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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

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

Plaintiff,

v.

HOME EXPRESS DELIVERY SERVICE,
LLC., a California limited liability company;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: **24STCV15753**

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 VINCENT RAGLIN JR., 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 HOME EXPRESS
7 DELIVERY SERVICE, LLC., a California limited liability company, and any of its respective
8 subsidiaries or affiliated companies within the State of California ("HOME EXPRESS"),
9 (collectively, and with DOES 1 through 100, as further defined below, "Defendants"), as a proxy of
10 the Labor and Workforce Development Agency of the State of California ("LWDA"), on behalf of
11 all other current and former non-exempt employees of Defendants working within the Civil Penalty
12 Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with
13 Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 227.3, 232, 232.5, 245, 246,
14 432, 432.3, 432.5, 432.7, 432.8, 1102.5, 1197.5, 1198.5, 1527, 3366, 3457, and 8397.4, on behalf
15 of all employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved
16 Employees").

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

19 3. Venue is proper in Los Angeles County, California pursuant to Code of Civil
20 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the
21 causes of action complained of herein arose; the county in which the employment relationship
22 began; the county in which performance of the employment contract, or part of it, between Plaintiff
23 and Defendants was due to be performed; the county in which the employment contract, or part of
24 it, between Plaintiff and Defendants was actually performed; and the county in which Defendants,
25 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff
26 and Aggrieved Employees in Los Angeles County, and because Defendants employ numerous
27 Aggrieved Employees in Los Angeles 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 all other aggrieved current and former employees of
6 Defendants during the Civil Penalty Period. Plaintiff does not seek to assert his own claim for civil
7 penalties under PAGA as part of this Action.

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

12 6. During the period beginning one (1) year preceding the provision of notice to the
13 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
14 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 201.3, 202, 203, 204, 210,
15 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, 246, 404, 432, 432.3, 432.5, 432.7,
16 432.8, 510, 512, 558, 1102.5, 1174, 1174.5, 11821.12, 1194, 1197, 1197.1, 1197.5, 1198.5, 1527,
17 2699, 2802, 2810.5, 3366, 3457, and 8397.4, among others, California Code of Regulations, Title
18 8, Section 3395, Business and Professions Code sections 16600, 16700, and 17200, Government
19 Code section 12952, as well as applicable Wage Orders.

20 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
21 on behalf of all other aggrieved current and former employees within the statutory period, to bring
22 a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section
23 2699.3 without asserting a claim to bring Plaintiff’s own claim for civil penalties under PAGA.
24 (*See, e.g., Balderas v. Fresh Start Harvesting, Inc.*)

25 8. On or around April 19, 2024, Plaintiff provided written notice pursuant to Labor
26 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
27 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
28 as well as by certified mail, with return receipt requested to Defendants, and each of them.

1 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
2 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
3 calendar days of the April 19, 2024 postmarked date of the herein-described notice sent by Plaintiff
4 to the LWDA and Defendants.

5 **PAGA REPRESENTATIVE ALLEGATIONS**

6 10. At all relevant times mentioned herein, Defendants had and have a policy or practice
7 of failing to pay overtime wages to Aggrieved Employees in the State of California in violation of
8 California state wage and hour laws as a result of, without limitation, Aggrieved Employees working
9 over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a
10 workweek without paying them proper overtime wages, as a result of, without limitation, failing to
11 accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting
12 employees to work off the clock, including, without limitation, by requiring employees: to come
13 early to work and leave late work without being able to clock in for all that time, to suffer under
14 Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in
15 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
16 out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend
17 company meetings off the clock, to make phone calls or drive off the clock, and/or go through
18 security screenings and/or temperature checks off the clock; failing to include all forms of
19 remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask
20 allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay periods
21 where overtime was worked and the additional compensation was earned for the purpose of
22 calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or
23 manipulation of time entries to show less hours than actually worked, for paying straight pay instead
24 of overtime pay, and by attempting but failing to properly implement an alternative workweek
25 schedule ("AWS") (including, without limitation, by failing to implement a written agreement
26 designating the regularly scheduled alternative workweek in which the specified number of work
27 days and work hours are regularly recurring; failing to adopt the AWS in a secret ballot election,
28 before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the

1 work unit; failing to follow the notice/disclosures procedures prior to any AWS election; and/or
2 failing to register an AWS election with the State of California, as required by Labor Code section
3 511 and applicable Wage Orders), to the detriment of Aggrieved Employees.

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

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

25 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
26 of failing to provide Aggrieved Employees paid, uninterrupted, timely, and complete rest periods of
27 at least ten (10) minutes per four (4) hours worked or major fractions thereof, or compensation in
28 lieu thereof, including, without limitation, by failing to provide rest periods all together; requiring

1 that they be bundled together and/or with meal periods; interrupting them; requiring that employees
2 carry cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion;
3 and not permitting employees to leave the premises; and/or otherwise requiring on-duty/on-call rest
4 periods, as required by California wage and hour laws.

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

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

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

26 17. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
28 Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned;

1 total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in
2 effect during the pay period and the corresponding number of hours worked at each hourly rate by
3 the employee; the legal name of the employer and/or the name and address of the legal entity
4 securing the employer's services if the employer is a farm labor contractor; and other such
5 information as required by Labor Code section 226, subdivision (a).

