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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

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

Plaintiff,

v.

DR. SQUATCH, INC., a California
corporation; KELLY SERVICES
GLOBAL, LLC; a Michigan Company; JOHN
S. HALDRUP, an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: **22STCV32762**

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]

COMES NOW plaintiff MARVIN BERNABE("Plaintiff"), as aggrieved employees, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004, and alleges as follows:

JURISDICTION AND VENUE

1. This is a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against DR. SQUATCH, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("DR. SQUATCH"), and KELLY SERVICES GLOBAL, LLC, a California limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California ("KELLY SERVICES,"); JOHN S. HALDRUP, an individual ("MR. HALDRUP") and DOES 1 through 100, as further defined below, "Defendants"), as a proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved Employees").

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

3. Venue is proper in Los Angeles County, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the causes of action complained of herein arose; the county in which the employment relationship began; the county in which performance of the employment contract, or part of it, between Plaintiffs,

1 or some of them, and Defendants was due to be performed; the county in which the employment
2 contract, or part of it, between Plaintiff and Defendants was actually performed; and the county in
3 which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct
4 effect on Plaintiffs and Aggrieved Employees in Los Angeles County, and because Defendants
5 employ numerous Aggrieved Employees in Los Angeles County.

6 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
7 Defendants during the applicable statutory period and suffered one or more of the Labor Code
8 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
9 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
10 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
11 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
12 employees of Defendants during the Civil Penalty Period.
13

14 5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
15 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
16 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
17 PAGA allegations described herein is not required.
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19 6. During the period beginning one (1) year preceding the provision of notice to the
20 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
21 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
22 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
23 1197.1, 1197.5, 1198.5, 2699, 2802, 2810.3, 2810.5, 6401, *et seq.*, 6409.6, and 6432 among others.

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

2 8. On or around July 20, 2022, Plaintiff provided written notice pursuant to Labor Code
3 section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation
4 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as
5 by certified mail, with return receipt requested to Defendants, and each of them.

6 9. Plaintiff also provided Defendants, and each of them, with notice under Labor Code
7 section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other's wage
8 and hour violations under Labor Code section 2810.3 on July 20, 2022 by certified mail with return
9 receipt requested.

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

14
15 **PAGA REPRESENTATIVE ALLEGATIONS**

16 11. At all relevant times mentioned herein, Defendants had and have a policy or
17 practice of failing to furnish and use safety devices and safeguards. And adopt and use
18 practices, means, methods, operations and processes which are reasonably adequate to
19 render such employment and place of employment safe and healthful, pursuant to, including
20 but not limited to, Labor Code section 6401. At all relevant times mentioned herein,
21 Defendants had and have a policy or practice of requiring or permitting employees to go or
22 be in any employment or place of employment which is not safe and healthful, pursuant to
23 Labor Code section 6402. At all relevant times mentioned herein, Defendants had and have
24 a policy or practice of failing or neglecting to: provide and use safety devices and safeguards
25 reasonably adequate to render the employment and place of employment safe; adopt and use
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1 methods and processes reasonably adequate to render the employment and place of
2 employment safe; and do every other thing reasonably necessary to protect the life, safety,
3 and health of employees, pursuant to Labor Code section 6403. Plaintiff is informed and
4 believes, and based thereon alleges that these failures include, without limitation, failing to
5 disinfect surfaces after use by Plaintiff and/or other Aggrieved Employees; failing to provide
6 adequate protection equipment to Plaintiff and/or other Aggrieved Employees; and failing
7 to provide adequate distance in working conditions between Plaintiff and/or other Aggrieved
8 Employees.
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10 12. At all relevant times mentioned herein, Defendants had and have a policy or
11 practice of failing to give sufficient, adequate and proper notice to Plaintiff and other
12 Aggrieved Employees of the Covid-19 exposure within one business day of receiving notice
13 of potential Covid-19 workplace exposure from a qualifying individual as required by Labor
14 Code section 6409.6. Plaintiff is informed and believes that numerous employees contracted
15 Covid-19 during the relevant time periods, but that Defendants failed to provide notice to
16 employees. Plaintiff is additionally informed and believes that Defendants do not or did not
17 keep adequate records of written notifications required in subdivision (a) for a period of at
18 least three years.
19

