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County of Alameda

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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 ALAMEDA

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

Plaintiff,

v.

SAMUEL HALE, LLC, a Florida limited
liability company; TWS FACILITY
SERVICES, INC., a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: **24CV074900**

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 FRANCISCO POROJ ALVAREZ, as an aggrieved employee, and on behalf of all
2 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 SAMUEL HALE,
7 LLC, a Florida limited liability company, and any of its respective subsidiaries or affiliated
8 companies within the State of California ("SAMUEL HALE"), and TWS FACILITY SERVICES,
9 INC., a California corporation, and any of its respective subsidiaries or affiliated companies within
10 the State of California ("TWS") (collectively, and with DOES 1 through 100, as further defined
11 below, "Defendants"), as a proxy of the Labor and Workforce Development Agency of the State of
12 California ("LWDA"), on behalf of all other current and former non-exempt employees of
13 Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to
14 the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203,
15 Labor Code section 226, Labor Code section 227.3, Labor Code section 245, *et seq.*, Labor Code
16 section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all other
17 employees of Defendants working within the Civil Penalty Period

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

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

28 4. Plaintiff is an "aggrieved employee" under PAGA, as Plaintiff was employed by

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

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

11 6. During the period beginning one (1) year preceding the provision of notice to the
12 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
13 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
14 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
15 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

16 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
17 on behalf of all other aggrieved current and former employees within the statutory period, to bring
18 a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section
19 2699.3 without asserting a claim to bring Plaintiff’s own claim for civil penalties under PAGA.
20 (*See, e.g., Balderas v. Fresh Start Harvesting, Inc.*) Specifically, Plaintiff does not seek to recover
21 Plaintiff’s 25% share of civil penalties for the particular Labor Code violations Plaintiff experienced.
22 Rather, this is a purely representative PAGA action wherein Plaintiff seeks to recover all civil
23 penalties for the Labor Code violations experienced by third-party aggrieved employees (Aggrieved
24 Employees) and the State of California’s 75% of the civil penalties for the Labor Code violations
25 Plaintiff experienced.

26 8. On or around February 6, 2024, Plaintiff provided written notice pursuant to Labor
27 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
28 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,

1 as well as by certified mail, with return receipt requested to Defendants, and each of them.

2 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
3 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
4 calendar days of the February 6, 2024, postmarked date of the herein-described notice sent by
5 Plaintiff to the LWDA and Defendants.

6 **PAGA REPRESENTATIVE ALLEGATIONS**

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

1 before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the
2 work unit; failing to follow the notice/disclosures procedures prior to any AWS election; and/or
3 failing to register an AWS election with the State of California, as required by Labor Code section
4 511 and applicable Wage Orders), to the detriment of Aggrieved Employees.

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

16 12. At all relevant times mentioned herein, Defendants had and have a policy or practice
17 of failing to provide Aggrieved Employees a thirty (30) minute uninterrupted, timely, and complete
18 meal period for days on which the employee worked in excess of five (5) and ten (10) hours per day
19 without being afforded uninterrupted, timely, and complete 30-minute meal periods or
20 compensation in lieu thereof including, without limitation, by interrupting meal periods; not
21 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 Aggrieved Employees paid, uninterrupted, timely, and complete rest periods of
28 at least ten (10) minutes per four (4) hours worked or major fractions thereof, or compensation in

1 lieu thereof, including, without limitation, by failing to provide rest periods all together; requiring
2 that they be bundled together and/or with meal periods; interrupting them; requiring that employees
3 carry cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion;
4 and not permitting employees to leave the premises; and/or otherwise requiring on-duty/on-call rest
5 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 Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned;
9 total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in
10 effect during the pay period and the corresponding number of hours worked at each hourly rate by
11 the employee; the legal name of the employer; and other such information as required by Labor
12 Code section 226, subdivision (a).

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

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

24 17. At all relevant times herein, Defendants had and have a policy or practice of failing
25 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
26 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
27 and applicable Wage Orders.
28

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

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

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

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

27 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
28 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge

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

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

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

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

27 **PARTIES**

28 **A. Plaintiff**

1 26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
2 is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-
3 exempt employee, with duties that included, but were not limited to, clean gym, kitchen, and tables.
4 Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately June 6,
5 2021 through approximately May 3, 2023.

