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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 STANISLAUS**

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

Plaintiff,

v.

ROCHAS' VALLEY ENTERPRISES, INC., a  
California corporation; and DOES 1 through  
100, inclusive,

Defendants.

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Superior Court of California  
County of Stanislaus  
Clerk of the Court  
By: Alecsandra McDonald, Deputy

\$435 PAID

CASE NO.: CV-23-003888

**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]

Sandhu, Sonny S.

This case has been assigned to Judge \_\_\_\_\_  
Dept. 24

Department \_\_\_\_\_, for all purposes including Trial.

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

4 **JURISDICTION AND VENUE**

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

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

18 3. Venue is proper in Stanislaus County, California pursuant to Code of Civil Procedure  
19 sections 392, *et seq.* because, among other things, Stanislaus County is where the causes of action  
20 complained of herein arose; the county in which the employment relationship began; the county in  
21 which performance of the employment contract, or part of it, between Plaintiff and Defendants was  
22 due to be performed; the county in which the employment contract, or part of it, between Plaintiff  
23 and Defendants was actually performed; and the county in which Defendants, or some of them,  
24 reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Aggrieved  
25 Employees in Stanislaus County, and because Defendants employ numerous Aggrieved Employees  
26 in Stanislaus County.

27 4. Plaintiff is an "aggrieved employee" under PAGA, as Plaintiff was employed by  
28 Defendants during the applicable statutory period and suffered one or more of the Labor Code

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

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

10 6. During the period beginning one (1) year preceding the provision of notice to the  
11 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),  
12 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 201, 202, 203, 204, 210, 226, 226.3,  
13 226.7, 232, 232.5, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5,  
14 2699, 2802, and 2810.5, among others.

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

19 8. On or around April 18, 2023, Plaintiff provided written notice pursuant to Labor  
20 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’  
21 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,  
22 as well as by certified mail, with return receipt requested to Defendants, and each of them.

23 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not  
24 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)  
25 calendar days of the April 18, 2023 postmarked date of the herein-described notice sent by Plaintiff  
26 to the LWDA and Defendants.

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**PAGA REPRESENTATIVE ALLEGATIONS**

10. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock, and/or go through security screenings and/or temperature checks off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, and for paying straight pay instead of overtime pay, to the detriment of Plaintiff and other Aggrieved Employees.

11. At all relevant times mentioned herein, Defendants had and have a practice or policy of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours worked or otherwise under Defendants' control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock

1 out for rest periods, and/or safety equipment off the clock, to attend company meetings off the clock,  
2 to make phone calls or drive off the clock; detrimental rounding of employee time entries; editing  
3 and/or manipulation of time entries to show less hours than actually worked; and failing to pay split  
4 shift premiums, to the detriment of Plaintiff and other Aggrieved Employees.

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

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

23 14. At all relevant times mentioned herein, Defendants had and have a policy or practice  
24 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish  
25 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross  
26 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable  
27 hourly rates in effect during the pay period and the corresponding number of hours worked at each  
28 hourly rate by the employee; the legal name of the employer and/or the name and address of the

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 15. 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 Plaintiff and other  
9 Aggrieved Employees.

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

15 17. At all relevant times mentioned herein, Defendants have had a policy or practice of  
16 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without  
17 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for purchasing and/or  
18 providing unreturned deposits for mandatory work uniforms; laundering mandatory work uniforms;  
19 mileage and/or gas costs incurred in driving personal vehicles for work-related purposes; using  
20 cellular phones for work-related purposes; and purchasing tools necessary to perform work duties.,  
21 in direct consequence of the discharge of their duties, or of their obedience to the directions of  
22 Defendants, as required by Labor Code 2802.

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

1 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants  
2 under Labor Code section 2810.5.

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

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

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

26 22. Defendants had and have a policy or practice of preventing Plaintiff and/or other  
27 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state  
28 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,

1 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,  
2 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of  
3 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and  
4 economic liberty.

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

### 9 **PARTIES**

#### 10 **A. Plaintiff**

11 24. Plaintiff DAVID FERREL JR is a resident of the State of California. At all relevant  
12 times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed  
13 Plaintiff DAVID FERREL JR as a non-exempt employee, with duties that included, but were not  
14 limited to, dispatching drivers for delivery and emailing and talking to customers. Plaintiff is  
15 informed and believes, and based thereon alleges that Plaintiff DAVID FERREL JR worked for  
16 Defendants from approximately October of 2019 through approximately May of 2022.

#### 17 **B. Defendants**

18 25. Plaintiff is informed and believes and based thereon alleges that defendant ROCHAS  
19 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of  
20 the laws of the State of California and doing business in the County of Stanislaus, State of California.  
21 At all relevant times herein, ROCHAS employed Plaintiff and similarly situated employees within  
22 the State of California.

23 26. The true names and capacities, whether individual, corporate, associate, or otherwise,  
24 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,  
25 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.  
26 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated  
27 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.  
28 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of

1 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is  
2 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent  
3 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or  
4 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the  
5 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall  
6 include ROCHA’S VALLEY, and any of their parent, subsidiary, or affiliated companies within the  
7 State of California, as well as DOES 1 through 100 identified herein.

### 8 **JOINT LIABILITY ALLEGATIONS**

9 27. 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 28. 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.

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

### 25 **FIRST CAUSE OF ACTION**

#### 26 **(Civil Penalties Under the Private Attorneys’ General Act (2004) – Against All Defendants)**

27 30. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the  
28 preceding paragraphs as though fully set forth hereat.

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32. 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.”

Civil Penalties Under Labor Code § 226.3

34. 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

34. 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

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

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

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

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

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

23 Violation of Labor Code § 558

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

28 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each

1 pay period for which the employee was underpaid in addition to an amount sufficient  
2 to recover underpaid wages;

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

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

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

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

19 Violation of Labor Code § 1174.5

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

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

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

2 44. 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.”

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

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

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

25 Violation of Labor Code § 1197.1

26 48. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other  
27 person acting either individually or as an officer, agent, or employee of another person, who pays  
28 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or

1 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,  
2 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to  
3 Section 203 as follows:

4 (1) For any initial violation that is intentionally committed, one hundred dollars  
5 (\$100) for each underpaid employee for each pay period for which the  
6 employee is underpaid. 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 (2) For each subsequent violation for the same specific offense, two hundred fifty  
10 dollars (\$250) for each underpaid employee for each pay period for which the  
11 employee is underpaid regardless of whether the initial violation is  
12 intentionally committed. This amount shall be in addition to an amount  
13 sufficient to recover underpaid wages, liquidated damages pursuant to Section  
14 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

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

26 50. As a direct and proximate result of the herein-described Labor Code violations,  
27 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to  
28 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one

1 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and  
2 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each  
3 subsequent violation.

4 Civil Penalties Under Labor Code § 2699

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

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

17 53. Plaintiff is informed and believes, and based thereon alleges that Defendants, and  
18 each of them, violated the Labor Code sections described herein, including, without limitation, for  
19 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,  
20 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the  
21 name of the employer, including “doing business as” names used, the name, address, and telephone  
22 number of the workers’ compensation insurance carrier, information regarding paid sick leave, and  
23 other pertinent information required to be disclosed by Defendants under Labor Code section  
24 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick  
25 leave required to be provided pursuant to California and local laws.

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

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