

1 **BIBIYAN LAW GROUP, P.C.**  
David D. Bibiyan (SBN 287811)  
2 *david@tomorrowlaw.com*  
Malalai Anbari (SBN 304482)  
3 *malalai@tomorrowlaw.com*  
Diego Aviles (SBN 315533)  
4 *diego@tomorrowlaw.com*  
8484 Wilshire Boulevard, Suite 500  
5 Beverly Hills, California 90211  
Tel: (310) 438-5555; Fax: (310) 300-1705

6 Attorneys for Plaintiff, FAUSTO PALMA CAMARGO,  
7 as an aggrieved employee, and on behalf of all other  
aggrieved employees

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9  
10 **FOR THE COUNTY OF SANTA CRUZ**

11 FAUSTO PALMA CAMARGO, as an  
aggrieved employee, and on behalf of all other  
12 aggrieved employees under the Labor Code  
Private Attorneys' General Act of 2004,

13  
14 Plaintiff,

15 v.

16 PARADISE LANDSCAPE, a California  
corporation; LORA VAN DEN HEUVEL, an  
17 individual; and DOES 1 through 100,  
inclusive,

18 Defendants.  
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26 COMES NOW plaintiff FAUSTO PALMA CAMARGO ("Plaintiff"), as an aggrieved  
27 employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys'  
28 General Act of 2004, and alleges as follows:

ELECTRONICALLY FILED  
Superior Court of California  
County of Santa Cruz  
4/1/2022 12:57 PM  
Alex Calvo, Clerk  
By: Karen Broughton, Deputy



CASE NO.: 22CV00658

**REPRESENTATIVE ACTION**

**COMPLAINT UNDER THE LABOR  
CODE PRIVATE ATTORNEYS'  
GENERAL ACT OF 2004 FOR CIVIL  
PENALTIES UNDER LABOR CODE  
SECTIONS 210, 226.3, 558, 1174.5, 1197.1  
and 2699**

**DEMAND FOR JURY TRIAL**

[Amount in Controversy Greater Than  
\$25,000.00]

1 **JURISDICTION AND VENUE**

2 1. This is a representative action, pursuant to the Labor Code Private Attorneys General  
3 Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against PARADISE  
4 LANDSCAPE, a California corporation, and any of its respective subsidiaries or affiliated  
5 companies within the State of California ("PARADISE"), and LORA VAN DEN HEUVEL, an  
6 individual, ("VAN DEN HEUVEL," and together with "PARADISE" and DOES 1 through 100, as  
7 further defined below, "Defendants"), as a proxy of the Labor and Workforce Development Agency  
8 of the State of California ("LWDA"), on behalf of Plaintiff and all other current and former non-  
9 exempt employees of Defendants working within the Civil Penalty Period, as further defined herein,  
10 and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor  
11 Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et*  
12 *seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on  
13 behalf of all employees of Defendants working within the Civil Penalty Period (collectively,  
14 "Aggrieved Employees").

15 2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code  
16 of Civil Procedure section 410.10.

17 3. Venue is proper in Santa Cruz County, California pursuant to Code of Civil  
18 Procedure sections 392, *et seq.* because, among other things, Santa Cruz County is the county in  
19 which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct  
20 effect on Plaintiff and Aggrieved Employees in Santa Cruz County, and because Defendants employ  
21 numerous Aggrieved Employees in Santa Cruz County.

22 4. Plaintiff is an "aggrieved employee" under PAGA, as Plaintiff was employed by  
23 Defendants during the applicable statutory period and suffered one or more of the Labor Code  
24 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term "civil  
25 penalty" is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code  
26 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA") plus  
27 reasonable attorneys' fees and costs, for Plaintiff and all other aggrieved current and former  
28 employees of Defendants during the Civil Penalty Period.

1           5.           Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative  
2 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*  
3 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the  
4 PAGA allegations described herein is not required.

5           6.           During the period beginning one (1) year preceding the provision of notice to the  
6 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),  
7 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,  
8 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,  
9 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

10          7.           Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees  
11 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within  
12 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures  
13 specified in Labor Code section 2699.3.

14          8.           On or around January 26, 2022, Plaintiff provided written notice pursuant to Labor  
15 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'  
16 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,  
17 as well as by certified mail, with return receipt requested to Defendants, and each of them.

