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By /s/ Jennifer Torres
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Attorneys for Plaintiffs, RAVNEET KAUR
and JESSICA GONZALEZ, as aggrieved employees,
and on behalf of all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

RAVNEET KAUR, and JESSICA
GONZALEZ, as aggrieved employees, and on
behalf of all other aggrieved employees under
the Labor Code Private Attorneys' General
Act of 2004,

Plaintiff,

v.

COLOR HEALTH, INC., a Delaware
corporation; RANDSTAD NORTH
AMERICA, INC., a Delaware corporation;
TABITHA DATTE, an individual; and DOES
1 through 100, inclusive,

Defendants.

CASE NO.: 23-CIV-00420

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 Exceeds \$25,000.00]

COMES NOW Plaintiffs RAVNEET KAUR, and JESSICA GONZALEZ (collectively, “Plaintiffs”), as aggrieved employees, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys’ General Act of 2004, and allege 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 COLOR HEALTH, INC., a Delaware corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“COLOR HEALTH”), RANDSTAD NORTH AMERICA, INC., a Delaware corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“RANDSTAD NORTH AMERICA,”), TABITHA DATTE, an individual, and any of its respective subsidiaries or affiliated companies within the State of California (“DATTE” and together with “COLOR HEALTH”, “RANDSTAD NORTH AMERICA,” 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 San Mateo County, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, San Mateo 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, or some of them, and Defendants was due to be performed; the county in which the employment contract, or part of it, between Plaintiff and Defendants was actually performed; and the county in which

1 Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect
2 on Plaintiffs and Aggrieved Employees in San Mateo County, and because Defendants employ
3 numerous Aggrieved Employees in San Mateo County.

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

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

15 6. During the period beginning one (1) year preceding the provision of notice to the
16 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
17 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 201, 202, 203, 204, 210, 226, 226.3,
18 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1,
19 1197.5, 1198.5, 2699, 2802, 2810.3, and 2810.5, among others.

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

24 8. On November 21, 2022, Plaintiff Ravneet Kaur provided written notice pursuant to
25 Labor Code section 2699.3 online and by certified mail, with return receipt requested, of
26 Defendants’ violation of various, including the herein-described, provisions of the Labor Code, to
27 the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
28 them.

1 9. Plaintiff Ravneet Kaur also provided Defendants, and each of them, with notice
2 under Labor Code section 2810.3, subdivision (d) that Plaintiffs would seek to hold them liable for
3 each other's wage and hour violations under Labor Code section 2810.3 on November 21, 2022 by
4 certified mail with return receipt requested.

5 10. On January 26, 2023, Plaintiffs provided amended written notice pursuant to Labor
6 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
7 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
8 as well as by certified mail, with return receipt requested to Defendants, and each of them.

9 11. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
10 provide notice of its intention to investigate Defendant Ravneet Kaur's alleged violations within
11 sixty-five (65) calendar days of the November 21, 2022 postmarked date of the herein-described
12 notice sent by Plaintiffs to the LWDA and Defendant Ravneet Kaur.

13 **PAGA REPRESENTATIVE ALLEGATIONS**

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

1 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
2 less hours than actually worked, and for paying straight pay instead of overtime, to the detriment of
3 Plaintiffs and other Aggrieved Employees.

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

15 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
16 of failing to provide Plaintiffs and other Aggrieved Employees a thirty (30) minute uninterrupted,
17 timely, and complete meal period for days on which the employee worked in excess of five (5) and
18 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
19 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
20 not providing timely meal periods; failing to provide first and second meal periods; providing short
21 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
22 periods; not permitting employees to leave the premises; and otherwise requiring on-duty/on-call
23 meal periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during
24 which employees worked, as required by California wage and hour laws

25 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
26 of failing to provide Plaintiffs and other Aggrieved Employees paid, uninterrupted, timely, and
27 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
28 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest

1 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
2 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
3 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
4 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

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

13 17. At all relevant times mentioned herein, Defendants had and have a policy or practice
14 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
15 Plaintiffs and other Aggrieved Employees with documents signed to obtain or hold employment
16 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
17 under Labor Code section 1174, making it difficult for Plaintiffs and other Aggrieved Employees to
18 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiffs and other
19 Aggrieved Employees.

20 18. At all relevant times mentioned herein, Defendants had and have a policy or practice
21 of failing to timely pay Plaintiffs and other Aggrieved Employees, among other wages, all wages
22 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
23 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
24 Code sections 201, 202, and 203.

25 19. At all relevant times herein, Defendants had and have a policy or practice of failing
26 to pay Plaintiffs 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 and applicable Wage Orders.

