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Attorneys for Plaintiff, JOSE PEREZ VENTURA,
as an aggrieved employee, and on behalf of all other
aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

JOSE PEREZ VENTURA, as an aggrieved
employee, and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys' General Act of 2004,

Plaintiff,

v.

BOSKOVICH FARMS, INC., a California
corporation; LABORNOW, INC., a
Massachusetts corporation; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: **22STCV18179**

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**

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

1 Plaintiff Jose Perez Ventura, as an aggrieved employee, and on behalf of all other aggrieved
2 employees under the Labor Code Private Attorneys' General Act of 2004, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
5 Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against Boskovich Farms,
6 Inc., a California corporation, and any of its respective subsidiaries or affiliated companies within
7 the State of California ("Boskovich"), and LaborNow, Inc., a Massachusetts corporation, and any
8 of its respective subsidiaries or affiliated companies within the State of California ("LaborNow" and
9 together with Boskovich and DOES 1 through 100, as further defined below, "Defendants"), as a
10 proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"), on
11 behalf of Plaintiff and all other current and former non-exempt employees of Defendants working
12 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims
13 for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section
14 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, Labor
15 Code section 6401, *et seq.*, Labor Code section 6409.1, Labor Code section 6432, restraints on
16 competition, whistleblowing and freedom of speech on behalf of all employees of Defendants
17 working within the Civil Penalty Period (collectively, "Aggrieved Employees").

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

20 3. Venue is proper in Los Angeles County, California pursuant to Code of Civil
21 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the
22 causes of action complained of herein arose; a county in which the employment relationship began;
23 and a county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged
24 herein have a direct effect on Plaintiffs and Aggrieved Employees in Los Angeles County, and
25 because Defendants employ numerous Aggrieved Employees in Los Angeles County.

26 4. Plaintiff is an "aggrieved employee" under PAGA, as Plaintiff was employed by
27 Defendants during the applicable statutory period and suffered one or more of the Labor Code
28 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term "civil

1 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
2 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
3 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
4 employees of Defendants during the Civil Penalty Period.

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

9 6. During the period beginning one (1) year preceding the provision of notice to the
10 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
11 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
12 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
13 1197.1, 1197.5, 1198.5, 2699, 2802, 2810.3, 2810.5, 6401, *et seq.*, 6409.1, and 6432 among others.

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

18 8. On or around March 29, 2022, Plaintiff provided written notice pursuant to Labor
19 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
20 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
21 as well as by certified mail, with return receipt requested to Defendants, and each of them.

22 9. Plaintiff also provided Defendants, and each of them, with notice under Labor Code
23 section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other’s wage
24 and hour violations under Labor Code section 2810.3 on or around March 28, 2022 by certified mail
25 with return receipt requested.

26 10. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
27 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
28 calendar days of the March 29, 2022 postmarked date of the herein-described notice sent by Plaintiff

1 to the LWDA and Defendants.

2 **PAGA REPRESENTATIVE ALLEGATIONS**

3 11. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of
5 California in violation of California state wage and hour laws as a result of, without limitation,
6 Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per
7 week, and/or seven (7) straight workdays in a workweek without paying them proper overtime
8 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually
9 worked; engaging, suffering, or permitting employees to work off the clock, including, without
10 limitation, by requiring employees: to remain on-call, to suffer under Defendants' control to
11 complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including
12 answering calls from dispatch and others), to clock out for meal periods and continue working, to
13 don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the
14 clock, to make phone calls or drive off the clock; failing to include all forms of remuneration,
15 including non-discretionary bonuses, incentive pay, meal allowances, and other forms of
16 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
17 additional compensation was earned for the purpose of calculating the overtime rate of pay;
18 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
19 less hours than actually worked, and for paying straight pay instead of overtime pay to the detriment
20 of Plaintiff and other Aggrieved Employees. The allegations in this paragraph are likely to have
21 evidentiary support after a reasonable opportunity for further investigation or discovery.

22 12. At all relevant times mentioned herein, Defendants had and have a practice or policy
23 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
24 worked or otherwise under Defendants' control as a result of, without limitation, failing to
25 accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-
26 call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift
27 tasks after clocking out (including answering calls from dispatch and others), to clock out for meal
28 periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to

1 attend company meetings off the clock, to make phone calls or drive off the clock; detrimental
2 rounding of employee time entries, editing and/or manipulation of time entries to show less hours
3 than actually worked; failing to pay reporting time pay; paid time off and vacation time owed; and
4 failing to pay split shift premiums to the detriment of Plaintiff and other Aggrieved Employees. The
5 allegations in this paragraph are likely to have evidentiary support after a reasonable opportunity
6 for further investigation or discovery.

