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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 FRESNO

DANIEL LUIS BELTRAN, as an aggrieved
employee, and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys' General Act of 2004,

Plaintiff,

v.

GAR BENNETT, LLC, a Delaware limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: [24CECG02597](#)

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 DANIEL LUIS BELTRAN, as an aggrieved employee, brings this Action under the
2 Labor Code Private Attorneys' General Act of 2004 ("PAGA") to collect civil penalties under
3 PAGA for all other aggrieved employees, and, in doing so, alleges 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 GAR BENNETT,
7 LLC, a Delaware limited liability company, and any of its respective subsidiaries or affiliated
8 companies within the State of California ("GAR") collectively, (and with DOES 1 through 100, as
9 further defined below, "Defendants"), as a proxy of the Labor and Workforce Development Agency
10 of the State of California ("LWDA"), on behalf of all other current and former non-exempt
11 employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as
12 it pertains to the alleged claims for failure to comply with Labor Code sections 96, 98.6, 200, 201,
13 202, 203, 204, 210, 226, 226.3, 227.3, 232, 232.5, 245, 246, 432, 432.3, 432.5, 432.7, 432.8, 1102.5,
14 1197.5, 1198.5, 1527, 3366, 3457, and 8397.4, on behalf of all employees of Defendants working
15 within the Civil Penalty Period (collectively, "Aggrieved Employees").

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

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

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

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

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, 201.3, 202, 203, 204, 210,
14 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, 246, 404, 432, 432.3, 432.5, 432.7,
15 432.8, 510, 512, 558, 1102.5, 1174, 1174.5, 11821.12, 1194, 1197, 1197.1, 1197.5, 1198.5, 1527,
16 2699, 2802, 2810.3, 2810.5, 3366, 3457, and 8397.4, among others, California Code of Regulations,
17 Title 8, Section 3395, Business and Professions Code sections 16600, 16700, and 17200,
18 Government Code section 12952, as well as applicable Wage Orders.

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

8. On or around March 12, 2024, Plaintiff provided written notice pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of them.

9. Plaintiff also provided Defendants, and each of them, with notice under Labor Code section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other's wage and hour violations under Labor Code section 2810.3 on March 12, 2024 by certified mail with return receipt requested.

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

PAGA REPRESENTATIVE ALLEGATIONS

11. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to remain on-call, to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked,

1 for paying straight pay instead of overtime pay to the detriment of Aggrieved Employees.

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

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

22 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
23 of failing to provide Aggrieved Employees paid, uninterrupted, timely, and complete rest periods of
24 at least ten (10) minutes per four (4) hours worked or major fractions thereof, or compensation in
25 lieu thereof, including, without limitation, by failing to provide rest periods all together; requiring
26 that they be bundled together and/or with meal periods; interrupting them; requiring that employees
27 carry cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion;
28 and not permitting employees to leave the premises; and/or otherwise requiring on-duty/on-call rest

1 periods as required by California wage and hour laws.

2 15. At all times relevant hereto, Defendants had and have a policy or practice of failing
3 to permit Aggrieved Employees from taking cooldown rest periods as required under California
4 Code of Regulations, Title 8, Section 3395, and have failed to pay premium pay in lieu thereof under
5 Labor Code section 226.7.

6 16. At all times relevant hereto, Defendants had and have a policy or practice of failing
7 to pay premium payments under Labor Code section 226.7 to Aggrieved Employees for non-
8 compliant meal periods and rest periods, as well as the failure to provide cooldown periods, at the
9 proper regular rate of pay in violation of Labor Code sections 512, 226.7, and applicable wage
10 orders.

11 17. At all times mentioned herein, Defendants had and have a policy or practice of
12 unlawfully deducting wages due, or to become due, or as an advance on wages to be earned; an
13 order, check, draft, note, memorandum, gift card, or other acknowledgment of indebtedness, (unless
14 it was negotiable and payable in cash, on demand, without discount, at some established place of
15 business in the state), the name and address of which must but did not appear on the instrument, and
16 at the time of its issuance and for a reasonable time thereafter, which must be but was not at least
17 30 days, the maker or drawer did not have sufficient funds in, or credit arrangement, or
18 understanding with the drawee for its payment of any scrip, coupon, or other thing redeemable, in
19 merchandise, or purporting to be payable or redeemable otherwise than in money. Plaintiff is further
20 informed and believes, and based thereon alleges that such wages were not compensated at the
21 “regular rate” of compensation as provided under Labor Code sections 226.7 and 510, subsection
22 (a).

