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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 SAN DIEGO**

ASHBY N. TOVAR, as an aggrieved
employee, and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys' General Act of 2004,

Plaintiff,

v.

TRADITIONS DRYWALL, INC., a
California corporation; KENNETH
HUFFMAN, an individual; and DOES 1
through 100, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By I. Quirarte ,Deputy Clerk

CASE NO.: 24CU005273C

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 ASHBY N. TOVAR, 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 Traditions Drywall,
7 Inc., a California corporation, and any of its respective subsidiaries or affiliated companies within
8 the State of California ("Traditions Drywall"), and any of its respective subsidiaries or affiliated
9 companies within the State of California (collectively, and with DOES 1 through 100, as further
10 defined below, "Defendants"), as a proxy of the Labor and Workforce Development Agency of the
11 State of California ("LWDA"), on behalf of all other current and former non-exempt employees of
12 Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to
13 the alleged claims for failure to comply with Labor Code sections 96, 98.6, 200, 201, 202, 203, 204,
14 210, 226, 226.3, 227.3, 232, 232.5, 245, 246, 432, 432.3, 432.5, 432.7, 432.8, 1102.5, 1197.5,
15 1198.5, 1527, 3366, 3457, and 8397.4, on behalf of all employees of Defendants working within the
16 Civil Penalty Period (collectively, "Aggrieved 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 San Diego County, California pursuant to Code of Civil Procedure
20 sections 392, *et seq.* because, among other things, San Diego 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 San Diego County, and because Defendants employ numerous Aggrieved Employees
27 in San Diego County.

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

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

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

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

20 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
21 on behalf of all other aggrieved current and former employees within the statutory period, to bring
22 a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section
23 2699.3 without asserting a claim to bring Plaintiff’s own claim for civil penalties under PAGA.
24 (*See, e.g., Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533.) Specifically,
25 Plaintiff does not seek to recover Plaintiff’s 25% share of civil penalties for the particular Labor
26 Code violations Plaintiff experienced. Rather, this is a purely representative PAGA action wherein
27 Plaintiff seeks to recover all civil penalties for the Labor Code violations experienced by third-party
28 aggrieved employees (Aggrieved Employees) and the State of California’s 75% of the civil penalties

1 for the Labor Code violations Plaintiff experienced.

2 8. On or around December 12, 2023, Plaintiff provided written notice pursuant to Labor
3 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
4 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
5 as well as by certified mail, with return receipt requested to Defendants, and each of them.

6 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
7 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
8 calendar days of the December 12, 2023, postmarked date of the herein-described notice sent by
9 Plaintiff to the LWDA and Defendants.

10 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

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

27 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
28 of failing to provide Aggrieved Employees paid, uninterrupted, timely, and complete rest periods of

1 at least ten (10) minutes per four (4) hours worked or major fractions thereof, or compensation in
2 lieu thereof, including, without limitation, by failing to provide rest periods all together; requiring
3 that they be bundled together and/or with meal periods; interrupting them; requiring that employees
4 carry cellular telephones or walkie-talkies during rest periods; not providing them in a timely
5 fashion; and not permitting employees to leave the premises; and/or otherwise requiring on-duty/on-
6 call rest periods, as required by California wage and hour laws.

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

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

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

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

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

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

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

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

1 of their duties, or of their obedience to the directions of Defendants, as required by Labor Code
2 2802.

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

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

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

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

24 26. At all times mentioned herein, Defendants have had, and continue to have, a policy
25 of failing to provide all working employees with suitable seats when the nature of the work
26 reasonably permits the use of seats. Defendants have also failed to place an adequate number of
27 seats in reasonable proximity to the work area and/or permitted employees to use such seats when
28

1 it does not interfere with the performance of their duties and employees are not engaged in the active
2 duties of their employment, and the nature of their work requires standing.

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

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

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

1 30. At all times mentioned herein, Defendants have had, and continue to have, a practice
2 or policy of relying on the salary history information of an applicant for employment as a factor in
3 determining whether to offer employment to an applicant or what salary to offer the applicant in
4 violation of Labor Code section 432.3 by including, on Defendants' application for employment, an
5 inquiry regarding current and/or former salary history information, including, without limitation,
6 compensation and benefits of the applicant for employment.

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

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

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

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

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

11 **PARTIES**

12 **A. Plaintiff**

13 36. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
14 is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-
15 exempt employee, with duties that included, but were not limited to, sales associate. Plaintiff is
16 informed and believes that Plaintiff worked for Defendants from approximately January of 2023
17 through the present.