21 13. At all relevant times mentioned herein, Defendants had and have a policy or
22 practice of failing within one business day after Defendants or a representative of
23 Defendants received notice of potential exposure to COVID-19 to provide written notice to
24 Plaintiff and other Aggrieved Employees, or their exclusive representatives, who were on
25 the premises at the same worksite as a qualifying individual who was within the infectious
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1 period that they may have been exposed to COVID-19. Furthermore, Plaintiff is informed
2 and believes, and based thereon alleges, that Defendants had and has a practice or policy of
3 failing within one business day after Defendants or a representative of Defendants
4 received a notice of potential exposure to COVID-19 to provide Plaintiff and other
5 Aggrieved Employees who were on the premises at the same worksite as the qualifying
6 individual within the infectious period and the exclusive representative, if any, with
7 information regarding COVID-19-related benefits to which the employee may be entitled
8 under applicable federal, state, or local laws, including, but not limited to, workers'
9 compensation, and options for exposed employees, including COVID-19-related leave,
10 company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave
11 provisions, as well as anti-retaliation and antidiscrimination protections of the employee.
12 Plaintiff is informed and believes, and based thereon alleges, that Defendants violated,
13 without limitation, Labor Code sections 6409.6 and 6432.
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15
16 14. At all relevant times mentioned herein, Defendants had and have a policy or
17 practice of failing within one business day after Defendants or a representative of
18 Defendants received a notice of potential exposure to COVID-19 to notify Plaintiff and
19 other Aggrieved Employees who were on the premises at the same worksite as the
20 qualifying individual within the infectious period, and the employers of subcontracted
21 employees who were on the premises at the same worksite as the qualifying individual
22 within the infectious period and the exclusive representative, if any, of the cleaning and
23 disinfection plan that the employer is implementing per the guidelines of the federal Centers
24 for Disease Control and Prevention and the COVID-19 prevention program per the Cal-
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1 OSHA COVID-19 Emergency Temporary Standards. Plaintiff is informed and believes,
2 and based thereon alleges, that Defendants violated, without limitation, Labor Code
3 sections 6409.6 and 6432.

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5 15. At all relevant times mentioned herein, Defendants had and have a policy or
6 practice of failing to notify the local public health agency in the jurisdiction of the worksite
7 of the names, number, occupation, and worksite of employees who had a laboratory-
8 confirmed case of COVID-19, as defined by the State Department of Public Health; a
9 positive COVID-19 diagnosis from a licensed health care provider; a COVID-19-related
10 order to isolate provided by a public health official; or died due to COVID-19, in the
11 determination of a county public health department or per inclusion in the COVID-19
12 statistics of a county. Plaintiff is informed and believes, and based thereon alleges, that
13 Defendants violated, without limitation, Labor Code sections 6409.6 and 6432
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15 16. Plaintiff is informed and believes, and based thereon alleges that Defendants
16 violated sections 1527, 3366, 3457 and 8397.4 by failing to provide adequate and readily
17 accessible sanitation facilities; a regular schedule for servicing, cleaning, and supplying
18 each facility to ensure it is maintained in a clean, sanitary and serviceable condition; an
19 adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a
20 sufficient number of toilets to be used by each sex of employee.
21

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

15 18. 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 continue working, to don and doff uniforms and/or safety equipment off the clock, to
22 attend company meetings off the clock, to make phone calls or drive off the clock; detrimental
23 rounding of employee time entries, editing and/or manipulation of time entries to show less hours
24 than actually worked; failing to pay reporting time pay; paid time off and vacation time owed; and
25 failing to pay split shift premiums, to the detriment of Plaintiff and other Aggrieved Employees.

1 19. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted,
3 timely, and complete meal period for days on which the employee worked in excess of five (5) and
4 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
5 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
6 not providing timely meal periods; failing to provide first and second meal periods; providing short
7 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
8 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
9 periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which
10 employees worked, as required by California wage and hour laws
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12 20. At all relevant times mentioned herein, Defendants had and have a policy or practice
13 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
14 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
15 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
16 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
17 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
18 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
19 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.
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21 21. At all relevant times mentioned herein, Defendants had and have a policy or practice
22 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
23 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross
24 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
25 hourly rates in effect during the pay period and the corresponding number of hours worked at each
26 hourly rate by the employee; the legal name of the employer and/or the name and address of the
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1 legal entity securing the employer's services if the employer is a farm labor contractor; and other
2 such information as required by Labor Code section 226, subdivision (a).

