

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Timothy Dillon

BIBIYAN LAW GROUP, P.C.
David D. Bibiyan (Cal. Bar No. 287811)
david@tomorrowlaw.com
Jeffrey D. Klein (Cal. Bar No. 297296)
jeff@tomorrowlaw.com
Sarah H. Cohen (Cal. Bar No. 330700)
sarah@tomorrowlaw.com
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Telephone: (310) 438-5555
Facsimile: (310) 300-1705

Attorneys for Plaintiff, GREGORY ROSA,
as an aggrieved employee, and on behalf of all other
aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

v.

PAQUETERIA HR EXPRESS, INC., a
California corporation; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: **23STCV06927**

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 226.8, 558, 1174.5,
1197.1 and 2699**

DEMAND FOR JURY TRIAL

[Amount in Controversy Greater Than
\$25,000.00]

COMES NOW plaintiff GREGORY ROSA (“Plaintiff”), as an aggrieved employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys’ General Act of 2004, and alleges as follows:

JURISDICTION AND VENUE

1. This is a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against PAQUETERIA HR EXPRESS, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“PAQUETERIA HR EXPRESS” and together with DOES 1 through 100, as further defined below, “Defendants”), as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*, Labor Code section 432, Labor Code section 1198.5, Labor Code section 2802, Labor Code section 226.8, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

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

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

1 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
2 Defendants during the applicable statutory period and suffered one or more of the Labor Code
3 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
4 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
5 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
6 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
7 employees of Defendants during the Civil Penalty Period.

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 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7,
15 226.8, 227.3, 232, 232.5, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5,
16 1198.5, 2699, 2802, and 2810.5, among others.

17 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
18 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
19 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
20 specified in Labor Code section 2699.3.

21 8. On or around January 13, 2023, Plaintiff provided written notice pursuant to Labor
22 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
23 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
24 as well as by certified mail, with return receipt requested to Defendants, and each of them.

25 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
26 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
27 calendar days of the January 13, 2023 postmarked date of the herein-described notice sent by
28 Plaintiff to the LWDA and Defendants.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8

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; detrimental rounding
4 of employee time entries; editing and/or manipulation of time entries to show less hours than
5 actually worked; and failing to pay split shift premiums, to the detriment of Plaintiff and other
6 Aggrieved Employees.

7 12. At all relevant times mentioned herein, Defendants had and have a policy or practice
8 of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute meal periods or
9 compensation in lieu thereof including, without limitation: by interrupting meal periods; not
10 providing timely meal periods; failing to provide first and second meal periods; providing short
11 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
12 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
13 periods; and auto-deducting meal periods that could not be auto-deducted by law or during which
14 employees worked, as required by California wage and hour laws

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

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

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

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

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

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

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

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

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

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

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

18 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
19 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
20 and experience they obtained at Defendants for purposes of competing with Defendants, including,
21 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
22 a prospective employer, and from disclosing who else works at Defendants and under what
23 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
24 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
25 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
26 Code sections 232, 232.5, and 1197.5, subdivision (k).

27 23. Defendants had and have a policy or practice of preventing Plaintiff and/or other
28 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants

1 to their managers or outside to private attorneys or government officials, among others, in violation
2 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
3 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
4 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
5 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
6 of Labor Code section 232 and 232.5.

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

14 25. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
15 Code sections 210, 226.3, 226.8 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which
16 violate the California Labor Code as described above, including on behalf of Plaintiff and other
17 Aggrieved Employees pursuant to PAGA.

18 26. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
19 aggrieved employees were intentionally misclassified throughout their employment as independent
20 contractors when in reality, they were employees of Defendants. As such, Plaintiff is informed and
21 believes, and based thereon alleges, that Defendants violated Labor Code section 226.8(a) and
22 Defendants are liable for civil penalties pursuant to Labor Code sections 226.8(b) and (c).

23 **PARTIES**

24 **A. Plaintiff**

25 27. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
26 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
27 exempt employee, with duties that included, but were not limited to, picking up the packages, and
28 boxes. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately

1 July of 2021 through approximately May 3, 2022.

2 **B. Defendants**

3 28. Plaintiff is informed and believes and based thereon alleges that defendant
4 PAQUETERIA HR EXPRESS is, and at all times relevant hereto was, a corporation organized and
5 existing under and by virtue of the laws of the State of California and doing business in the County
6 of Los Angeles, State of California.

7 29. The true names and capacities, whether individual, corporate, associate, or otherwise,
8 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
9 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
10 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
11 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
12 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
13 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
14 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
15 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
16 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
17 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
18 include PAQUETERIA HR EXPRESS, and any of their parent, subsidiary, or affiliated companies
19 within the State of California, as well as DOES 1 through 100 identified herein.