18 **B. Defendants**

19 37. Plaintiff is informed and believes and based thereon alleges that defendant Traditions
20 Drywall is, and at all times relevant hereto was, a corporation organized and existing under and by
21 virtue of the laws of the State of California and doing business in the County of San Diego, State of
22 California.

23 38. Plaintiff is informed and believes and based thereon alleges that defendant Kenneth
24 Huffman ("Huffman") is, and at all times relevant hereto was, an Officer of Traditions Drywall and
25 doing business in the County of San Diego, State of California.

26 39. The true names and capacities, whether individual, corporate, associate, or otherwise,
27 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
28 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.

1 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
2 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
3 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
4 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
5 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
6 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
7 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
8 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
9 include Traditions Drywall, Huffman, and any of their parent, subsidiary, or affiliated companies
10 within the State of California, as well as DOES 1 through 100 identified herein.

11 **JOINT LIABILITY ALLEGATIONS**

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

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

26 42. Plaintiff is informed and believes, and based thereon alleges, that despite the
27 formation of the purported corporate existence of Traditions Drywall, Huffman, and DOES 1
28 through 50, inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same

1 with DOES 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to,
2 the following reasons:

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

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

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

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

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

28 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the

1 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be
2 disregarded.

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

5 **FIRST CAUSE OF ACTION**

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

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

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

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

15 46. At all relevant times herein, Labor Code section 210, subdivision (a), states and
16 stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in
17 this article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
18 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
19 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
20 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
21 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

1 48. 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 Civil Penalties Under Labor Code § 226.3

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

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

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

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

26 53. Pursuant to Labor Code section 226.3, Aggrieved Employees are entitled to recover
27 civil penalties for Defendants' violation of Labor Code section 226, subdivision (a), in the amount
28 of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period for the initial

1 violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay period for each
2 subsequent violation.

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

5 Violation of Labor Code § 558

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

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

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

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

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

26 57. As a direct and proximate result of the herein-described Labor Code violations,
27 pursuant to Labor Code section 558, Aggrieved Employees are entitled to recover civil penalties for
28 Defendants' herein-described Labor Code violations in the amount fifty dollars (\$50) for each

1 Aggrieved Employee per pay period for the initial violation, and one hundred dollars (\$100) for
2 each Aggrieved Employee per pay period for each subsequent violation.

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

5 Violation of Labor Code § 1174.5

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

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

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

25 62. Pursuant to Labor Code section 1174.5, "[a]ny person employing labor who willfully
26 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
27 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
28 member of the commission or employees of the division to inspect records pursuant to subdivision

1 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

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

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

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

13 Violation of Labor Code § 1197.1

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

20 (1) For any initial violation that is intentionally committed, one hundred dollars
21 (\$100) for each underpaid employee for each pay period for which the
22 employee is underpaid. This amount shall be in addition to an amount
23 sufficient to recover underpaid wages, liquidated damages pursuant to Section
24 1194.2, and any applicable penalties imposed pursuant to Section 203.

25 (2) For each subsequent violation for the same specific offense, two hundred fifty
26 dollars (\$250) for each underpaid employee for each pay period for which the
27 employee is underpaid regardless of whether the initial violation is
28 intentionally committed. This amount shall be in addition to an amount

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

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

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

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

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

21 Civil Penalties Under Labor Code § 2699

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

28 71. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor

1 Code except those for which a civil penalty is specifically provided, the established civil penalty for
2 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
3 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
4 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
5 employee per pay period for each subsequent violation.

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

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

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

22 **PRAYER**

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

25 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
26 1174.5, 1197.1, and 2699 for all Aggrieved Employees aside from Plaintiff;

27 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
28 210, 226.3, 558, 1174.5, 1197.1, and 2699;

- 1 C. Pre-judgment and post-judgment interest;
2 D. For costs of suit incurred herein; and
3 E. Such other and further relief as the Court deems just and proper.

4 Dated: August 8, 2024

BIBIYAN LAW GROUP, P.C.

6 BY: */s/ Faik Yetgin*

7 _____
8 David D. Bibiyan
9 Jeffrey D. Klein
10 Faik Yetgin

11 Attorneys for Plaintiff ASHBY N. TOVAR, as
12 an aggrieved employee on behalf of all other
13 aggrieved employees under the Labor Code
14 Private Attorneys' General Act of 2004
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