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as an aggrieved employee, and on behalf of all other
aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

Attorneys for Plaintiff, Crystal Rotaru,
as an aggrieved employee, and on behalf of
all other aggrieved employees

Plaintiff,

v.

BLOWER-DEMPSAY CORPORATION, a
California Corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: **24CV089741**

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

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

18 3. This action is brought pursuant to PAGA. The civil penalties sought by Plaintiff
19 exceed the minimal jurisdiction limits of the Superior Court and will be established according to
20 proof at trial.

21 4. This Court has jurisdiction over this action pursuant to California Constitution,
22 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
23 those given by statute to other courts. The statutes under which this action is brought do not specify
24 any other basis for jurisdiction.

25 5. This Court has jurisdiction over all Defendants because, upon information and belief,
26 each party has sufficient minimum contacts in California, or otherwise intentionally avails itself of
27 California law so as to render the exercise of jurisdiction over it by the California courts consistent
28 with traditional notions of fair play and substantial justice.

1 6. Venue is proper in this Court because, upon information and belief, the named
2 Defendants transact business and/or have offices in this county, and the acts and omissions alleged
3 herein took place in this county. Moreover, this action is brought on behalf of the State of California
4 as a private attorney general and has jurisdiction in this venue.

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

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

17 9. During the period beginning one (1) year preceding the provision of notice to the
18 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
19 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 201.3, 202, 203, 204, 210,
20 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, 246, 404, 432, 432.3, 432.5, 432.7,
21 432.8, 510, 512, 558, 1102.5, 1174, 1174.5, 11821.12, 1194, 1197, 1197.1, 1197.5, 1198.5, 1527,
22 2699, 2802, 2810.5, 3366, 3457, and 8397.4, among others, California Code of Regulations, Title
23 8, Section 3395, Business and Professions Code sections 16600, 16700, and 17200, Government
24 Code section 12952, as well as applicable Wage Orders.

25 10. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
26 on behalf of all other aggrieved current and former employees within the statutory period, to bring
27 a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section
28 2699.3 without asserting a claim to bring Plaintiff’s own claim for civil penalties under PAGA.

1 (See, e.g., *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533.) Specifically,
2 Plaintiff does not seek to recover Plaintiff's 25% share of civil penalties for the particular Labor
3 Code violations Plaintiff experienced. Rather, this is a purely representative PAGA action wherein
4 Plaintiff seeks to recover all civil penalties for the Labor Code violations experienced by third-party
5 aggrieved employees (Aggrieved Employees) and the State of California's 75% of the civil penalties
6 for the Labor Code violations Plaintiff experienced.

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

11 12. Plaintiff also provided Defendants, and each of them, with notice under Labor Code
12 section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other's wage
13 and hour violations under Labor Code section 2810.3 on June 4, 2024 by certified mail with return
14 receipt requested.

15 13. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
16 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
17 calendar days of the August 8, 2024, postmarked date of the herein-described notice sent by Plaintiff
18 to the LWDA and Defendants.

19 **PAGA REPRESENTATIVE ALLEGATIONS**

20 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
21 of failing to pay overtime wages to Aggrieved Employees in the State of California in violation of
22 California state wage and hour laws as a result of, without limitation, Aggrieved Employees working
23 over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a
24 workweek without paying them proper overtime wages, as a result of, without limitation, failing to
25 accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting
26 employees to work off the clock, including, without limitation, by requiring employees: to come
27 early to work and leave late work without being able to clock in for all that time, to suffer under
28 Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in

1 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
2 out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend
3 company meetings off the clock, to make phone calls or drive off the clock, and/or go through
4 security screenings and/or temperature checks off the clock; failing to include all forms of
5 remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask
6 allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay periods
7 where overtime was worked and the additional compensation was earned for the purpose of
8 calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or
9 manipulation of time entries to show less hours than actually worked, for paying straight pay instead
10 of overtime pay, and by attempting but failing to properly implement an alternative workweek
11 schedule (“AWS”) (including, without limitation, by failing to implement a written agreement
12 designating the regularly scheduled alternative workweek in which the specified number of work
13 days and work hours are regularly recurring; failing to adopt the AWS in a secret ballot election,
14 before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the
15 work unit; failing to follow the notice/disclosures procedures prior to any AWS election; and/or
16 failing to register an AWS election with the State of California, as required by Labor Code section
17 511 and applicable Wage Orders) all to the detriment of Employee and other aggrieved employees.
18 Consequently, Employee is informed and believes, and based thereon alleges, that Employer
19 violated Labor Code sections 510, 1194, and applicable Wage Orders based on its practice of
20 providing total compensation that is less than the required legal overtime compensation for the
21 overtime worked, entitling Employee and other aggrieved employees to damages, to the detriment
22 of Aggrieved Employees.

