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as an aggrieved employee, and on behalf of all other

aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

v.

K.R WOLFE, INC., a Nevada corporation;
JOSE MARTI, an individual; KELLEN
WOLFE, an individual; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 24STCV10673

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
\$35,000.00]

1 Plaintiff ERNEST ABRAHAM TURAY, as an aggrieved employee, brings this Action on
2 behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of
3 2004 ("PAGA") to collect civil penalties under PAGA for all other aggrieved employees, and, in
4 doing so alleges as follows:

5 **JURISDICTION AND VENUE**

6 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
7 Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against K.R WOLFE, INC., a
8 Nevada corporation, and any of its respective subsidiaries or affiliated companies within the State
9 of California ("K.R WOLFE"), and JOSE MARTI, an individual working and controlling the
10 employment of Plaintiff in California, as well as a project manager of K.R. Wolfe in California
11 ("MARTI"); KELLEN WOLFE, an individual residing in California, as well as the Vice President
12 of K.R. Wolfe ("WOLFE") (collectively, and with DOES 1 through 100, as further defined below,
13 "Defendants"), as a proxy of the Labor and Workforce Development Agency of the State of
14 California ("LWDA"), on behalf of all other current and former non-exempt employees of
15 Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to
16 the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203,
17 Labor Code section 226, Labor Code section 227.3, Labor Code section 245, *et seq.*, Labor Code
18 section 2802, restraints on competition, whistleblowing and freedom of speech, on behalf of all other
19 employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved
20 Employees").

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

23 3. Venue is proper in LOS ANGELES County, California pursuant to Code of Civil
24 Procedure sections 392, *et seq.* (including sections 393, subdivision (a), and 395.5) and *Crestwood*
25 *Behavioral Health, Inc. v. Superior Court of Alameda County*, (60 Cal.App.5th 1069, 1076-77),
26 because, among other things, LOS ANGELES County is the county in which Defendants, or some
27 of them, do business and in which violations occurred against certain aggrieved employees.
28 Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Aggrieved

1 Employees in LOS ANGELES County, and because Defendants employ numerous Aggrieved
2 Employees in LOS ANGELES County.

3 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
4 Defendants during the applicable statutory period and suffered one or more of the Labor Code
5 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
6 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
7 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
8 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
9 employees of Defendants during the Civil Penalty Period. Plaintiff does not seek to assert his own
10 claim for civil penalties under PAGA as part of this Action.

11 5. Specifically, Plaintiff seeks 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, 200, 201, 201.3, 202, 203, 204, 210,
18 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, 246, 404, 432, 510, 512, 558, 1102.5,
19 1174, 1174.5, 11821.12, 1194, 1197, 1197.1, 1197.5, 1198.5, 1527, 2699, 2802, 2810.5, 3366, 3457,
20 and 8397.4, among others, California Code of Regulations, Title 8, Section 3395, Business and
21 Professions Code sections 16600, 16700, and 17200, Government Code section 12952, as well as
22 applicable Wage Orders.

23 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
24 on behalf of all other aggrieved current and former employees within the statutory period, to bring
25 a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section
26 2699.3 without asserting a claim to bring Plaintiff’s own claim for civil penalties under PAGA.
27 (*See, e.g., Balderas v. Fresh Start Harvesting, Inc.*) Specifically, Plaintiff does not seek to recover
28 Plaintiff’s 25% share of civil penalties for the particular Labor Code violations Plaintiff experienced.

1 Rather, this is a purely representative PAGA action wherein Plaintiff seeks to recover all civil
2 penalties for the Labor Code violations experienced by third-party aggrieved employees (Aggrieved
3 Employees) and the State of California's 75% of the civil penalties for the Labor Code violations
4 Plaintiff experienced.

5 8. On or around January 10, 2024, Plaintiff provided 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 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
10 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
11 calendar days of the January 8, 2024, postmarked date of the herein-described notice sent by Plaintiff
12 to the LWDA and Defendants.