20 **JOINT LIABILITY ALLEGATIONS**

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

26 31. All of the acts and conduct described herein of each and every corporate defendant
27 was duly authorized, ordered, and directed by the respective and collective defendant corporate
28 employers, and the officers and management-level employees of said corporate employers. In

1 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
2 their said employees, agents, and representatives, and each of them; and upon completion of the
3 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
4 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
5 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
6 aforementioned corporate employees, agents and representatives.

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

9 **FIRST CAUSE OF ACTION**

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

11 33. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
12 preceding paragraphs as though fully set forth hereat.

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

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

19 35. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
20 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
21 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
22 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
23 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
24 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
25 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

26 36. At all relevant times herein, Defendants have had a consistent policy or practice of
27 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
28 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other

1 Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of Labor
2 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
3 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
4 for each subsequent violation in connection with each payment that was made in violation of Labor
5 Code section 204.

6 Civil Penalties Under Labor Code § 226.3

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

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

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

22 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
23 and have a policy or practice of failing to furnish non-exempt employees, including, without
24 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
25 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
26 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
27 name of the employer and/or the name and address of the legal entity securing the employer's
28 services if the employer is a farm labor contractor; and other such information as required by Labor

1 Code section 226, subdivision (a).

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

7 (Civil Penalties Under Labor Code § 226.8 – Against All Defendants)

8 42. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the
9 preceding paragraphs of this Complaint as though fully set forth hereat.

10 43. Plaintiff is informed and believes that Defendants had and have a policy or practice
11 of failing to comply with Labor Code section 226.8 as Defendants willfully misclassified Plaintiff
12 and other aggrieved employees as independent contractors.

13 44. Labor Code section 226.8(b) states: "If the Labor and Workforce Development
14 Agency or a court issues a determination that a person or employer has engaged in any of the
15 enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty
16 of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000)
17 for each violation, in addition to any other penalties or fines permitted by law."

18 45. Labor Code section 226.8(c) states: "If the Labor and Workforce Development
19 Agency or a court issues a determination that a person or employer has engaged in any of the
20 enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging
21 in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty
22 of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars
23 (\$25,000) for each violation, in addition to any other penalties or fines permitted by law."

24 46. Thus, pursuant to Labor Code section 226.8, Plaintiff and other aggrieved employees
25 he seeks to represent are entitled to recover civil penalties for Defendants' violation of Labor Code
26 section 226.8, subdivision (a) in the amount specified in Labor Code sections 226.8, subdivisions
27 (b) and (c).

28 ///

1 Violation of Labor Code § 558

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

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

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

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

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

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

25 Violation of Labor Code § 1174.5

26 50. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
27 every person employing labor in California to “[a]llow any member of the commission or the
28 employees of the Division of Labor Standards Enforcement free access to the place of business or

1 employment of the person to secure any information or make any investigation that they are
2 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
3 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
4 or papers of the person.”

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

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

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

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

27 55. As a direct and proximate result of the herein-described Labor Code violations,
28 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to

1 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five
2 hundred dollars (\$500) per violation per Aggrieved Employee.

3 Violation of Labor Code § 1197.1

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

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

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

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

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

10 Civil Penalties Under Labor Code § 2699

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

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

23 61. Plaintiff is informed and believes and based thereon alleges that Defendants, and
24 each of them, violated the Labor Code sections described herein, including, without limitation, for
25 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
26 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
27 name of the employer, including "doing business as" names used, the name, address, and telephone
28 number of the workers' compensation insurance carrier, information regarding paid sick leave, and

1 other pertinent information required to be disclosed by Defendants under Labor Code section
2 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick
3 leave required to be provided pursuant to California and local laws.

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

7 **REQUEST FOR JURY TRIAL**

8 63. Plaintiff hereby requests a trial by jury.

9 **PRAYER**

10 **WHEREFORE**, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for
11 judgment against Defendants as follows:

- 12 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 226.8, 558,
13 1174.5, 1197.1, 226.8 and 2699;
14 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
15 210, 226.3, 558, 1174.5, 1197.1, and 2699;
16 C. Pre-judgment and post-judgment interest;
17 D. For costs of suit incurred herein; and
18 E. Such other and further relief as the Court deems just and proper.

19
20 Dated: March 29, 2023

BIBIYAN LAW GROUP, P.C.

21
22 BY: /s/ Sarah H. Cohen

23 DAVID D. BIBIYAN

24 JEFFREY D. KLEIN

SARAH H. COHEN

25 Attorneys for Plaintiff GREGORY ROSA on behalf
26 of himself and all others similarly situated
27
28