23 15. At all relevant times mentioned herein, Defendants had and have a practice or policy
24 of failing to compensate Aggrieved Employees with minimum wages for all hours Aggrieved
25 Employees worked or were otherwise under Defendants’ control as a result of, without limitation,
26 failing to accurately track and/or pay for all minutes actually worked; by requiring Aggrieved
27 Employees: to come early to work and leave late work without being able to clock in for all that
28 time, to suffer under Employer’s control due to long lines for clocking in, to complete pre-shift tasks

1 before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
2 working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the
3 clock, to attend company meetings off the clock, to make phone calls or drive off the clock;
4 detrimental rounding of employee time entries; editing and/or manipulation of time entries to show
5 less hours than actually worked; and failing to pay split shift premiums. In addition, aggrieved
6 employees were required to report to work, and did report, but were not put to work and/or were
7 furnished less than half their usual or scheduled day's work without being paid for half the usual or
8 scheduled work at their regular rate of pay, to the detriment of Aggrieved Employees.

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

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

27 18. At all times relevant hereto, Defendants had and have a policy or practice of failing
28 to permit Aggrieved Employees from taking cooldown rest periods as required under California

1 Code of Regulations, Title 8, Section 3395, and have failed to pay premium pay in lieu thereof under
2 Labor Code section 226.7.

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

8 20. At all times mentioned herein, Defendants had and have a policy or practice of
9 issuing payment of wages due, or to become due, or as an advance on wages to be earned: (1) an
10 order, check, draft, note, memorandum, gift card, or other acknowledgment of indebtedness, which
11 was not negotiable and payable in cash, on demand, without discount, at some established place of
12 business in the state; and/or upon which the name and address did not appear on the instrument;
13 and/or at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days,
14 the maker or drawer did not have sufficient funds in, or credit, arrangement, or understanding with
15 the drawee for its payment and/or (2) any scrip, coupon, or other thing redeemable, in merchandise,
16 or purporting to be payable or redeemable otherwise than in money. Plaintiff is further informed
17 and believes, and based thereon alleges that such wages were not compensated at the “regular rate”
18 of compensation as provided under Labor Code sections 226.7 and 510, subsection (a).

19 21. At all relevant times mentioned herein, Defendants had and have a policy or practice
20 of failing to comply with Labor Code section 226, subdivision (a), by intentionally failing to furnish
21 Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned;
22 total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in
23 effect during the pay period and the corresponding number of hours worked at each hourly rate by
24 the employee; the legal name of the employer and/or the name and address of the legal entity
25 securing the employer’s services if the employer is a farm labor contractor; and other such
26 information as required by Labor Code section 226, subdivision (a).

27 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
28 of failing to comply with Labor Code section 226, subdivision (a), by intentionally failing to furnish

1 Aggrieved Employees with documents signed to obtain or hold employment under Labor Code
2 section 432, personnel records under Labor Code section 1198.5, and time records under Labor
3 Code section 1174, making it difficult for Aggrieved Employees to calculate their unpaid wages
4 and/or premium payments, to the detriment of Aggrieved Employees.

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

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

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

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

1 leave; and other pertinent information required to be disclosed by Defendants under Labor Code
2 section 2810.5.

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

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

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

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

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

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

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

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

26 35. At all times mentioned herein, Defendants have had, and continue to have, a practice
27 or policy of requiring Aggrieved Employees to agree in writing to confidentiality policies that
28 unlawfully restrain trade by prohibiting Aggrieved Employees from speaking with prospective

1 employers about their work with Defendants, including, but not limited to, their wages and working
2 conditions. Defendants also required Aggrieved Employees to inform prospective employers of
3 Defendants' restrictions of Aggrieved Employees' freedom to work.

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

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

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

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

3 **PARTIES**

4 **A. Plaintiff**

5 40. Plaintiff CRYSTAL ROTARU is a resident of the State of California. At all relevant
6 times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to,
8 entering orders from customers into the computer system. Plaintiff is informed and believes, and
9 based thereon alleges, that Plaintiff CRYSTAL ROTARU worked for Defendants from
10 approximately October of 2022 through approximately June of 2023.

