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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 ORANGE

CARLOS ANTONI ACEVEDO, 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.

JM VENTURES, INC., a California
corporation dba TAPS FISH HOUSE &
BREWERY; GT3, LLC, a California limited
liability company; JM DISTRIBUTION, LLC,
a California limited liability company;
RELENTLESS SIBLINGS, LLC, a California
limited liability company; SOUTH COUNTY
CONCEPTS, INC., a California corporation;
WILD DEVIL, LLC, a California corporation;
JOSEPH P. MANZELLA, an individual; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 30-2023-01367247-CU-OE-CXC

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]

Assigned for All Purposes
Judge Lon F. Hurwitz
Dept. CX103

1 Plaintiff CARLOS ANTONI ACEVEDO, JR., as an aggrieved employee, and on behalf of
2 all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004, alleges
3 as 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 JM VENTURES,
7 INC., a California corporation dba TAPS FISH HOUSE & BREWERY, and any of its respective
8 subsidiaries or affiliated companies within the State of California ("JM VENTURES"), GT3, LLC,
9 a California limited liability company, and any of its respective subsidiaries or affiliated companies
10 within the State of California ("GT3"), JM DISTRIBUTION, LLC, a California limited liability
11 company, and any of its respective subsidiaries or affiliated companies within the State of California
12 ("JM DISTRIBUTION"), RELENTLESS SIBLINGS, LLC, a California limited liability company,
13 and any of its respective subsidiaries or affiliated companies within the State of California
14 ("RELENTLESS SIBLINGS"), SOUTH COUNTY CONCEPTS, INC., a California corporation,
15 and any of its respective subsidiaries or affiliated companies within the State of California ("SOUTH
16 COUNTY CONCEPTS"), WILD DEVIL, LLC, a California corporation, and any of its respective
17 subsidiaries or affiliated companies within the State of California ("WILD DEVIL"), JOSEPH P.
18 MANZELLA, an individual, and any of its respective subsidiaries or affiliated companies within
19 the State of California ("MANZELLA") (collectively, and with DOES 1 through 100, as further
20 defined below, "Defendants"), as a proxy of the Labor and Workforce Development Agency of the
21 State of California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt
22 employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as
23 it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code
24 section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 245, *et seq.*,
25 Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on
26 behalf of all employees of Defendants working within the Civil Penalty Period (collectively,
27 "Aggrieved Employees").

28 2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code

1 of Civil Procedure section 410.10.

2 3. Venue is proper in ORANGE County, California pursuant to Code of Civil Procedure
3 sections 392, et seq. because, among other things, ORANGE County is where the causes of action
4 complained of herein arose; the county in which the employment relationship began; the county in
5 which performance of the employment contract, or part of it, between Plaintiff and Defendants was
6 due to be performed; the county in which the employment contract, or part of it, between Plaintiff
7 and Defendants was actually performed; and the county in which Defendants, or some of them,
8 reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Aggrieved
9 Employees in ORANGE County, and because Defendants employ numerous Aggrieved Employees
10 in ORANGE County.

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

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

22 6. During the period beginning one (1) year preceding the provision of notice to the
23 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
24 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 201, 202, 203, 204, 210, 226, 226.3,
25 226.7, 227.3, 232, 232.5, 245, et seq., 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1,
26 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

27 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
28 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within

1 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
2 specified in Labor Code section 2699.3.

3 8. On or around September 12, 2023, Plaintiff provided written notice pursuant to Labor
4 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
5 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
6 as well as by certified mail, with return receipt requested to Defendants, and each of them.

7 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
8 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
9 calendar days of the September 12, 2023 postmarked date of the herein-described notice sent by
10 Plaintiff to the LWDA and Defendants.

11 **PAGA REPRESENTATIVE ALLEGATIONS**

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

1 entries, editing and/or manipulation of time entries to show less hours than actually worked, and for
2 paying straight pay instead of overtime pay to the detriment of Employee and other aggrieved
3 employees.

4 11. At all relevant times mentioned herein, Defendants had and have a practice or policy
5 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
6 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 come early
8 to work and leave late work without being able to clock in for all that time, to suffer under
9 Defendant's control due to long lines for clocking in, to complete pre-shift tasks before clocking in
10 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
11 out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend
12 company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding
13 of employee time entries; editing and/or manipulation of time entries to show less hours than
14 actually worked; and failing to pay split shift premiums, to the detriment of Plaintiff and other
15 Aggrieved Employees.

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

26 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
28 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions

1 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
2 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
3 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
4 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
5 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

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

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

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

26 17. At all relevant times herein, Defendants had and have a policy or practice of failing
27 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
28

1 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
2 and applicable Wage Orders.

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

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

19 20. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
20 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
21 California law (including, without limitation Labor Code section 245, *et seq.*), and also did not
22 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
23 all other Aggrieved Employees.

24 21. At all relevant times mentioned herein, Defendants have had a policy or practice of
25 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
26 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
27 any calendar month shall be paid for between the 16th and 26th day of the month during which the
28

1 labor was performed, and labor performed between the 16th and the last day, inclusive of any
2 calendar month, shall be paid for between the 1st and 10th day of the following month.”

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

12 23. Defendants had and have a policy or practice of preventing Plaintiff and/or other
13 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
14 to their managers or outside to private attorneys or government officials, among others, in violation
15 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
16 1102.5. In addition, Plaintiff is informed and believes that Defendants’ herein-described policies
17 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
18 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
19 of Labor Code section 232 and 232.5.

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

27 25. Plaintiff, in Plaintiff’s representative capacity, seeks civil penalties under Labor
28 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate

1 the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
2 Employees pursuant to PAGA.