3 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
5 Plaintiff and other Aggrieved Employees with 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, making it difficult for Plaintiff and other Aggrieved Employees to
8 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiffs and other
9 Aggrieved Employees.
10

11 23. At all relevant times mentioned herein, Defendants had and have a policy or practice
12 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
13 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
14 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
15 Code sections 201, 202, and 203.

16 24. At all relevant times mentioned herein, Defendants have had a policy or practice of
17 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
18 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred purchasing uniforms,
19 providing uniform and other deposits, separately laundering mandatory uniforms, for the purchase
20 of tools and safety equipment (including work boots to handle oil), e in direct consequence of the
21 discharge of their duties, or of their obedience to the directions of Defendants, as required by Labor
22 Code 2802.
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24 25. At all relevant times mentioned herein, Defendants have had a policy or practice of
25 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
26 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
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1 Employees with the rates of pay and overtime rates of pay applicable to their employment;
2 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
3 name, address, and telephone number of the workers' compensation insurance carrier; information
4 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
5 under Labor Code section 2810.5.

6 26. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
7 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
8 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
9 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
10 all other Aggrieved Employees.
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12 27. At all relevant times mentioned herein, Defendants have had a policy or practice of
13 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
14 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
15 any calendar month shall be paid for between the 16th and 26th day of the month during which the
16 labor was performed, and labor performed between the 16th and the last day, inclusive of any
17 calendar month, shall be paid for between the 1st and 10th day of the following month."
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19 28. At all relevant times mentioned herein, Defendants had and have a policy or practice
20 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
21 and experience they obtained at Defendants for purposes of competing with Defendants, including,
22 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
23 a prospective employer, and from disclosing who else works at Defendants and under what
24 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
25 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
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1 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
2 Code sections 232, 232.5, and 1197.5, subdivision (k).

3 29. Defendants had and have a policy or practice of preventing Plaintiff and/or other
4 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
5 to their managers or outside to private attorneys or government officials, among others, in violation
6 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
7 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
8 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
9 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
10 of Labor Code section 232 and 232.5.
11

12 30. Defendants had and have a policy or practice of preventing Plaintiff and/or other
13 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
14 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
15 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
16 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
17 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
18 economic liberty.
19

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

24 **PARTIES**

25 **A. Plaintiff**

26 32. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
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1 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
2 exempt employee, with duties that included, but were not limited to, making and manufacturing
3 soap. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately
4 December of 2021 through approximately February of 2022.

5 **B. Defendants**

6 33. Plaintiff is informed and believes and based thereon alleges that defendant DR.
7 SQUATCH is, and at all times relevant hereto was, a corporation organized and existing under and
8 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
9 State of California.

10 34. Plaintiff is informed and believes and based thereon alleges that defendant KELLY
11 SERVICES is, and at all times relevant hereto was, a limited liability company organized and
12 existing under and by virtue of the laws of the State of California and doing business in the County
13 of Los Angeles, State of California.

14 35. Plaintiff is informed and believes and based thereon alleges that defendant MR.
15 HALDRUP is, and at all times relevant hereto was, an individual residing in California, as well as
16 Chief Executive Officer of DR. SQUATCH.

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

7
8 **JOINT LIABILITY ALLEGATIONS**

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

14 38. All of the acts and conduct described herein of each and every corporate defendant
15 was duly authorized, ordered, and directed by the respective and collective defendant corporate
16 employers, and the officers and management-level employees of said corporate employers. In
17 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
18 their said employees, agents, and representatives, and each of them; and upon completion of the
19 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
20 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
21 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
22 aforementioned corporate employees, agents and representatives.

24 39. Plaintiff is informed and believes, and based thereon alleges, that despite the
25 formation of the purported corporate existence of DR. SQUATCH, KELLY SERVICES, MR.
26 HALDRUP, and DOES 1 through 50, inclusive (the “Alter Ego Defendants”), they, and each of
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1 them, are one and the same with DOES 51 through 100 (“Individual Defendants”), and each of them,
2 due to, but not limited to, the following reasons:

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

8 b. The Individual Defendants derive actual and significant monetary benefits by
9 and through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego Defendants as
10 the funding source for the Individual Defendants’ own personal expenditures;

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

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

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

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

7 40. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
8 thereon alleges that Defendants, and each of them, are joint employers.
9

10 **FIRST CAUSE OF ACTION**

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

12 41. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
13 preceding paragraphs as though fully set forth hereat.

