

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: David Cowan

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individually and as a proxy for the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

[UNLIMITED CIVIL]

ALBA VELASCO, an individual, and as a proxy
for the State of California,

Case No.: **20STCV19427**

COMPLAINT FOR:

Plaintiff,

- 1. Failure to Reimburse and Indemnify for Expenditures**
- 2. Unpaid Wages and Failure to Pay Minimum Wages**
- 3. Labor Code § 203 Waiting Time Penalties**
- 4. Failure to Provide Accurate Itemized Wage Statements**
- 5. Labor Code § 1195.5(k) Penalty**
- 6. Private Attorneys General Act**

vs.

CALEDONIAN, INC., a corporation; and
DOES 1 through 5, inclusive,

Defendants.

DEMAND FOR JURY TRIAL

Plaintiff, ALBA VELASCO, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear the subject matter of this complaint. This Court also has jurisdiction over each defendant, as the unlawful business acts alleged herein occurred in California. Plaintiff's claims arise out of and are related to all Defendants' contacts with California.

2. Venue is proper in this Court because all or some of the violations of law and unlawful practices alleged herein occurred and are occurring in the County of Los Angeles.

PARTIES

3. Plaintiff is an individual who, at all relevant times, has resided in the State of California.

1 4. Defendant CALEDONIAN, INC., is a corporation that conducted, and is conducting,
2 business in the State of California.

3 5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
4 DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names and capacities.
5 Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when
6 ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named
7 Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's
8 injuries were proximately caused by the conduct of such defendant.

9 6. All of the Defendants, including DOES 1-5, are alleged to be co-conspirators with each
10 other, in that each agreed to participate, and participated in, the furtherance of the objective of civil
11 wrongs as alleged in this Complaint.

12 7. Plaintiff is informed and believes and thereupon alleges that each Defendant entered into
13 a conspiracy and agreement with the other Defendants and/or subsequently joined said conspiracy and
14 ratified the prior acts and conduct of the Defendants who had previously entered into said conspiracy.
15 Plaintiff is currently unaware of when each Defendant joined said conspiracy and, upon information and
16 belief, alleges that all Defendants have knowingly, maliciously, and willfully entered into said
17 conspiracy, which continues until this day. The purposes of this ongoing conspiracy include, but are not
18 limited to, the wrongs alleged herein. All Defendants' acts and failures to act as alleged herein were
19 perpetrated in furtherance of the ongoing conspiracy.

20 8. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
21 each defendant was completely dominated and controlled by its, his or her co-Defendants, each was the
22 agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the
23 others.

24 9. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
25 each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-
26 Defendants and was acting within the course and scope of such agency, employment, and/or joint
27 venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain
28 Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant

and/or Defendants confirmed and ratified said conduct and omissions.

10. Whenever and wherever reference is made to individuals who are not named as defendants in this Complaint but are or were employees and/or agents of Defendants, such references shall be deemed to mean that such individuals at all relevant times acted on behalf of the Defendant within the scope of their employment.

11. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the corporate Defendants, and each of them, had the right to control, and controlled, Plaintiff's wages, hours and working conditions, and has the right to control the manner in which Plaintiff performed work duties, including but not limited to supervision of work, engaged Plaintiff, suffered and permitted Plaintiff to work, and they were employers, joint employers, or co-employers of Plaintiff at all relevant times alleged herein.

12. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the Defendant, and each of them, were an integrated enterprise in that they had an interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control.

GENERAL ALLEGATIONS

13. Plaintiff worked for Defendant as a tutor from on or about March 21, 2019, to on or about the week of April 20, 2020.

14. Plaintiff's co-workers provided, and continue to provide, tutoring services, among others, to Defendant's students for Defendant. This makes them presumed employees and Plaintiff has no burden to prove otherwise. Nonetheless, Defendant retained the right to exercise, and did in fact exercise, control over their wages, hours, and working conditions of Plaintiff and co-workers and suffered and permitted them to work

15. Plaintiff and co-workers performed work that was within the usual course of Defendant's business. This renders them undisputed employees.