6 **B. Defendants**

7 27. Plaintiff is informed and believes and based thereon alleges that defendant SAMUEL
8 HALE is, and at all times relevant hereto was, a limited liability company organized and existing
9 under and by virtue of the laws of the State of Florida and doing business in numerous counties
10 within the State of California, including, upon information and belief, the County of Alameda.

11 28. Plaintiff is informed and believes and based thereon alleges that defendant TWS is,
12 and at all times relevant hereto was, a corporate organized and existing under and by virtue of the
13 laws of the State of California and doing business in numerous counties within the State of
14 California, including the County of Alameda.

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

28 **JOINT LIABILITY ALLEGATIONS**

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

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

15 32. Plaintiff is informed and believes, and based thereon alleges, that despite the
16 formation of the purported corporate existence of SAMUEL HALE, TWS, and DOES 1 through 50,
17 inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same with DOES
18 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following
19 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 33. 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 34. 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 35. 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 36. 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 37. 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, Aggrieved Employees are
14 entitled to recover civil penalties for Defendants’ violations of Labor Code section 204, in the
15 amount of one hundred dollars (\$100) for each Aggrieved Employee for each initial violation per
16 employee, and two hundred dollars (\$200) for each Aggrieved Employee for each subsequent
17 violation in connection with each payment that was made in violation of Labor Code section 204.

18 Civil Penalties Under Labor Code § 226.3

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

26 39. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
27 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
28 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for

1 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
2 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

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

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

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

17 Violation of Labor Code § 558

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

- 22 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
23 pay period for which the employee was underpaid in addition to an amount sufficient
24 to recover underpaid wages;
- 25 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
26 employee for each pay period for which the employee was underpaid in addition to
27 an amount sufficient to recover underpaid wages;
- 28 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

44. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections described herein, including causing Aggrieved Employees not to: be paid with 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 employer, the name of the employer, including any “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.

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

Violation of Labor Code § 1174.5

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

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

48. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required every person employing labor in California to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable piece rate paid to, employees employed at the respective plants or establishments. These records

1 shall be kept in accordance with rules established for this purpose by the commission, but in any
2 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
3 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
4 earned.”

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

10 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
11 willfully failed to keep adequate or accurate time records including wage statements and similar
12 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
13 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
14 under Labor Code section 1174.

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

19 Violation of Labor Code § 1197.1

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

- 26 (1) For any initial violation that is intentionally committed, one hundred dollars
27 (\$100) for each underpaid employee for each pay period for which the
28 employee is underpaid. This amount shall be in addition to an amount

1 sufficient to recover underpaid wages, liquidated damages pursuant to Section
2 1194.2, and any applicable penalties imposed pursuant to Section 203.

3 (2) For each subsequent violation for the same specific offense, two hundred fifty
4 dollars (\$250) for each underpaid employee for each pay period for which the
5 employee is underpaid regardless of whether the initial violation is
6 intentionally committed. 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 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
10 Section 203, recovered pursuant to this section shall be paid to the affected
11 employee.”

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

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

25 Civil Penalties Under Labor Code § 2699

26 55. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
27 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
28 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or

1 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
2 action brought by an aggrieved employee on behalf of himself or herself and other current or former
3 employees pursuant to the procedures specified in Labor Code section 2699.3.

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

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

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

22 **REQUEST FOR JURY TRIAL**

23 59. Plaintiff hereby requests a trial by jury.

24 **PRAYER**

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

- 27 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
28 1174.5, 1197.1, and 2699;

- 1 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
2 210, 226.3, 558, 1174.5, 1197.1, and 2699;
3 C. Pre-judgment and post-judgment interest;
4 D. For costs of suit incurred herein; and
5 E. Such other and further relief as the Court deems just and proper.

6 Dated: April 26, 2024

BIBIYAN LAW GROUP, P.C.

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8
9 BY: /s/ Michael E. Braud

10 DAVID D. BIBIYAN

JEFFREY D. KLEIN

MICHAEL E. BRAUD

11 Attorneys for Plaintiff FRANCISCO POROJ
12 ALVAREZ, as an aggrieved employee, and on
13 behalf of all other aggrieved employees under
14 the Labor Code Private Attorneys' General
15 Act of 2004,
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