1 20. At all relevant times mentioned herein, Defendants have had a policy or practice of
2 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
3 limitation, Plaintiffs and other Aggrieved Employees, with their costs incurred in mileage and/or
4 gas costs incurred in driving personal vehicles for work-related purposes and using cellular phones
5 for work-related purposes. in direct consequence of the discharge of their duties, or of their
6 obedience to the directions of Defendants, as required by Labor Code 2802.

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

15 22. At all relevant times mentioned herein, Defendants failed to provide Plaintiffs and
16 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
17 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
18 permit its use upon request as contemplated under California laws, to the detriment of Plaintiffs and
19 all other Aggrieved Employees.

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

26 24. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of preventing Plaintiffs and/or Aggrieved Employees from using or disclosing the skills, knowledge
28 and experience they obtained at Defendants for purposes of competing with Defendants, including,

1 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
2 a prospective employer, and from disclosing who else works at Defendants and under what
3 circumstances that they might be receptive to an offer from a rival employer. Plaintiffs are informed
4 and believe that this policy and/or practice violates Business and Professions Code sections 17200,
5 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
6 Code sections 232, 232.5, and 1197.5, subdivision (k).

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

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

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

26 **PARTIES**

27 **A. Plaintiffs**

28 28. Plaintiff RAVNEET KAUR is a resident of the State of California. At all relevant

1 times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed
2 Plaintiff as a Scientific Laboratory Technician from approximately January 2022 through March 15,
3 2022 as a non-exempt employee, with duties that included, but were not limited to, manufacturing
4 DNA tests, manufacturing genetic tests, manufacturing COVID-19 tests, running machines, and test
5 labeling.

6 29. Plaintiff JESSICA GONZALEZ is a resident of the State of California. At all
7 relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants
8 employed Plaintiff as a Vaccine Specialist from approximately February 2022 through May, 2022
9 as a non-exempt employee, with duties that included, but were not limited to, setting up A frames,
10 setting up tables and canopies, register and check in patients, take temperature of vaccines, transport
11 vaccines, and assist nurses.

12 **B. Defendants**

13 30. Plaintiffs are informed and believe and based thereon allege that defendant COLOR
14 HEALTH is, and at all times relevant hereto was, a corporation organized and existing under and
15 by virtue of the laws of the State of Delaware and doing business in the County of San Mateo, State
16 of California.

17 31. Plaintiffs are informed and believe and based thereon allege that defendant
18 RANDSTAD NORTH AMERICA is, and at all times relevant hereto was, a Delaware company
19 organized and existing under and by virtue of the laws of the State of California and doing business
20 in the County of San Mateo, State of California.

21 32. Plaintiffs are informed and believe and based thereon allege that defendant DATTE
22 is, and at all times relevant hereto was, an individual residing in California, as well as supervisor for
23 COLOR HEALTH, and DOES 1 through 100, as further defined below. Plaintiffs are further
24 informed and believes and based thereon alleges that DATTE violated, or caused to be violated, the
25 above-referenced and below-referenced Labor Code provisions in violation of Labor Code section
26 558.1.

27 33. The true names and capacities, whether individual, corporate, associate, or otherwise,
28 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiffs,

1 who therefore sue defendants by such fictitious names under Code of Civil Procedure section 474.
2 Plaintiffs are informed and believe and based thereon alleges that each of the defendants designated
3 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
4 Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities
5 of the defendants designated hereinafter as DOES when such identities become known. Plaintiffs
6 are informed and believe, and based thereon alleges, that each defendant acted in all respects
7 pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business
8 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable
9 to the other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it
10 shall include COLOR HEALTH, RANDSTAD NORTH AMERICA, DATTE, and any of their
11 parent, subsidiary, or affiliated companies within the State of California, as well as DOES 1 through
12 100 identified herein.

13 **JOINT LIABILITY ALLEGATIONS**

14 34. Plaintiffs are informed and believe, and based thereon allege, that at all times
15 mentioned herein, each of the defendants was the agent, principal, employee, employer,
16 representative, joint venture or co-conspirator of each of the other defendants, either actually or
17 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
18 employment, joint venture, and conspiracy.