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

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

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

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

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

18 22. At all relevant times mentioned herein, Defendants have had a policy or practice of
19 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
20 limitation, Aggrieved Employees, with their costs incurred for driving personal vehicles (*i.e.*,
21 mileage and gas), purchasing uniforms, including, without limitation, for steel-toe boots, non-slip
22 shoes, and other safety and/or personal protective equipment ("PPE"), providing uniform and other
23 deposits, separately laundering mandatory uniforms, for the purchase of tools, and for the purchase
24 and maintenance of cellular phones and cellular phone plans in direct consequence of the discharge
25 of their duties, or of their obedience to the directions of Defendants, as required by Labor Code
26 2802.

27 23. At all relevant times mentioned herein, Defendants have had a policy or practice of
28 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft

1 Protection Act of 2011) by, among other things, failing to provide Aggrieved Employees with the
2 rates of pay and overtime rates of pay applicable to their employment; allowances claimed as part
3 of the minimum wage; the regular payday designated by Defendants; the name, address, and
4 telephone number of the workers' compensation insurance carrier; information regarding paid sick
5 leave; and other pertinent information required to be disclosed by Defendants under Labor Code
6 section 2810.5.

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

11 25. At all relevant times mentioned herein, Defendants had or have a policy or practice
12 of failing to reimburse deposits made, including uniform deposits, together with all interest owed at
13 the separation of employment in violation of Labor Code section 404.

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

20 27. At all times mentioned herein, Defendants have had, and continue to have, a policy
21 of failing to provide all working employees with suitable seats when the nature of the work
22 reasonably permits the use of seats. Defendants have also failed to place an adequate number of
23 seats in reasonable proximity to the work area and/or permitted employees to use such seats when
24 it does not interfere with the performance of their duties and employees are not engaged in the active
25 duties of their employment, and the nature of their work requires standing.

26 28. At all times mentioned herein, Defendants have had, and continue to have, a policy
27 of failing to provide all temporary workers with owed wages weekly by not later than the regular
28 payday of the following week.

1 29. At all times mentioned herein, Defendants have had, and continue to have, a policy
2 of failing to provide adequate and readily accessible sanitation facilities; a regular schedule for
3 servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and
4 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or
5 blowers; and a sufficient number of toilets to be used by each sex of employee.

6 30. At all times mentioned herein, Defendants have had, and continue to have, a policy
7 of failing to conducting unlawful background checks on prospective and current employees prior to
8 making a conditional offer. Plaintiff is informed and believes, and based thereon alleges, that
9 Defendants violated applicable laws by, without limitation: requiring job applicants and employees
10 to disclose their conviction history before Defendants made a conditional offer of employment;
11 inquiring into or considering the conviction history of applicants before Defendants made any
12 conditional offers of employment; considering, distributing, or disseminating information about
13 arrests not followed by conviction, referrals to or participation in a pretrial or posttrial diversion
14 program, convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant
15 to law, or any conviction for which the convicted person has received a full pardon or has been
16 issued a certificate of rehabilitation, while conducting conviction history background checks in
17 connection with any applications for employment; intending to deny an applicant a position of
18 employment solely or in part because of the applicant's conviction history; and asking applicants
19 for employment to disclose, through any written form or verbally, information concerning or related
20 to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that
21 occurred while the person was subject to the process and jurisdiction of the juvenile court, to the
22 detriment of Aggrieved Employees

23 31. At all times mentioned herein, Defendants have had, and continue to have, a practice
24 or policy of relying on the salary history information of an applicant for employment as a factor in
25 determining whether to offer employment to an applicant or what salary to offer the applicant in
26 violation of Labor Code section 432.3 by including, on Defendants' application for employment, an
27 inquiry regarding current and/or former salary history information, including, without limitation,
28 compensation and benefits of the applicant for employment.

1 32. At all times mentioned herein, Defendants have had, and continue to have, a practice
2 or policy of requiring Aggrieved Employees to agree in writing to confidentiality policies that
3 unlawfully restrain trade by prohibiting Aggrieved Employees from speaking with prospective
4 employers about their work with Defendants, including but not limited to their wages and working
5 conditions. Defendants also required Aggrieved Employees to inform prospective employers of
6 Defendants' restrictions of Aggrieved Employees' freedom to work.

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

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

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

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

PARTIES

A. Plaintiff

37. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, automation technician, automating equipment in the fields, preparing orders, allocations, inventory and receiving. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately March of 2016 through approximately September of 2023.

B. Defendants

38. Plaintiff is informed and believes and based thereon alleges that Defendant GAR is, and at all times relevant hereto was, a limited liability company organized and existing under and by virtue of the laws of the State of Delaware and doing business in the County of Fresno, State of California.

39. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall

1 include GAR, and any of their parent, subsidiary, or affiliated companies within the State of
2 California, as well as DOES 1 through 100 identified herein.