18          9.           Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not  
19 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)  
20 calendar days of the January 26, 2022 postmarked date of the herein-described notice sent by  
21 Plaintiff to the LWDA and Defendants.

### 22                               PAGA REPRESENTATIVE ALLEGATIONS

23          10.          At all relevant times mentioned herein, Defendants had and have a policy or practice  
24 of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of  
25 California in violation of California state wage and hour laws as a result of, without limitation,  
26 Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per  
27 week, and/or seven (7) straight workdays in a workweek without paying them proper overtime  
28 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually

1 worked; engaging, suffering, or permitting employees to work off the clock, including, without  
2 limitation, by requiring employees: to come early to work and leave work late without being able to  
3 clock in for all that time, to suffer under Defendants' control to complete pre-shift tasks before  
4 clocking in and post-shift tasks after clocking out (including answering calls from dispatch and  
5 others), to clock out for meal periods and rest periods and continue working, to don and doff  
6 uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make  
7 phone calls or drive off the clock, and/or to go through security screenings and/or temperature  
8 checks off the clock; failing to include all forms of remuneration, including non-discretionary  
9 bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of  
10 pay for the pay periods where overtime was worked and the additional compensation was earned  
11 for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time  
12 entries, editing and/or manipulation of time entries to show less hours than actually worked, and for  
13 paying straight pay instead of overtime pay, to the detriment of Plaintiff and other Aggrieved  
14 Employees.

15 11. At all relevant times mentioned herein, Defendants had and have a practice or policy  
16 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours  
17 worked or otherwise under Defendants' control as a result of, without limitation, failing to  
18 accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-  
19 call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift  
20 tasks after clocking out (including answering calls from dispatch and others), to clock out for meal  
21 periods and rest periods and continue working, to don and doff uniforms and/or safety equipment  
22 off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock;  
23 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show  
24 less hours than actually worked; failing to pay reporting time pay; paid time off and vacation time  
25 owed; and failing to pay split shift premiums, to the detriment of Plaintiff and other Aggrieved  
26 Employees.

27 12. At all relevant times mentioned herein, Defendants had and have a policy or practice  
28 of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted,

1 timely, and complete meal period for days on which the employee worked in excess of five (5) and  
2 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal  
3 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;  
4 not providing timely meal periods; failing to provide first and second meal periods; providing short  
5 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal  
6 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal  
7 periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which  
8 employees worked, as required by California wage and hour laws

9 13. At all relevant times mentioned herein, Defendants had and have a policy or practice  
10 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and  
11 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions  
12 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest  
13 periods all together; requiring that they be bundled together and/or with meal periods; interrupting  
14 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods; not  
15 providing them in a timely fashion; and not permitting employees to leave the premises; and/or  
16 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

17 14. At all relevant times mentioned herein, Defendants had and have a policy or practice  
18 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish  
19 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross  
20 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable  
21 hourly rates in effect during the pay period and the corresponding number of hours worked at each  
22 hourly rate by the employee; the legal name of the employer and/or the name and address of the legal  
23 entity securing the employer's services if the employer is a farm labor contractor; and other such  
24 information as required by Labor Code section 226, subdivision (a).

25 15. At all relevant times mentioned herein, Defendants had and have a policy or practice  
26 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish  
27 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment  
28 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records

1 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to  
2 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiffs and other  
3 Aggrieved Employees.

4 16. At all relevant times mentioned herein, Defendants had and have a policy or practice  
5 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages  
6 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime  
7 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor  
8 Code sections 201, 202, and 203.

9 17. At all relevant times herein, Defendants had and have a policy or practice of failing  
10 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon  
11 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3  
12 and applicable Wage Orders.

13 18. At all relevant times mentioned herein, Defendants have had a policy or practice of  
14 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without  
15 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal  
16 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,  
17 separately laundering mandatory uniforms, for the purchase of tools and safety equipment (including  
18 work boots to handle oil), for the purchase and maintenance of cellular phones and cellular phone  
19 plans, in direct consequence of the discharge of their duties, or of their obedience to the directions  
20 of Defendants, as required by Labor Code 2802.

