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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 RIVERSIDE**

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

Plaintiff,

v.

LMS REINFORCING STEEL USA, LP, a  
Texas limited liability company; RICK  
BAGLEY, an individual; and DOES 1 through  
100, inclusive,

Defendants.

CASE NO.: **CVRI 2403230**

**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 JOSE CANGAS, as an aggrieved employee, brings this Action under the Labor  
2 Code Private Attorneys' General Act of 2004 ("PAGA") to collect civil penalties under PAGA for  
3 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 LMS Reinforcing Steel  
7 USA, LP, a Texas limited liability company, and any of its respective subsidiaries or affiliated  
8 companies within the State of California ("LMS"), and Rick Bagley, an individual ("Bagley")  
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 Riverside County, California pursuant to Code of Civil Procedure  
20 sections 392, *et seq.* because, among other things, Riverside County is where the causes of action  
21 complained of herein arose; the county in which the employment relationship began; the county in  
22 which performance of the employment contract, or part of it, between Plaintiff and Defendants was  
23 due to be performed; the county in which the employment contract, or part of it, between Plaintiff  
24 and Defendants was actually performed; and the county in which Defendants, or some of them,  
25 reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Aggrieved  
26 Employees in Riverside County, and because Defendants employ numerous Aggrieved Employees  
27 in Riverside County.

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

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

13           6.           During the period beginning one (1) year preceding the provision of notice to the  
14 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),  
15 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 201.3, 202, 203, 204, 210,  
16 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, 246, 404, 432, 432.3, 432.5, 432.7,  
17 432.8, 510, 512, 558, 1102.5, 1174, 1174.5, 11821.12, 1194, 1197, 1197.1, 1197.5, 1198.5, 1527,  
18 2699, 2802, 2810.3, 2810.5, 3366, 3457, and 8397.4, among others, California Code of Regulations,  
19 Title 8, Section 3395, Business and Professions Code sections 16600, 16700, and 17200,  
20 Government Code section 12952, as well as applicable Wage Orders.

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

1 Employees) and the State of California's 75% of the civil penalties for the Labor Code violations  
2 Plaintiff experienced.

3 8. On or around April 17, 2024, Plaintiff provided written notice pursuant to Labor  
4 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'  
5 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,  
6 as well as by certified mail, with return receipt requested to Defendants, and each of them.

7 9. Plaintiff also provided Defendants, and each of them, with notice under Labor Code  
8 section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other's wage  
9 and hour violations under Labor Code section 2810.3 on April 17, 2024 by certified mail with return  
10 receipt requested.

11 10. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not  
12 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)  
13 calendar days of the April 17, 2024 postmarked date of the herein-described notice sent by Plaintiff  
14 to the LWDA and Defendants.

15 **PAGA REPRESENTATIVE ALLEGATIONS**

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

1 was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee  
2 time entries, editing and/or manipulation of time entries to show less hours than actually worked,  
3 for paying straight pay instead of overtime pay to the detriment of Aggrieved Employees.

4 12. 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 remain on-call;  
8 to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift  
9 tasks after clocking out, to clock out for meal periods and continue working, to don and doff  
10 uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make  
11 phone calls or drive off the clock; detrimental rounding of employee time entries, editing and/or  
12 manipulation of time entries to show less hours than actually worked; failing to pay reporting time  
13 pay; paid time off and vacation time owed to the detriment of Aggrieved Employees.

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

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

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

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

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

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

25 18. At all relevant times mentioned herein, Defendants had and have a policy or practice  
26 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish  
27 Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned;  
28 total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in

1 effect during the pay period and the corresponding number of hours worked at each hourly rate by  
2 the employee; the legal name of the employer and/or the name and address of the legal entity  
3 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 19. At all relevant times mentioned herein, Defendants had and have a policy or practice  
6 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish  
7 Aggrieved Employees with documents signed to obtain or hold employment under Labor Code  
8 section 432, personnel records under Labor Code section 1198.5, and time records under Labor  
9 Code section 1174, making it difficult for Aggrieved Employees to calculate their unpaid wages  
10 and/or premium payments, to the detriment of Aggrieved Employees.

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

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

20 22. At all relevant times mentioned herein, Defendants have had a policy or practice of  
21 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without  
22 limitation, Aggrieved Employees, with their costs incurred for driving personal vehicles (*i.e.*,  
23 mileage and gas), purchasing uniforms, including, without limitation, for steel-toe boots, non-slip  
24 shoes, and other safety and/or personal protective equipment ("PPE"), providing uniform and other  
25 deposits, separately laundering mandatory uniforms, for the purchase of tools, and for the purchase  
26 and maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge  
27 of their duties, or of their obedience to the directions of Defendants, as required by Labor Code  
28 2802.

1       23.       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       24.       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       25.       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       26.       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       27.       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       28.       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       29.       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       30.       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       31.       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 32. 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 33. 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 34. 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 35. 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 36. 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 37. Plaintiff Jose Cangas is a resident of the State of California. At all relevant times  
11 herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants employed  
12 Plaintiff as a non-exempt employee, with duties that included, but were not limited to, installing,  
13 moving, and loading steel. Plaintiff is informed and believes that Plaintiff worked for Defendants  
14 from approximately April of 2019 through at least November of 2023.