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

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

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

2 44. At all relevant times herein, Defendants have had a consistent policy or practice of
3 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
4 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
5 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
6 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
7 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
8 for each subsequent violation in connection with each payment that was made in violation of Labor
9 Code section 204.
10

11 Civil Penalties Under Labor Code § 226.3

12 45. Defendants had and have a policy or practice of failing to comply with Labor Code
13 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
14 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
15 wages earned; the name and address of each employer with whom they have been placed to work;
16 all applicable hourly rates in effect during the pay period and the corresponding number of hours
17 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal
18 entity securing the employer’s services if the employer is a farm labor contractor; and other such
19 information as required by Labor Code section 226, subdivision (a).
20

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

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

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

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

16 Violation of Labor Code § 558

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

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

1 an amount sufficient to recover underpaid wages;

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

3 51. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
4 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
5 causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and overtime
6 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
7 regular payday designated by employer, the name of the employer, including any “doing business
8 as” names used, the name, address, and telephone number of the workers’ compensation insurance
9 carrier, information regarding paid sick leave, and other pertinent information.
10

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

16 Violation of Labor Code § 1174.5

17 53. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
18 every person employing labor in California to “[a]llow any member of the commission or the
19 employees of the Division of Labor Standards Enforcement free access to the place of business or
20 employment of the person to secure any information or make any investigation that they are
21 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
22 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
23 or papers of the person.”
24

25 54. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
26 every person employing labor in California to “[k]eep a record showing the names and addresses of
27

1 all employees employed and the ages of all minors.”

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

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

17 57. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
18 willfully failed to keep adequate or accurate time records including wage statements and similar
19 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
20 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
21 under Labor Code section 1174.

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

1 Violation of Labor Code § 1197.1

2 59. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
3 person acting either individually or as an officer, agent, or employee of another person, who pays
4 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
5 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
6 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
7 Section 203 as follows:
8

- 9 (1) For any initial violation that is intentionally committed, one hundred dollars
10 (\$100) for each underpaid employee for each pay period for which the
11 employee is underpaid. This amount shall be in addition to an amount
12 sufficient to recover underpaid wages, liquidated damages pursuant to Section
13 1194.2, and any applicable penalties imposed pursuant to Section 203.
14 (2) For each subsequent violation for the same specific offense, two hundred fifty
15 dollars (\$250) for each underpaid employee for each pay period for which the
16 employee is underpaid regardless of whether the initial violation is
17 intentionally committed. This amount shall be in addition to an amount
18 sufficient to recover underpaid wages, liquidated damages pursuant to Section
19 1194.2, and any applicable penalties imposed pursuant to Section 203.
20 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
21 Section 203, recovered pursuant to this section shall be paid to the affected
22 employee.”
23

24 60. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
25 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
26 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ minimum wages for all
27

1 hours worked or otherwise under Defendants' control due to, without limitation, routinely failing to
2 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
3 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
4 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,
5 entitling Plaintiff and other aggrieved Employees to actual and liquidated damages.

6 61. As a direct and proximate result of the herein-described Labor Code violations,
7 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
8 recover civil penalties for Defendants' herein-described Labor Code violations in the amount one
9 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
10 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
11 subsequent violation.
12

13 Civil Penalties Under Labor Code § 2699

14 62. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
15 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
16 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
17 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
18 action brought by an aggrieved employee on behalf of himself or herself and other current or former
19 employees pursuant to the procedures specified in Labor Code section 2699.3.
20

21 63. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
22 Code except those for which a civil penalty is specifically provided, the established civil penalty for
23 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
24 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
25 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
26 employee per pay period for each subsequent violation.
27

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

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

REQUEST FOR JURY TRIAL

15 66. Plaintiff hereby requests a trial by jury.
16

PRAYER

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

- 20 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
21 1174.5, 1197.1, and 2699;
- 22 B. An award of reasonable attorneys’ fees and costs pursuant to Labor Code sections
23 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 24 C. Pre-judgment and post-judgment interest;
- 25 D. For costs of suit incurred herein; and
- 26 E. Such other and further relief as the Court deems just and proper.
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Dated: October 6, 2022

BIBIYAN LAW GROUP, P.C.

BY: /s/ Jean H. Power
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as an aggrieved employee, and on behalf of all
other aggrieved employees under the Labor
Code Private Attorneys' General Act of 2004,