3 **JOINT LIABILITY ALLEGATIONS**

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

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

18 42. Plaintiff is informed and believes, and based thereon alleges, that despite the
19 formation of the purported corporate existence of GAR, and DOES 1 through 50, inclusive (the
20 “Alter Ego Defendants”), they, and each of them, are one and the same with DOES 51 through 100
21 (“Individual Defendants”), and each of them, due to, but not limited to, the following reasons:

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

27 b. The Individual Defendants derive actual and significant monetary benefits by
28 and through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego Defendants as

1 the funding source for the Individual Defendants' own personal expenditures;

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

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

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

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

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

24 **FIRST CAUSE OF ACTION**

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

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

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1 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal
2 entity securing the employer's services if the employer is a farm labor contractor; and other such
3 information as required by Labor Code section 226, subdivision (a).

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

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

11 52. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
12 and have a policy or practice of failing to furnish Aggrieved Employees with itemized wage
13 statements that accurately reflect gross wages earned; total hours worked; net wages earned; all
14 deductions; all applicable hourly rates in effect and the corresponding number of hours worked at
15 each hourly rate in effect during the pay period; the legal name of the employer and/or the name and
16 address of the legal entity securing the employer's services if the employer is a farm labor contractor;
17 and other such information as required by Labor Code section 226, subdivision (a).

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

23 54. Plaintiff does not seek to recover Plaintiff's 25% share of civil penalties for the
24 particular Labor Code violation(s) that Plaintiff experienced.

25 Violation of Labor Code § 558

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

1 penalty as follows:

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

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

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

21 58. Plaintiff does not seek to recover Plaintiff’s 25% share of civil penalties for the
22 particular Labor Code violation(s) that Plaintiff experienced.

23 Violation of Labor Code § 1174.5

24 59. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
25 every person employing labor in California to “[a]llow any member of the commission or the
26 employees of the Division of Labor Standards Enforcement free access to the place of business or
27 employment of the person to secure any information or make any investigation that they are
28 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,

1 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
2 or papers of the person.”

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

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

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

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

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

1 65. Plaintiff does not seek to recover Plaintiff's 25% share of civil penalties for the
2 particular Labor Code violation(s) that Plaintiff experienced.

3 Violation of Labor Code § 1197.1

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

- 10 (1) For any initial violation that is intentionally committed, one hundred dollars
11 (\$100) for each underpaid employee for each pay period for which the
12 employee is underpaid. This amount shall be in addition to an amount
13 sufficient to recover underpaid wages, liquidated damages pursuant to Section
14 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 15 (2) For each subsequent violation for the same specific offense, two hundred fifty
16 dollars (\$250) for each underpaid employee for each pay period for which the
17 employee is underpaid regardless of whether the initial violation is
18 intentionally committed. This amount shall be in addition to an amount
19 sufficient to recover underpaid wages, liquidated damages pursuant to Section
20 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 21 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
22 Section 203, recovered pursuant to this section shall be paid to the affected
23 employee."

24 67. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
25 Aggrieved Employees not to be paid minimum wages as a result of Defendants, without limitation,
26 routinely failing to pay Aggrieved Employees' minimum wages for all hours worked or otherwise
27 under Defendants' control due to, without limitation, routinely failing to accurately track and/or pay
28 for all hours actually worked; detrimental rounding or manipulation of time entries; paying straight

1 pay instead of overtime or otherwise failing to pay overtime hours at the proper overtime rate of
2 pay; engaging, suffering, or permitting employees to work off the clock, entitling Plaintiff and other
3 Aggrieved Employees to actual and liquidated damages.

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

9 69. Plaintiff does not seek to recover Plaintiff's 25% share of civil penalties for the
10 particular Labor Code violation(s) that Plaintiff experienced.

11 Civil Penalties Under Labor Code § 2699

12 70. 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 71. 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 72. 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 73. Moreover, Aggrieved Employees within the State of California are entitled to an
6 award of reasonable attorneys' fees and costs in connection with their herein-described claims for
7 civil penalties.

8 74. Plaintiff does not seek to recover Plaintiff's 25% share of civil penalties for the
9 particular Labor Code violation(s) that Plaintiff experienced.

10 **PRAYER**

11 **WHEREFORE**, on behalf of Aggrieved Employees, Plaintiff prays for judgment against
12 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 for all Aggrieved Employees aside from Plaintiff;
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: June 11, 2024

BIBIYAN LAW GROUP, P.C.

21
22 BY: /s/ Katherine Willis

23 DAVID D. BIBIYAN

24 JEFFREY D. KLEIN

KATHERINE WILLIS

25 Attorneys for Plaintiff DANIEL LUIS
26 BELTRAN, as an aggrieved employee on
27 behalf of all other aggrieved employees under
28 the Labor Code Private Attorneys' General
Act of 2004