7 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
8 of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted,
9 timely, and complete meal period for days on which the employee worked in excess of five (5) and
10 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
11 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
12 not providing timely meal periods; failing to provide first and second meal periods; providing short
13 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
14 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
15 periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which
16 employees worked as required by California wage and hour laws. The allegations in this paragraph
17 are likely to have evidentiary support after a reasonable opportunity for further investigation or
18 discovery.

19 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
20 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
21 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
22 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
23 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
24 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
25 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
26 otherwise requiring on-duty/on-call rest periods as required by California wage and hour laws. The
27 allegations in this paragraph are likely to have evidentiary support after a reasonable opportunity
28 for further investigation or discovery.

1 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
3 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross
4 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
5 hourly rates in effect during the pay period and the corresponding number of hours worked at each
6 hourly rate by the employee; the legal name of the employer and/or the name and address of the legal
7 entity securing the employer's services if the employer is a farm labor contractor; and other such
8 information as required by Labor Code section 226, subdivision (a). The allegations in this paragraph
9 are likely to have evidentiary support after a reasonable opportunity for further investigation or
10 discovery.

11 16. At all relevant times mentioned herein, Defendants had and have a policy or practice
12 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
13 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
14 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
15 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
16 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiffs and other
17 Aggrieved Employees. The allegations in this paragraph are likely to have evidentiary support after
18 a reasonable opportunity for further investigation or discovery.

19 17. At all relevant times mentioned herein, Defendants had and have a policy or practice
20 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
21 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
22 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
23 Code sections 201, 202, and 203. The allegations in this paragraph are likely to have evidentiary
24 support after a reasonable opportunity for further investigation or discovery.

25 18. At all relevant times herein, Defendants had and have a policy or practice of failing
26 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
27 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
28

1 and applicable Wage Orders. The allegations in this paragraph are likely to have evidentiary support
2 after a reasonable opportunity for further investigation or discovery.

3 19. At all relevant times mentioned herein, Defendants have had a policy or practice of
4 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
5 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal
6 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
7 separately laundering mandatory uniforms, for the purchase of tools and safety equipment, for the
8 purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the
9 discharge of their duties, or of their obedience to the directions of Defendants, as required by Labor
10 Code 2802. The allegations in this paragraph are likely to have evidentiary support after a reasonable
11 opportunity for further investigation or discovery.

12 20. At all relevant times mentioned herein, Defendants have had a policy or practice of
13 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
14 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
15 Employees with the rates of pay and overtime rates of pay applicable to their employment;
16 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
17 name, address, and telephone number of the workers' compensation insurance carrier; information
18 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
19 under Labor Code section 2810.5. The allegations in this paragraph are likely to have evidentiary
20 support after a reasonable opportunity for further investigation or discovery.

21 21. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
22 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
23 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
24 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
25 all other Aggrieved Employees. The allegations in this paragraph are likely to have evidentiary
26 support after a reasonable opportunity for further investigation or discovery.

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1 22. At all relevant times mentioned herein, Defendants have had a policy or practice of
2 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
3 Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of
4 any calendar month shall be paid for between the 16th and 26th day of the month during which the
5 labor was performed, and labor performed between the 16th and the last day, inclusive of any
6 calendar month, shall be paid for between the 1st and 10th day of the following month.” The
7 allegations in this paragraph are likely to have evidentiary support after a reasonable opportunity
8 for further investigation or discovery.

9 23. At all relevant times mentioned herein, Defendants have had a policy or practice of
10 failing to furnish and use safety devices and safeguards, and adopt and use practices, means,
11 methods, operations and processes which are reasonably adequate to render such employment and
12 place of employment safe and healthful, in violation of Labor Code section 6401. At all relevant
13 times mentioned herein, Defendants have had a policy or practice of requiring or permitting
14 employees to go or be in any employment or place of employment which is not safe and healthful
15 in violation of Labor Code section 6402. At all relevant times mentioned herein, Defendants have
16 had a policy or practice of failing or neglecting to: provide and use safety devices and safeguards
17 reasonably adequate to render the employment and place of employment safe; adopt and use
18 methods and processes reasonably adequate to render the employment and place of employment
19 safe; and do every other thing reasonably necessary to protect the life, safety, and health of
20 employees in violation of Labor Code section 6403. Defendants’ failures include, without
21 limitation: failing to disinfect surfaces after use by Plaintiff and other Aggrieved Employees; failing
22 to provide adequate protection equipment to Plaintiff and other Aggrieved Employees; and failing
23 to provide adequate distance in working conditions between Plaintiff and other Aggrieved
24 Employees. The allegations in this paragraph are likely to have evidentiary support after a
25 reasonable opportunity for further investigation or discovery.