21 19. At all relevant times mentioned herein, Defendants have had a policy or practice of  
22 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft  
23 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved  
24 Employees with the rates of pay and overtime rates of pay applicable to their employment;  
25 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the  
26 name, address, and telephone number of the workers' compensation insurance carrier; information  
27 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants  
28 under Labor Code section 2810.5.

1       20.       At all relevant times mentioned herein, Defendants failed to provide Plaintiff and  
2 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to  
3 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not  
4 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and  
5 all other Aggrieved Employees.

6       21.       At all relevant times mentioned herein, Defendants have had a policy or practice of  
7 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code  
8 Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of  
9 any calendar month shall be paid for between the 16th and 26th day of the month during which the  
10 labor was performed, and labor performed between the 16th and the last day, inclusive of any  
11 calendar month, shall be paid for between the 1st and 10th day of the following month.”

12       22.       At all relevant times mentioned herein, Defendants had and have a policy or practice  
13 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge  
14 and experience they obtained at Defendants for purposes of competing with Defendants, including,  
15 without limitation, preventing Employees from disclosing their wages in negotiating a new job with  
16 a prospective employer, and from disclosing who else works at Defendants and under what  
17 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed  
18 and believes that this policy and/or practice violates Business and Professions Code sections 17200,  
19 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor  
20 Code sections 232, 232.5, and 1197.5, subdivision (k).

21       23.       Defendants had and have a policy or practice of preventing Plaintiff and/or other  
22 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants  
23 to their managers or outside to private attorneys or government officials, among others, in violation  
24 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section  
25 1102.5. In addition, Plaintiff is informed and believes that Defendants’ herein-described policies  
26 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information  
27 about unsafe or discriminatory working conditions, or about wage and hour violations in violation  
28 of Labor Code section 232 and 232.5.

24. Defendants had and have a policy or practice of preventing Plaintiff and/or other Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose wages, working conditions, and illegal conduct, including, without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5, subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and economic liberty.

25. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved Employees pursuant to PAGA.

## PARTIES

### A. Plaintiff

26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, driving, landscape installation, and landscape maintenance. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately October of 2018 through at least February of 2021.

## B. Defendants

27. Plaintiff is informed and believes and based thereon alleges that defendant PARADISE is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of California and doing business in the County of Santa Cruz, State of California.

28. Plaintiff is informed and believes and based thereon alleges that defendant VAN DEN HEUVEL is, and at all times relevant hereto was, an individual residing in California and acting as the chief financial officer, chief executive officer, and director of PARADISE and DOES 1 through 100, as further defined below. Plaintiff is further informed and believes and based thereon

/ / /

1 alleges that VAN DEN HEUVEL violated, or caused to be violated, the above-referenced and below  
2 referenced Labor Code provisions in violation of Labor Code section 558.1.

3       29.       The true names and capacities, whether individual, corporate, associate, or otherwise,  
4 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,  
5 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.  
6 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated  
7 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.  
8 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of  
9 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is  
10 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent  
11 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or  
12 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the  
13 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall  
14 include PARADISE, VAN DEN HEUVEL, and any of their parent, subsidiary, or affiliated  
15 companies within the State of California, as well as DOES 1 through 100 identified herein.

#### 16                                   **JOINT LIABILITY ALLEGATIONS**

17       30.       Plaintiff is informed and believes, and based thereon alleges, that at all times  
18 mentioned herein, each of the defendants was the agent, principal, employee, employer,  
19 representative, joint venture or co-conspirator of each of the other defendants, either actually or  
20 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,  
21 employment, joint venture, and conspiracy.

22       31.       All of the acts and conduct described herein of each and every corporate defendant  
23 was duly authorized, ordered, and directed by the respective and collective defendant corporate  
24 employers, and the officers and management-level employees of said corporate employers. In  
25 addition thereto, said corporate employers participated in the aforementioned acts and conduct of  
26 their said employees, agents, and representatives, and each of them; and upon completion of the  
27 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant  
28 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,

1 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the  
2 aforementioned corporate employees, agents and representatives.

