code  
12 section 2699(a)) in an amount to be established at trial. Twenty-five percent of such penalties shall  
13 be paid to PLAINTIFF and AGGRIEVED EMPLOYEES and the remaining seventy-five percent  
14 shall be paid to the California Labor and Workplace Development Agency ("LWDA"), pursuant  
15 to Labor Code section 2699. As a further direct and proximate result of DEFENDANTS' unlawful  
16 conduct, as set forth herein, PLAINTIFF is also entitled to recover attorneys' fees and litigation  
17 costs pursuant to California Labor Code section 2699(g), in addition to California Code of Civil  
18 Procedure § 1021.5.

19 31. PLAINTIFF complied with the procedures for bringing suit specified in California  
20 Labor Code § 2699.3. On April 15, 2021, PLAINTIFF gave online notice to the LWDA, and by  
21 written notice to DEFENDANTS (via certified mail, return receipt requested) on April 15, 2021,  
22 of the specific provisions of the California Labor Code alleged to have been violated, including the  
23 facts and theories to support those violations.

24 32. More than 65 days have elapsed since PLAINTIFF's notice, and PLAINTIFF's  
25 counsel has received no notice from the Labor and Workforce Development Agency stating its  
26 intentions to prosecute Plaintiff's PAGA claims. PLAINTIFF has also not received any indication  
27 that DEFENDANTS would attempt to cure their violations. PLAINTIFF has thus adequately  
28 exhausted his PAGA administrative remedies.

1 **CAUSE OF ACTION FOR CIVIL PENALTIES FOR VIOLATIONS OF THE**  
2 **CALIFORNIA LABOR CODE UNDER PRIVATE ATTORNEYS GENERAL ACT (CAL.**  
3 **LAB. CODE § 2699, *ET SEQ.*)**  
4 **(Cal. Lab. Code §2699)**

5 33. PLAINTIFF incorporates in this cause of action each and every allegation of the  
6 preceding paragraphs, with the same force and effect as though fully set forth herein.

7 34. California Labor Code § 2699(a) states:

8 Notwithstanding any other provision of the law, any provision of this code  
9 that provides for a civil penalty to be assessed and collected by the Labor  
10 and Workforce Development Agency or any of its departments, divisions,  
11 commissions, boards, agencies, or employees, for a violation of this code,  
12 may, as an alternative, be recovered through a civil action brought by an  
13 aggrieved employee on behalf of himself or herself and other current or  
14 former employees...

15 35. PLAINTIFF is an "aggrieved employee," as defined by California Labor Code  
16 §2699(c), because he was employed by DEFENDANTS and was among the many employees  
17 against whom violations of law were committed. This action seeks PAGA-relief only for  
18 PLAINTIFF and all aggrieved employees, during the statute of limitations' period.

19 36. PLAINTIFF has met all of the requirements set forth in California Labor Code § 2699.3  
20 necessary to maintain a civil action against DEFENDANTS for violations of California Labor Code  
21 sections 201-203, 204, 210, 216, 226, 226.7, 246, 510, 512, 558, 558.1, 1194, 1194.2, 1197, 2802,  
22 and 1197.1 as well as various IWC Wage Orders.

23 37. PLAINTIFF brings this claim as a representative action on behalf of himself and other  
24 AGGRIEVED EMPLOYEES, as well as the LWDA, alleging violations of the California Labor  
25 Code sections as cited in this complaint.

26 38. As a direct and proximate result of DEFENDANTS' unlawful conduct, as set forth  
27 herein, PLAINTIFF is entitled to penalties under California Labor Code Sections 2698 and 2699.

28 39. Pursuant to California Labor Code Section 2699, PLAINTIFF and AGGRIEVED  
EMPLOYEES should be awarded twenty-five percent (25%) of all penalties due under California  
Law, including attorney fees and costs. The LWDA should be awarded the other 75% of penalties.

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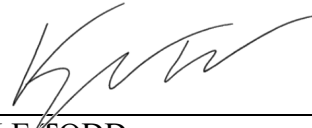
**PRAYER FOR RELIEF**

**WHEREFORE**, the Representative PLAINTIFF, on behalf of himself and other AGGRIEVED EMPLOYEES, prays for judgment and the following specific relief against DEFENDANTS, and each of them, jointly and separately, as follows:

1. That the Court declare, adjudge, and decree that this action is a proper representative action pursuant to California Labor Code section 2699;
2. That the Court make an award to PLAINTIFF, AGGRIEVED EMPLOYEES, and the LWDA of civil penalties for violations of the Labor Code, pursuant to Labor Code section 2699;
3. For reasonable attorneys' fees and costs, pursuant to California Labor Code section 2699(g) and/or California Code of Civil Procedure § 1021.5; and,
4. For costs of suit and any and all other such relief as the Court deems just and proper to the full extent permitted by the PAGA statutes.

Dated: May 21, 2021

KYLE TODD, P.C.

By: 

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KYLE TODD

Attorney for Plaintiff JOSE PENA, as an individual and on behalf of all aggrieved employees

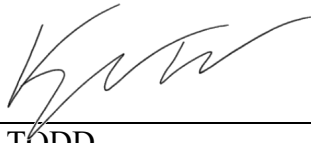
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**DEMAND FOR JURY TRIAL**

PLAINTIFF demands a trial by jury on all issues so triable.

Dated: May 21, 2021

KYLE TODD, P.C.

By: 

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KYLE TODD

Attorney for Plaintiff JOSE PENA, as an  
individual and on behalf of all aggrieved  
employees