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

28 36. Plaintiffs are informed and believe, and based thereon allege, that despite the

1 formation of the purported corporate existence of COLOR HEALTH, RANDSTAD NORTH
2 AMERICA, DATTE, and DOES 1 through 50, inclusive (the “Alter Ego Defendants”), they, and
3 each of them, are one and the same with DOES 51 through 100 (“Individual Defendants”), and each
4 of them, due to, but not limited to, the following reasons:

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

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

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

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

24 e. The recognition of the separate existence of the Individual Defendants from
25 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to
26 insulate themselves from liability to Plaintiffs for violations to the Civil Code, Government Code,
27 and other statutory violations. The corporate existence of these defendants should thus be
28

1 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
2 and injustice to Plaintiffs herein;

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

6 37. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
7 thereon alleges that Defendants, and each of them, are joint employers.

8 **FIRST CAUSE OF ACTION**

9 **(Civil Penalties Under Labor Code § 210 – Against All Defendants)**

10 38. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
11 and incorporate each by reference as though fully set forth hereat.

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

17 40. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
18 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
19 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
20 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
21 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
22 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
23 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

24 41. At all relevant times herein, Defendants have had a consistent policy or practice of
25 failing to pay Plaintiffs and/or Aggrieved Employees during their employment on a timely basis as
26 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiffs and other
27 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
28 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for

1 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
2 for each subsequent violation in connection with each payment that was made in violation of Labor
3 Code section 204.

4 **SECOND CAUSE OF ACTION**

5 **(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)**

6 42. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
7 and incorporates each by reference as though fully set forth hereat.

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

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

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

23 46. Plaintiffs are informed and believe, and based thereon allege, that Defendants had
24 and have a policy or practice of failing to furnish non-exempt employees, including, without
25 limitation, Plaintiffs, with itemized wage statements that accurately reflect gross wages earned; total
26 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
27 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
28 name of the employer and/or the name and address of the legal entity securing the employer's services

1 if the employer is a farm labor contractor; and other such information as required by Labor Code
2 section 226, subdivision (a).

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

8 **THIRD CAUSE OF ACTION**

9 **(Violation of Labor Code § 558 – Against All Defendants)**

10 48. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
11 and incorporates each by reference as though fully set forth hereat.

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

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

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

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

23 50. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and
24 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
25 causing Plaintiffs and other Aggrieved Employees not to: be paid overtime wages and minimum
26 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
27 their employment and after their employment separation; receive accurate, itemized wage
28 statements; be provided with the opportunity to inspect employment records; be provided with

1 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of
2 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
3 of pay.

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

9 **FOURTH CAUSE OF ACTION**

10 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

11 52. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
12 and incorporates each by reference as though fully set forth hereat.

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

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

23 55. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
24 every person employing labor in California to “[k]eep, at a central location in the state or at the
25 plants or establishments at which employees are employed, payroll records showing the hours
26 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
27 piece rate paid to, employees employed at the respective plants or establishments. These records
28 shall be kept in accordance with rules established for this purpose by the commission, but in any

1 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
2 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
3 earned.”

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

9 57. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
10 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
11 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
12 inspection of records as required by Labor Code subdivision (b).

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

17 **FIFTH CAUSE OF ACTION**

18 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

19 59. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
20 and incorporates each by reference as though fully set forth hereat.

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

- 27 (1) For any initial violation that is intentionally committed, one hundred dollars
28 (\$100) for each underpaid employee for each pay period for which the

1 employee is underpaid. This amount shall be in addition to an amount
2 sufficient to recover underpaid wages, liquidated damages pursuant to Section
3 1194.2, and any applicable penalties imposed pursuant to Section 203.

4 (2) For each subsequent violation for the same specific offense, two hundred fifty
5 dollars (\$250) for each underpaid employee for each pay period for which the
6 employee is underpaid regardless of whether the initial violation is
7 intentionally committed. This amount shall be in addition to an amount
8 sufficient to recover underpaid wages, liquidated damages pursuant to Section
9 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

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

20 62. As a direct and proximate result of the herein-described Labor Code violations,
21 pursuant to Labor Code section 1197.1, Plaintiffs 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 **SIXTH CAUSE OF ACTION**

27 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

28 63. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs

1 and incorporates each by reference as though fully set forth hereat.

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

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

14 66. Plaintiffs are informed and believe and based thereon allege that Defendants, and
15 each of them, violated the Labor Code sections described herein, including, without limitation, for
16 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
17 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
18 employment and after employment separation; provide employees the opportunity to inspect
19 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
20 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual
21 and use of paid sick leave; paying employees all owed paid time off and vacation time owed by
22 separation at the proper rate of pay; and placing restraints on competition, whistleblowing and
23 freedom of speech, entitling Plaintiffs and other Aggrieved Employees to civil penalties for each of
24 these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

25 67. Moreover, Plaintiffs and other Aggrieved Employees within the State of California
26 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
27 connection with their herein-described claims for civil penalties.

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