13 **PAGA REPRESENTATIVE ALLEGATIONS**

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

1 where overtime was worked and the additional compensation was earned for the purpose of
2 calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or
3 manipulation of time entries to show less hours than actually worked, for paying straight pay instead
4 of overtime pay, and by attempting but failing to properly implement an alternative workweek
5 schedule (“AWS”) (including, without limitation, by failing to implement a written agreement
6 designating the regularly scheduled alternative workweek in which the specified number of work
7 days and work hours are regularly recurring; failing to adopt the AWS in a secret ballot election,
8 before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the
9 work unit; failing to follow the notice/disclosures procedures prior to any AWS election; and/or
10 failing to register an AWS election with the State of California, as required by Labor Code section
11 511 and applicable Wage Orders) all to the detriment of Employee and other aggrieved employees

12 11. At all relevant times mentioned herein, Defendants had and have a practice or policy
13 of failing to compensate Aggrieved Employees with minimum wages for all hours worked or
14 otherwise under Defendants’ control as a result of, without limitation, failing to accurately track
15 and/or pay for all minutes actually worked; by requiring Aggrieved Employees: to remain on-call;
16 come early to work and leave late work without being able to clock in for all that time, to suffer
17 under Defendants’ control due to long lines for clocking in, to complete pre-shift tasks before
18 clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
19 working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the
20 clock, to attend company meetings off the clock, to make phone calls or drive off the clock;
21 detrimental rounding of employee time entries; editing and/or manipulation of time entries to show
22 less hours than actually worked; failing to pay reporting time pay; paid time off and vacation time
23 owed; and failing to pay split shift premiums, to the detriment of Aggrieved Employees.

24 12. At all relevant times mentioned herein, Defendants had and have a policy or practice
25 of failing to provide Aggrieved Employees a thirty (30) minute uninterrupted, timely, and complete
26 meal period for days on which the employee worked in excess of five (5) and ten (10) hours per day
27 without being afforded uninterrupted, timely, and complete 30-minute meal periods or
28 compensation in lieu thereof including, without limitation, by interrupting meal periods; not

1 providing timely meal periods; failing to provide first and second meal periods; providing short
2 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
3 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
4 periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which
5 employees worked, as required by California wage and hour laws.

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

14 14. 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 Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned;
17 total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in
18 effect during the pay period and the corresponding number of hours worked at each hourly rate by
19 the employee; the legal name of the employer and/or the name and address of the legal entity
20 securing the employer's services if the employer is a farm labor contractor; and other such
21 information as required by Labor Code section 226, subdivision (a).

22 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
23 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
24 Aggrieved Employees with documents signed to obtain or hold employment under Labor Code
25 section 432, personnel records under Labor Code section 1198.5, and time records under Labor
26 Code section 1174, making it difficult for Aggrieved Employees to calculate their unpaid wages
27 and/or premium payments, to the detriment of Aggrieved Employees.
28

1 16. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of failing to timely pay Aggrieved Employees, among other wages, all wages owed as a result of
3 Defendants' practice or policy of failing to pay, among other wages, overtime wages at the regular
4 rate of pay, minimum wages, premium wages at the regular rate of pay, paid time off, paid sick
5 leave, and vacation time owed as required by Labor Code sections 201, 202, and 203.

6 17. At all relevant times herein, Defendants had and have a policy or practice of failing
7 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
8 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
9 and applicable Wage Orders.

10 18. At all relevant times mentioned herein, Defendants have had a policy or practice of
11 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
12 limitation, Aggrieved Employees, with their costs incurred for purchasing uniforms, for the
13 purchase of tools and/or safety equipment, and for the purchase and maintenance of cellular phones
14 and cellular phone plans, in direct consequence of the discharge of their duties, or of their obedience
15 to the directions of Defendants, as required by Labor Code 2802.

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

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

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

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

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

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

1 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
2 economic liberty.

3 25. Plaintiff, in Plaintiff's representative capacity *only*, seeks civil penalties under Labor
4 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts on behalf of
5 only and all other Aggrieved Employees, which violate the California Labor Code as described
6 above.

7 **PARTIES**

8 **A. Plaintiff**

9 26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
10 is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-
11 exempt employee, with duties that included, but were not limited to, installing medical equipment
12 and programming. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff Ernest
13 Abraham Turay worked for Defendants from approximately May 20, 2023 through approximately
14 July 21, 2023.

15 **B. Defendants**

16 27. Plaintiff is informed and believes and based thereon alleges that defendant K.R
17 WOLFE is, and at all times relevant hereto was, a corporation organized and existing under and by
18 virtue of the laws of the State of Nevada and doing business throughout the State of California,
19 including the County of Los Angeles.

20 28. Plaintiff is informed and believes and based thereon alleges that defendant MARTI is,
21 and at all times relevant hereto was, an individual working and controlling the employment of
22 Plaintiff in California, as well as a project manager of K.R. WOLFE in California, and DOES 1
23 through 100, as further defined below.

24 29. Plaintiff is informed and believes and based thereon alleges that defendant WOLFE is,
25 and at all times relevant hereto was, an individual residing in California, as well as the Vice President
26 of K.R. WOLFE, and Does 1 through 100, as further defined below.