26 24. At all relevant times mentioned herein, Defendants have had a policy or practice of
27 failing to give sufficient, adequate and proper notice to employees of the Covid-19 exposure within
28 one business day of receiving notice of a Covid-19 workplace exposure from a qualifying individual

1 and further Defendants do not or did not keep adequate records of written notifications required in
2 subdivision (a) for a period of at least three years in violation of Labor Code section 6409.6. The
3 allegations in this paragraph are likely to have evidentiary support after a reasonable opportunity
4 for further investigation or discovery.

5 25. At all relevant times mentioned herein, Defendants have had a policy or practice of
6 failing, within one business day after Defendants or a representative of Defendants received a notice
7 of potential exposure to COVID-19, to notify Plaintiff and other Aggrieved Employees who were
8 on the premises at the same worksite as the qualifying individual within the infectious period, and
9 the employers of subcontracted employees who were on the premises at the same worksite as the
10 qualifying individual within the infectious period and the exclusive representative, if any, of the
11 cleaning and disinfection plan that the employer is implementing per the guidelines of the COVID-
12 19 prevention program per the Cal-OSHA COVID-19 Emergency Temporary Standards, among
13 other things in violation of Labor Code sections 6409.6 and 6432. The allegations in this paragraph
14 are likely to have evidentiary support after a reasonable opportunity for further investigation or
15 discovery.

16 26. At all relevant times mentioned herein, Defendants had and have a policy or practice
17 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
18 and experience they obtained at Defendants for purposes of competing with Defendants, including,
19 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
20 a prospective employer, and from disclosing who else works at Defendants and under what
21 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
22 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
23 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
24 Code sections 232, 232.5, and 1197.5, subdivision (k). The allegations in this paragraph are likely
25 to have evidentiary support after a reasonable opportunity for further investigation or discovery.

26 27. Defendants had and have a policy or practice of preventing Plaintiff and/or other
27 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
28 to their managers or outside to private attorneys or government officials, among others, in violation

1 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
2 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
3 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
4 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
5 of Labor Code section 232 and 232.5. The allegations in this paragraph are likely to have evidentiary
6 support after a reasonable opportunity for further investigation or discovery.

7 28. Defendants had and have a policy or practice of preventing Plaintiff and/or other
8 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
9 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
10 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
11 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
12 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
13 economic liberty. The allegations in this paragraph are likely to have evidentiary support after a
14 reasonable opportunity for further investigation or discovery.

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

19 **PARTIES**

20 **A. Plaintiff**

21 30. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
22 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
23 exempt employee, with duties that included, but were not limited to, diagnosing and repairing
24 machinery failures. Plaintiff is informed and believes that Plaintiff worked for Defendants from
25 approximately May of 2016 through approximately March of 2021.

26 **B. Defendants**

27 31. Plaintiff is informed and believes and based thereon alleges that defendant
28 Boskovich is, and at all times relevant hereto was, a corporation organized and existing under and

1 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
2 State of California. Plaintiff is informed and believes, and based thereon alleges, that Boskovich is
3 a “client employer” within the meaning of Labor Code section 2810.3 that procures outplacement
4 staffing and payroll services from various staffing agencies, including but not limited to, LaborNow.
5 At all relevant times herein, Boskovich employed Plaintiff and similarly situated employees within
6 the State of California

7 32. Plaintiff is informed and believes and based thereon alleges that defendant
8 LaborNow is, and at all times relevant hereto was, a corporation organized and existing under and
9 by virtue of the laws of the State of Massachusetts and doing business in the County of Los Angeles,
10 State of California. Plaintiff is informed and believes, and based thereon alleges, that LaborNow is
11 a labor contractor within the meaning of Labor Code section 2810.3 that provides outplacement
12 staffing and payroll services for various industries and professions, including for Boskovich. At all
13 relevant times herein, LaborNow employed Plaintiff and similarly situated employees within the
14 State of California.

15 33. The true names and capacities, whether individual, corporate, associate, or otherwise,
16 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
17 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
18 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
19 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
20 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
21 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
22 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
23 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
24 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
25 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
26 include Boskovich, LaborNow, and any of their parent, subsidiary, or affiliated companies within
27 the State of California, as well as DOES 1 through 100 identified herein.