### 15 **B. Defendants**

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

20 39. Plaintiff is informed and believes and based thereon alleges that Defendant Bagley  
21 is, and at all times relevant hereto, was an individual residing in California, as well as Plaintiff's  
22 Supervisor, and DOES 1 through 100, as further defined below.

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

1 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is  
2 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent  
3 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or  
4 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the  
5 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall  
6 include LMS, Bagley, and any of their parent, subsidiary, or affiliated companies within the State  
7 of California, as well as DOES 1 through 100 identified herein.

### 8 **JOINT LIABILITY ALLEGATIONS**

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

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

23 43. Plaintiff is informed and believes, and based thereon alleges, that despite the  
24 formation of the purported corporate existence of LMS, Bagley, and DOES 1 through 50, inclusive  
25 (the “Alter Ego Defendants”), they, and each of them, are one and the same with DOES 51 through  
26 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following reasons:

27 a. The Alter Ego Defendants are completely dominated and controlled by the  
28 Individual Defendants who personally committed the wrongful and illegal acts and violated the laws

1 as set forth in this Complaint, and who have hidden and currently hide behind the Alter Ego  
2 Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or  
3 inequitable purpose;

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

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

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

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

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

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

1 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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Civil Penalties Under Labor Code § 226.3

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

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

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

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

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

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

### Violation of Labor Code § 558

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

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

57. 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.

58. 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.

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

Violation of Labor Code § 1174.5

60. 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.”

61. 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.”

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

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

64. Plaintiff is informed and believes, and based thereon alleges, that Defendants have willfully failed to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment

1 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records  
2 under Labor Code section 1174.

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

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

9 Violation of Labor Code § 1197.1

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

16 (1) For any initial violation that is intentionally committed, one hundred dollars  
17 (\$100) for each underpaid employee for each pay period for which the  
18 employee is underpaid. 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 (2) For each subsequent violation for the same specific offense, two hundred fifty  
22 dollars (\$250) for each underpaid employee for each pay period for which the  
23 employee is underpaid regardless of whether the initial violation is  
24 intentionally committed. This amount shall be in addition to an amount  
25 sufficient to recover underpaid wages, liquidated damages pursuant to Section  
26 1194.2, and any applicable penalties imposed pursuant to Section 203.

27 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to  
28 Section 203, recovered pursuant to this section shall be paid to the affected

1 employee.”

2 68. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused  
3 Aggrieved Employees not to be paid minimum wages as a result of Defendants, without limitation,  
4 routinely failing to pay Aggrieved Employees’ minimum wages for all hours worked or otherwise  
5 under Defendants’ control due to, without limitation, routinely failing to accurately track and/or pay  
6 for all hours actually worked; detrimental rounding or manipulation of time entries; paying straight  
7 pay instead of overtime or otherwise failing to pay overtime hours at the proper overtime rate of  
8 pay; engaging, suffering, or permitting employees to work off the clock, entitling Plaintiff and other  
9 Aggrieved Employees to actual and liquidated damages.

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

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

17 Civil Penalties Under Labor Code § 2699

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

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

1 employee per pay period for each subsequent violation.

2 73. Plaintiff is informed and believes, and based thereon alleges that Defendants, and  
3 each of them, violated the Labor Code sections described herein, including, without limitation, for  
4 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,  
5 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the  
6 name of the employer, including “doing business as” names used, the name, address, and telephone  
7 number of the workers’ compensation insurance carrier, information regarding paid sick leave, and  
8 other pertinent information required to be disclosed by Defendants under Labor Code section  
9 2810.5, failing to provide Aggrieved Employees with the amount of paid sick leave required to be  
10 provided pursuant to California and local laws.

11 74. Moreover, Aggrieved Employees within the State of California are entitled to an  
12 award of reasonable attorneys’ fees and costs in connection with their herein-described claims for  
13 civil penalties.

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

16 **PRAYER**

17 **WHEREFORE**, on behalf of Aggrieved Employees, Plaintiff prays for judgment against  
18 Defendants as follows:

- 19 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,  
20 1174.5, 1197.1, and 2699 for all Aggrieved Employees aside from Plaintiff;  
21 B. An award of reasonable attorneys’ fees and costs pursuant to Labor Code sections  
22 210, 226.3, 558, 1174.5, 1197.1, and 2699;  
23 C. Pre-judgment and post-judgment interest;  
24 D. For costs of suit incurred herein; and

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E. Such other and further relief as the Court deems just and proper.

Dated: June 11, 2024

BIBIYAN LAW GROUP, P.C.

BY: /s/ Katherine Willis

DAVID D. BIBIYAN

JEFFREY D. KLEIN

KATHERINE WILLIS

Attorneys for Plaintiff JOSE CANGAS, as an  
aggrieved employee on behalf of all other  
aggrieved employees under the Labor Code  
Private Attorneys' General Act of 2004