27 30. 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 Plaintiff,

1 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
2 Plaintiff is informed and believes 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 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
5 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
6 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
7 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
8 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
9 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
10 include K.R WOLFE, MARTI, WOLFE, and any of their parent, subsidiary, or affiliated companies
11 within the State of California, as well as DOES 1 through 100 identified herein.

12 **JOINT LIABILITY ALLEGATIONS**

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

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

27 33. Plaintiff is informed and believes, and based thereon alleges, that despite the
28 formation of the purported corporate existence of K.R WOLFE, MARTI, WOLFE, and DOES 1

1 through 50, inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same
2 with DOES 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to,
3 the following reasons:

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

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

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

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

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

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

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

6 **FIRST CAUSE OF ACTION**

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

8 35. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
9 preceding paragraphs as though fully set forth hereat.

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

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

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

23 38. At all relevant times herein, Defendants have had a consistent policy or practice of
24 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
25 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Aggrieved Employees are
26 entitled to recover civil penalties for Defendants’ violations of Labor Code section 204, in the
27 amount of one hundred dollars (\$100) for each Aggrieved Employee for each initial violation per
28 employee, and two hundred dollars (\$200) for each Aggrieved Employee for each subsequent

1 violation in connection with each payment that was made in violation of Labor Code section 204.

2 Civil Penalties Under Labor Code § 226.3

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

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

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

18 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
19 and have a policy or practice of failing to furnish Aggrieved employees, including, without
20 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
21 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
22 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
23 name of the employer and/or the name and address of the legal entity securing the employer's
24 services if the employer is a farm labor contractor; and other such information as required by Labor
25 Code section 226, subdivision (a).

26 43. Pursuant to Labor Code section 226.3, Aggrieved Employees are entitled to recover
27 civil penalties for Defendants' violation of Labor Code section 226, subdivision (a) in the amount
28 of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period for the initial

1 violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay period for each
2 subsequent violation.

3 Violation of Labor Code § 558

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

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

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

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

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

22 46. As a direct and proximate result of the herein-described Labor Code violations,
23 pursuant to Labor Code section 558, Aggrieved Employees are entitled to recover civil penalties for
24 Defendants’ herein-described Labor Code violations in the amount fifty dollars (\$50) for each
25 Aggrieved Employee per pay period for the initial violation, and one hundred dollars (\$100) for
26 each Aggrieved Employee per pay period for each subsequent violation.

27 Violation of Labor Code § 1174.5

28 47. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required

1 every person employing labor in California to “[a]llow any member of the commission or the
2 employees of the Division of Labor Standards Enforcement free access to the place of business or
3 employment of the person to secure any information or make any investigation that they are
4 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
5 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
6 or papers of the person.”

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

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

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

24 51. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
25 willfully failed to keep adequate or accurate time records including wage statements and similar
26 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
27 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
28 under Labor Code section 1174.

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

Violation of Labor Code § 1197.1

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

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

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

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

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

11 Civil Penalties Under Labor Code § 2699

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

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

24 58. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
25 each of them, violated the Labor Code sections described herein, including, without limitation, for
26 the failure to: pay 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 of the employer, including "doing business as" names used, the name, address, and telephone

1 number of the workers' compensation insurance carrier, information regarding paid sick leave, and
2 other pertinent information required to be disclosed by Defendants under Labor Code section
3 2810.5, failing to provide Aggrieved Employees with the amount of paid sick leave required to be
4 provided pursuant to California and local laws.

5 59. Moreover, Aggrieved Employees within the State of California whom he seeks to
6 represent are entitled to an award of reasonable attorneys' fees and costs in connection with their
7 herein-described claims for civil penalties.

8 **REQUEST FOR JURY TRIAL**

9 60. Plaintiff hereby requests a trial by jury.

10 **PRAYER**

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

- 13 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
14 1174.5, 1197.1, and 2699;
15 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
16 210, 226.3, 558, 1174.5, 1197.1, and 2699;
17 C. Pre-judgment and post-judgment interest;
18 D. For costs of suit incurred herein; and
19 E. Such other and further relief as the Court deems just and proper.

20 Dated: April 26, 2024

BIBIYAN LAW GROUP, P.C.

21
22 BY: /s/ Michael E. Braud

23 DAVID D. BIBIYAN

24 JEFFREY D. KLEIN

MICHAEL E. BRAUD

25 Attorneys for Plaintiff ERNEST ABRAHAM
26 TURAY, as an aggrieved employee, and on
27 behalf of all other aggrieved employees under
28 the Labor Code Private Attorneys' General
Act of 2004,