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1 **JOINT LIABILITY ALLEGATIONS**

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

7 35. All of the acts and conduct described herein of each and every corporate defendant
8 was duly authorized, ordered, and directed by the respective and collective defendant corporate
9 employers, and the officers and management-level employees of said corporate employers. In
10 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
11 their said employees, agents, and representatives, and each of them; and upon completion of the
12 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
13 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
14 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
15 aforementioned corporate employees, agents and representatives.

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

18 **FIRST CAUSE OF ACTION**

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

20 37. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
21 preceding paragraphs as though fully set forth hereat.

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

23 38. At all relevant times herein, Labor Code section 204, requires and required that:
24 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
25 between the 16th and 26th day of the month during which the labor was performed, and labor
26 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
27 between the 1st and 10th day of the following month.”

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

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

Civil Penalties Under Labor Code § 226.3

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

42. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage

1 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

2 43. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
3 this section are in addition to any other penalty provided by law.”

4 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
5 and have a policy or practice of failing to furnish non-exempt employees, including, without
6 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
7 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
8 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
9 name of the employer and/or the name and address of the legal entity securing the employer’s services
10 if the employer is a farm labor contractor; and other such information as required by Labor Code
11 section 226, subdivision (a).

12 45. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
13 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision
14 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
15 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
16 period for each subsequent violation.

17 Violation of Labor Code § 558

18 46. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
19 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
20 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
21 penalty as follows:

- 22 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
23 pay period for which the employee was underpaid in addition to an amount sufficient
24 to recover underpaid wages;
- 25 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
26 employee for each pay period for which the employee was underpaid in addition to
27 an amount sufficient to recover underpaid wages;
- 28 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

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

48. 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

49. 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.”

50. 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.”

51. 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

1 shall be kept in accordance with rules established for this purpose by the commission, but in any
2 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
3 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
4 earned.”

5 52. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
6 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
7 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
8 member of the commission or employees of the division to inspect records pursuant to subdivision
9 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

10 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
11 willfully failed to keep adequate or accurate time records including wage statements and similar
12 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
13 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
14 under Labor Code section 1174.

15 54. As a direct and proximate result of the herein-described Labor Code violations,
16 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
17 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
18 hundred dollars (\$500) per violation per Aggrieved Employee.

19 Violation of Labor Code § 1197.1

20 55. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
21 person acting either individually or as an officer, agent, or employee of another person, who pays
22 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
23 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
24 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
25 Section 203 as follows:

- 26 (1) For any initial violation that is intentionally committed, one hundred dollars
27 (\$100) for each underpaid employee for each pay period for which the
28 employee is underpaid. This amount shall be in addition to an amount

1 sufficient to recover underpaid wages, liquidated damages pursuant to Section
2 1194.2, and any applicable penalties imposed pursuant to Section 203.

3 (2) For each subsequent violation for the same specific offense, two hundred fifty
4 dollars (\$250) for each underpaid employee for each pay period for which the
5 employee is underpaid regardless of whether the initial violation is
6 intentionally committed. This amount shall be in addition to an amount
7 sufficient to recover underpaid wages, liquidated damages pursuant to Section
8 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

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

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

26 Civil Penalties Under Labor Code § 2699

27 58. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
28 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed

1 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
2 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
3 action brought by an aggrieved employee on behalf of himself or herself and other current or former
4 employees pursuant to the procedures specified in Labor Code section 2699.3.

5 59. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
6 Code except those for which a civil penalty is specifically provided, the established civil penalty for
7 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
8 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
9 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
10 employee per pay period for each subsequent violation.

11 60. Plaintiff is informed and believes and based thereon alleges that Defendants, and
12 each of them, violated the Labor Code sections described herein, including, without limitation, for
13 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
14 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
15 name of the employer, including "doing business as" names used, the name, address, and telephone
16 number of the workers' compensation insurance carrier, information regarding paid sick leave, and
17 other pertinent information required to be disclosed by Defendants under Labor Code section
18 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick
19 leave required to be provided pursuant to California and local laws.

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

23 **PRAYER**

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

- 26 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
27 1174.5, 1197.1, and 2699;

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- 1 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
2 210, 226.3, 558, 1174.5, 1197.1, and 2699;
3 C. For costs of suit incurred herein; and
4 D. Such other and further relief as the Court deems just and proper.

5 BIBIYAN LAW GROUP, P.C.

6 Dated: June 2, 2022

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8 BY: _____

9 DAVID D. BIBIYAN

10 JEFFREY C. BILS

11 JOSHUA SHIRIAN

12 Attorneys for Plaintiff JOSE PEREZ
13 VENTURA, as an aggrieved employee, and
14 on behalf of all other aggrieved employees
15 under the Labor Code Private Attorneys'
16 General Act of 2004,
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