3 32. Plaintiff is informed and believes, and based thereon alleges, that despite the  
4 formation of the purported corporate existence of PARADISE and DOES 1 through 50, inclusive  
5 (the "Alter Ego Defendants"), they, and each of them, are one and the same with VAN DEN  
6 HEUVEL and DOES 51 through 100 ("Individual Defendants"), and each of them, due to, but not  
7 limited to, the following reasons:

8 a. The Alter Ego Defendants are completely dominated and controlled by the  
9 Individual Defendants who personally committed the wrongful and illegal acts and violated the laws  
10 as set forth in this Complaint, and who have hidden and currently hide behind the Alter Ego  
11 Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or  
12 inequitable purpose;

13 b. The Individual Defendants derive actual and significant monetary benefits by  
14 and through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego Defendants as  
15 the funding source for the Individual Defendants' own personal expenditures;

16 c. Plaintiff is informed and believes, and thereon alleges, that the Individual  
17 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear  
18 as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or  
19 accomplishing some other wrongful or inequitable purpose;

20 d. Plaintiff is informed and believes, and thereon alleges, that the business affairs  
21 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned  
22 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same  
23 are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein  
24 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of  
25 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned  
26 herein were, the alter egos of the Individual Defendants;

27 ///

28 ///

1 e. The recognition of the separate existence of the Individual Defendants from  
2 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to  
3 insulate themselves from liability to Plaintiff for violations to the Civil Code, Government Code,  
4 and other statutory violations. The corporate existence of these defendants should thus be  
5 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud  
6 and injustice to Plaintiff herein;

7 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the  
8 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be  
9 disregarded.

10 33. As a result of the aforementioned facts, Plaintiff is informed and believes, and based  
11 thereon alleges that Defendants, and each of them, are joint employers.

12 **FIRST CAUSE OF ACTION**

13 **(Civil Penalties Under the Private Attorneys' General Act (2004) – Against All Defendants)**

14 34. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the  
15 preceding paragraphs as though fully set forth hereat.

16 **Civil Penalties Under Labor Code § 210**

17 35. At all relevant times herein, Labor Code section 204, requires and required that:  
18 “[l]abor performed between the 1<sup>st</sup> and 15<sup>th</sup> days, inclusive, of any calendar month shall be paid for  
19 between the 16<sup>th</sup> and 26<sup>th</sup> day of the month during which the labor was performed, and labor  
20 performed between the 16<sup>th</sup> and the last day, inclusive, of any calendar month, shall be paid for  
21 between the 1<sup>st</sup> and 10<sup>th</sup> day of the following month.”

22 36. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated  
23 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this  
24 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,  
25 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any  
26 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For  
27 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for  
28 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

1       37.       At all relevant times herein, Defendants have had a consistent policy or practice of  
2 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as  
3 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other  
4 Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of Labor  
5 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for  
6 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee  
7 for each subsequent violation in connection with each payment that was made in violation of Labor  
8 Code section 204.

9                               Civil Penalties Under Labor Code § 226.3

10       38.       Defendants had and have a policy or practice of failing to comply with Labor Code  
11 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees  
12 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net  
13 wages earned; the name and address of each employer with whom they have been placed to work;  
14 all applicable hourly rates in effect during the pay period and the corresponding number of hours  
15 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal  
16 entity securing the employer's services if the employer is a farm labor contractor; and other such  
17 information as required by Labor Code section 226, subdivision (a).

18       39.       Labor Code section 226.3 states that "[a]ny employer who violates subdivision (a)  
19 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)  
20 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for  
21 each violation in a subsequent citation, for which the employer fails to provide the employee a wage  
22 deduction statement or fails to keep the records required in subdivision (a) of Section 226."

23       40.       Labor Code section 226.3 further provides that "[t]he civil penalties provided for in  
24 this section are in addition to any other penalty provided by law."

25       41.       Plaintiff is informed and believes, and based thereon alleges, that Defendants had  
26 and have a policy or practice of failing to furnish non-exempt employees, including, without  
27 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total  
28 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the

1 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal  
2 name of the employer and/or the name and address of the legal entity securing the employer's services  
3 if the employer is a farm labor contractor; and other such information as required by Labor Code  
4 section 226, subdivision (a).

5 42. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are  
6 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision  
7 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period  
8 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay  
9 period for each subsequent violation.