3 **PARTIES**

4 **A. Plaintiff**

5 26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
6 is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-
7 exempt employee, with duties that included, but were not limited to, food preparation. Plaintiff is
8 informed and believes that Plaintiff worked for Defendants from approximately December 23, 2022
9 through March 13, 2023.

10 **B. Defendants**

11 27. Plaintiff is informed and believes and based thereon alleges that Defendant JM
12 VENTURES is, and at all times relevant hereto was, a corporation organized and existing under and
13 by virtue of the laws of the State of California and doing business in the County of Orange, State of
14 California.

15 28. Plaintiff is informed and believes and based thereon alleges that Defendant SOUTH
16 COUNTY CONCEPTS is, and at all times relevant hereto was, a corporation organized and existing
17 under and by virtue of the laws of the State of California and doing business in the County of Orange,
18 State of California.

19 29. Plaintiff is informed and believes and based thereon alleges that Defendant WILD
20 DEVIL is, and at all times relevant hereto was, a limited liability company organized and existing
21 under and by virtue of the laws of the State of California and doing business in the County of Orange,
22 State of California.

23 30. Plaintiff is informed and believes and based thereon alleges that Defendant
24 RELENTLESS SIBLINGS is, and at all times relevant hereto was, a limited liability company
25 organized and existing under and by virtue of the laws of the State of California and doing business
26 in the County of Orange, State of California.

27 31. Plaintiff is informed and believes and based thereon alleges that Defendant GT3 is, and
28 at all times relevant hereto was, a limited liability company organized and existing under and by

1 virtue of the laws of the State of California and doing business in the County of Orange, State of
2 California.

3 32. Plaintiff is informed and believes and based thereon alleges that Defendant JM
4 DISTRIBUTION is, and at all times relevant hereto was, a limited liability company organized and
5 existing under and by virtue of the laws of the State of California and doing business in the County
6 of Orange, State of California.

7 33. Plaintiff is informed and believes and based thereon alleges that Defendant JOSEPH
8 MANZELLA ("MANZELLA") is, and at all times relevant hereto was, an individual residing in
9 Orange County and the owner, member, principal, director, officer, or managing agent of the
10 Entities. Plaintiff is further informed and believes and based thereon alleges that Manzella violated,
11 or caused to be violated, the Labor Code provisions set forth herein, including Labor Code section
12 558.1.

13 34. The true names and capacities, whether individual, corporate, associate, or otherwise,
14 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
15 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
16 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
17 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
18 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
19 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
20 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
21 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
22 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
23 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
24 include JM VENTURES; GT3; JM DISTRIBUTION; RELENTLESS SIBLINGS; SOUTH
25 COUNTY CONCEPTS; WILD DEVIL; MANZELLA, and any of their parent, subsidiary, or
26 affiliated companies within the State of California, as well as DOES 1 through 100 identified herein.

27 **JOINT LIABILITY ALLEGATIONS**

28 35. Plaintiff is informed and believes, and based thereon alleges, that at all times

1 mentioned herein, each of the defendants was the agent, principal, employee, employer,
2 representative, joint venture or co-conspirator of each of the other defendants, either actually or
3 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
4 employment, joint venture, and conspiracy.

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

14 37. Plaintiff is informed and believes, and based thereon alleges, that despite the
15 formation of the purported corporate existence of JM VENTURES; GT3; JM DISTRIBUTION;
16 RELENTLESS SIBLINGS; SOUTH COUNTY CONCEPTS; WILD DEVIL; MANZELLA, and
17 DOES 1 through 50, inclusive (the "Alter Ego Defendants"), they, and each of them, are one and
18 the same with DOES 51 through 100 ("Individual Defendants"), and each of them, due to, but not
19 limited to, the following reasons:

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

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

28 c. Plaintiff is informed and believes, and thereon alleges, that the Individual

1 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear
2 as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
3 accomplishing some other wrongful or inequitable purpose;

4 d. Plaintiff is informed and believes, and thereon alleges, that the business affairs
5 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned
6 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same
7 are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein
8 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of
9 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
10 herein were, the alter egos of the Individual Defendants;

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

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

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

22 **FIRST CAUSE OF ACTION**

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

24 39. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
25 preceding paragraphs as though fully set forth hereat.

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

27 40. At all relevant times herein, Labor Code section 204, requires and required that:
28 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for

1 between the 16th and 26th day of the month during which the labor was performed, and labor
2 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
3 between the 1st and 10th day of the following month.”

4 41. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
5 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
6 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
7 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
8 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
9 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
10 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

19 Civil Penalties Under Labor Code § 226.3

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

28 44. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)

1 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
2 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
3 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
4 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

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

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

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

20 Violation of Labor Code § 558

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

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

28 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid

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

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

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

11 50. 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 51. 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 52. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
25 every person employing labor in California to “[k]eep a record showing the names and addresses of
26 all employees employed and the ages of all minors.”

27 53. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
28 every person employing labor in California to “[k]eep, at a central location in the state or at the

1 plants or establishments at which employees are employed, payroll records showing the hours
2 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
3 piece rate paid to, employees employed at the respective plants or establishments. These records
4 shall be kept in accordance with rules established for this purpose by the commission, but in any
5 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
6 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
7 earned.”

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

13 55. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
14 willfully failed to keep adequate or accurate time records including wage statements and similar
15 payroll documents under Labor Code section 226, 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.

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

22 Violation of Labor Code § 1197.1

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

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

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

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

Civil Penalties Under Labor Code § 2699

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

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

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

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

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