11 **B. Defendants**

12 41. Plaintiff is informed and believes and based thereon alleges that defendant Blower-
13 Dempsay Corporation is, and at all times relevant hereto was, a corporation organized and existing
14 under and by virtue of the laws of the State of California and doing business in the County of Orange,
15 State of California. At all relevant times herein, Blower-Dempsay Corporation employed Plaintiff
16 and similarly situated employees within the State of California.

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

1 well as DOES 1 through 100 identified herein.

2 **JOINT LIABILITY ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

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

3 47. 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 48. At all relevant times herein, Labor Code section 204, requires and required that:
7 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
8 between the 16th and 26th day of the month during which the labor was performed, and labor
9 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
10 between the 1st and 10th day of the following month.”

11 49. At all relevant times herein, Labor Code section 210, subdivision (a), states and
12 stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in
13 this 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 50. 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 51. 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

52. 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).

53. 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."

54. 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."

55. 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).

56. 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.

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

3 Violation of Labor Code § 558

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

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

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

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

15 59. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
16 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
17 failing to provide written notice in the language Defendant normally uses to communicate
18 employment-related information to the employee, containing the following information: pay the
19 rates of pay and overtime rates of pay applicable to their employment; allowances claimed as part
20 of the minimum wage; the regular payday designated by Defendants; Defendants' name(s),
21 including "doing business as" names used; the name, address, and telephone number of the workers'
22 compensation insurance carrier; information regarding paid sick leave; and other pertinent
23 information required to be disclosed by Defendants.

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

61. 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

62. 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.”

63. 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.”

64. 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.”

65. 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).

66. Plaintiff is informed and believes, and based thereon alleges, that Defendants have

1 willfully failed to keep adequate or accurate time records including wage statements and similar
2 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
3 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
4 under Labor Code section 1174.

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

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

11 Violation of Labor Code § 1197.1

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

18 (1) For any initial violation that is intentionally committed, one hundred dollars
19 (\$100) for each underpaid employee for each pay period for which the
20 employee is underpaid. This amount shall be in addition to an amount
21 sufficient to recover underpaid wages, liquidated damages pursuant to Section
22 1194.2, and any applicable penalties imposed pursuant to Section 203.

23 (2) For each subsequent violation for the same specific offense, two hundred fifty
24 dollars (\$250) for each underpaid employee for each pay period for which the
25 employee is underpaid regardless of whether the initial violation is
26 intentionally committed. This amount shall be in addition to an amount
27 sufficient to recover underpaid wages, liquidated damages pursuant to Section
28 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

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

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

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

19 Civil Penalties Under Labor Code § 2699

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

26 74. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
27 Code except those for which a civil penalty is specifically provided, the established civil penalty for
28 a violation of those provisions is as follows: if, at the time of the alleged violation, the person

1 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
2 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
3 employee per pay period for each subsequent violation.

4 75. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
5 each of them, violated the Labor Code sections described herein, including, without limitation, for
6 the failure to provide Aggrieved Employees with the amount of paid sick leave required to be
7 provided pursuant to California and local laws and provide written notice in the language Defendant
8 normally uses to communicate employment-related information to the employee, containing the
9 following information: pay the rates of pay and overtime rates of pay applicable to their
10 employment; allowances claimed as part of the minimum wage; the regular payday designated by
11 Defendants; Defendants' name(s), including "doing business as" names used; the name, address,
12 and telephone number of the workers' compensation insurance carrier; information regarding paid
13 sick leave; and other pertinent information required to be disclosed by Defendants under Labor Code
14 section 2810.5.

15 76. Moreover, Aggrieved Employees within the State of California are entitled to an
16 award of reasonable attorneys' fees and costs in connection with their herein-described claims for
17 civil penalties.

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

20 **PRAYER**

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

- 23 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
24 1174.5, 1197.1, and 2699 for all Aggrieved Employees aside from Plaintiff;
25 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
26 210, 226.3, 558, 1174.5, 1197.1, and 2699;
27 C. Pre-judgment and post-judgment interest;
28 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: August 30, 2024

BIBIYAN LAW GROUP, P.C.

BY: /s/ Jason Rothman

David Bibiyan

Jeffrey Klein

Jason Rothman

Sarah Cohen

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