10 Violation of Labor Code § 558

11 43. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person  
12 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating  
13 hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil  
14 penalty as follows:

15 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each  
16 pay period for which the employee was underpaid in addition to an amount sufficient  
17 to recover underpaid wages;

18 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid  
19 employee for each pay period for which the employee was underpaid in addition to  
20 an amount sufficient to recover underpaid wages;

21 (3) Wages recovered pursuant to this section shall be paid to the affected employee."

22 44. Plaintiff is informed and believes, and based thereon allege, that Defendants, and  
23 each of them, violated, or caused to be violated, the Labor Code sections described herein, including  
24 causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and overtime  
25 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the  
26 regular payday designated by employer, the name of the employer, including any "doing business  
27 as" names used, the name, address, and telephone number of the workers' compensation insurance  
28 carrier, information regarding paid sick leave, and other pertinent information.

45. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

Violation of Labor Code § 1174.5

46. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required every person employing labor in California to “[a]llow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.”

47. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required every person employing labor in California to “[k]eep a record showing the names and addresses of all employees employed and the ages of all minors.”

48. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required every person employing labor in California to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

49. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any

1 member of the commission or employees of the division to inspect records pursuant to subdivision  
2 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

3 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants have  
4 willfully failed to keep adequate or accurate time records including wage statements and similar  
5 payroll documents under Labor Code section 226, documents signed to obtain or hold employment  
6 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records  
7 under Labor Code section 1174.

8 51. As a direct and proximate result of the herein-described Labor Code violations,  
9 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to  
10 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five  
11 hundred dollars (\$500) per violation per Aggrieved Employee.

12 Violation of Labor Code § 1197.1

13 52. Pursuant to Labor Code section 1197.1, subdivision (a): "Any employer or other  
14 person acting either individually or as an officer, agent, or employee of another person, who pays  
15 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or  
16 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,  
17 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to  
18 Section 203 as follows:

19 (1) For any initial violation that is intentionally committed, one hundred dollars  
20 (\$100) for each underpaid employee for each pay period for which the  
21 employee is underpaid. This amount shall be in addition to an amount  
22 sufficient to recover underpaid wages, liquidated damages pursuant to Section  
23 1194.2, and any applicable penalties imposed pursuant to Section 203.

24 (2) For each subsequent violation for the same specific offense, two hundred fifty  
25 dollars (\$250) for each underpaid employee for each pay period for which the  
26 employee is underpaid regardless of whether the initial violation is  
27 intentionally committed. This amount shall be in addition to an amount  
28 sufficient to recover underpaid wages, liquidated damages pursuant to Section

1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

53. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ minimum wages for all hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, entitling Plaintiff and other aggrieved Employees to actual and liquidated damages.

54. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each subsequent violation.

#### Civil Penalties Under Labor Code § 2699

55. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

56. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor Code except those for which a civil penalty is specifically provided, the established civil penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the person

1 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved  
2 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved  
3 employee per pay period for each subsequent violation.

4 57. Plaintiff is informed and believes and based thereon alleges that Defendants, and  
5 each of them, violated the Labor Code sections described herein, including, without limitation, for  
6 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,  
7 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the  
8 name of the employer, including "doing business as" names used, the name, address, and telephone  
9 number of the workers' compensation insurance carrier, information regarding paid sick leave, and  
10 other pertinent information required to be disclosed by Defendants under Labor Code section  
11 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick  
12 leave required to be provided pursuant to California and local laws.

13 58. Moreover, Plaintiff and other Aggrieved Employees within the State of California  
14 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in  
15 connection with their herein-described claims for civil penalties.

16 **REQUEST FOR JURY TRIAL**

17 59. Plaintiff hereby requests a trial by jury.

18 **PRAYER**

19 **WHEREFORE**, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for  
20 judgment against Defendants as follows:

- 21 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,  
22 1174.5, 1197.1, and 2699;
- 23 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections  
24 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 25 C. Pre-judgment and post-judgment interest;
- 26 D. For costs of suit incurred herein; and

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E. Such other and further relief as the Court deems just and proper.

Dated: April 1, 2022

BIBIYAN LAW GROUP, P.C.

BY: 

MALALAI ANBARI

DAVID D. BIBIYAN

Attorneys for Plaintiff FAUSTO PALMA  
CAMARGO, as an aggrieved employee, and  
on behalf of all other aggrieved employees  
under the Labor Code Private Attorneys'  
General Act of 2004