6 18. 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 documents signed to obtain or hold employment under Labor Code
9 section 432, personnel records under Labor Code section 1198.5, and time records under Labor
10 Code section 1174, making it difficult for Aggrieved Employees to calculate their unpaid wages
11 and/or premium payments, to the detriment of Aggrieved Employees.

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

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

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

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

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

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

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

22 26. At all times mentioned herein, Defendants have had, and continue to have, a policy
23 of failing to provide all working employees with suitable seats when the nature of the work
24 reasonably permits the use of seats. Defendants have also failed to place an adequate number of
25 seats in reasonable proximity to the work area and/or permitted employees to use such seats when
26 it does not interfere with the performance of their duties and employees are not engaged in the active
27 duties of their employment, and the nature of their work requires standing.
28

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

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

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

26 30. At all times mentioned herein, Defendants have had, and continue to have, a practice
27 or policy of relying on the salary history information of an applicant for employment as a factor in
28 determining whether to offer employment to an applicant or what salary to offer the applicant in

1 violation of Labor Code section 432.3 by including, on Defendants' application for employment, an
2 inquiry regarding current and/or former salary history information, including, without limitation,
3 compensation and benefits of the applicant for employment.

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

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

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

26 34. Defendants had and have a policy or practice of preventing Aggrieved Employees
27 from engaging in lawful conduct during non-work hours, thus violating state statutes entitling
28 employees to disclose wages, working conditions, and illegal conduct, including, without limitation,

1 Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5, subdivision (k). Plaintiff is
2 informed and believes that this lawful conduct includes the exercise of Aggrieved Employee's
3 constitutional rights of freedom of speech and economic liberty.

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

8 **PARTIES**

9 **A. Plaintiff**

10 36. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
11 is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-
12 exempt employee, with duties that included, but were not limited to, loading appliances on trucks,
13 driving appliances to customer homes, and offloading and installing appliances. Plaintiff is
14 informed and believes that Plaintiff worked for Defendants from approximately April of 2023
15 through to the present.

16 **B. Defendants**

17 37. Plaintiff is informed and believes and based thereon alleges that defendant HOME
18 EXPRESS is, and at all times relevant hereto was, a limited liability company organized and existing
19 under and by virtue of the laws of the State of California and doing business in the County of Los
20 Angeles, State of California.

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

1 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
2 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
3 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
4 include HOME EXPRESS, and any of their parent, subsidiary, or affiliated companies within the
5 State of California, as well as DOES 1 through 100 identified herein.

6 **JOINT LIABILITY ALLEGATIONS**

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

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

21 41. Plaintiff is informed and believes, and based thereon alleges, that despite the
22 formation of the purported corporate existence of HOME EXPRESS, and DOES 1 through 50,
23 inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same with DOES
24 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following
25 reasons:

26 a. The Alter Ego Defendants are completely dominated and controlled by the
27 Individual Defendants who personally committed the wrongful and illegal acts and violated the laws
28 as set forth in this Complaint, and who have hidden and currently hide behind the Alter Ego

Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or inequitable purpose;

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

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

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

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

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

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

FIRST CAUSE OF ACTION

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

2 43. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
3 preceding paragraphs as though fully set forth hereat.

4 Civil Penalties Under Labor Code § 210

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

10 45. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
11 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
12 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
13 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
14 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
15 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
16 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

24 Civil Penalties Under Labor Code § 226.3

25 47. Defendants had and have a policy or practice of failing to comply with Labor Code
26 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
27 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
28 wages earned; the name and address of each employer with whom they have been placed to work;

1 all applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal
3 entity securing the employer's services if the employer is a farm labor contractor; and other such
4 information as required by Labor Code section 226, subdivision (a).

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

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

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

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

24 Violation of Labor Code § 558

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

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

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

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

20 Violation of Labor Code § 1174.5

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

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

1 every person employing labor in California to “[k]eep a record showing the names and addresses of
2 all employees employed and the ages of all minors.”

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

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

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

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

26 Violation of Labor Code § 1197.1

27 61. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
28 person acting either individually or as an officer, agent, or employee of another person, who pays

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

5 (1) For any initial violation that is intentionally committed, one hundred dollars
6 (\$100) for each underpaid employee for each pay period for which the
7 employee is underpaid. This amount shall be in addition to an amount
8 sufficient to recover underpaid wages, liquidated damages pursuant to Section
9 1194.2, and any applicable penalties imposed pursuant to Section 203.

10 (2) For each subsequent violation for the same specific offense, two hundred fifty
11 dollars (\$250) for each underpaid employee for each pay period for which the
12 employee is underpaid regardless of whether the initial violation is
13 intentionally committed. This amount shall be in addition to an amount
14 sufficient to recover underpaid wages, liquidated damages pursuant to Section
15 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

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

27 63. As a direct and proximate result of the herein-described Labor Code violations,
28 pursuant to Labor Code section 1197.1, Aggrieved Employees are entitled to recover civil penalties

1 for Defendants' herein-described Labor Code violations in the amount one hundred dollars (\$100)
2 for each Aggrieved Employee per pay period for the initial violation, and two hundred and fifty
3 dollars (\$250) for each Aggrieved Employee per pay period for each subsequent violation.

4 Civil Penalties Under Labor Code § 2699

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

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

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

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

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