16. Defendant, however, did not pay them as employees, but instead paid them as independent contractors. Defendant did not provide complete payment of wages, timely payment of wages, compliant itemized wage statements, or reimbursements for work related expenses.

17. Defendant also failed to pay her minimum wages for certain pay periods.

18. On March 3, 2020, Plaintiff requested her payroll records, personnel records, and all documents she had signed relating to her employment. Defendant did not provide Plaintiff with her payroll within 21 days of her request. Defendant also did not provide Plaintiff with her personnel records within 30 days of her request. More than 30 days from Plaintiff's request, Defendant has not provided payroll and personnel records.

FIRST CAUSE OF ACTION

**FAILURE TO REIMBURSE AND INDEMNIFY FOR EXPENDITURES
(AGAINST ALL DEFENDANTS AND DOES 1-5)**

19. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

20. California Labor Code § 2802(a) provides that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties"

21. Labor Code "Section 2802 is designed to prevent employers from passing their operating expenses on to their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 562 (2007).

22. Defendant violated Labor Code section 2802 and protections afforded by wage order provisions by passing on its operating expenses to Plaintiff, in violation of Labor Code § 2802(a).

23. Plaintiff has been damaged by Defendant's failure to reimburse in an amount according to proof at trial.

24. Pursuant to California Labor Code § 2802, and other applicable statutes, Plaintiff is entitled to reimbursement of expenditures, in an amount according to proof at trial, interest thereon, and an award of attorneys' fees, and costs.

25. "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Lab. Code § 558.1(a).

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SECOND CAUSE OF ACTION

UNPAID WAGES AND FAILURE TO PAY MINIMUM WAGES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

26. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

27. “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Lab. Code § 204(a).

28. “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage . . . applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage . . ., including interest thereon, reasonable attorney’s fees, and costs of suit.” Lab. Code § 1194(a).

29. Defendant has not paid Plaintiff for certain hours worked. As a result, CALEDONIAN failed to pay Plaintiff the legal minimum wage afforded by wage order provisions.

30. Plaintiff has been harmed by Defendant’s failure to pay regular minimum wages due in an amount according to proof at trial.

31. An employee receiving less than the legal minimum wage or legal overtime compensation “is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Lab. Code § 1194.

32. Labor Code § 1173 defines commission as Industrial Welfare Commission (“IWC”). An employee receiving less than the minimum wage set by an IWC order “shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.” Lab. Code § 1194.2.

33. Plaintiff is entitled to the unpaid balance of the full wages due, minimum wages due, liquidated damages, interest, and attorneys’ fees.

34. “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the

Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Lab. Code § 558.1(a).

THIRD CAUSE OF ACTION

LABOR CODE § 203 WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

35. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

36. “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced.” Lab. Code § 203(a).

37. Defendant failed to timely pay Plaintiff her complete final wages upon her discharge, in violation of Labor Code § 201 and wage order provisions, and failed to pay her the additional continuing wages as a penalty from the original due date, in violation of Labor Code § 203.

38. Plaintiff has been harmed by Defendant’s conduct and is entitled to a statutory waiting time penalty, in an amount according to proof at trial, interest thereon, and an award of attorneys’ fees, and costs.

39. “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the IWC, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Lab. Code § 558.1(a).

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS AND DOES 1-5)

40. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

41. “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s

wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Lab. Code § 226(a). Relevant Wage Orders of IWC, applicable to Defendant, such as Wage Order No. 4-2001 section 7(B), provide that “Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.”

42. Defendants failed to provide Plaintiff with itemized wage statements showing: total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

43. “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the IWC, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Lab. Code § 558.1(a).

44. Defendant knowingly and intentionally failed to provide an itemized statement in writing showing accurate: total hours worked by the employee; all deductions; net wages earned; the inclusive

1 dates of the period for which the employee is paid; the name of the employee and only the last four
2 digits of his or her social security number or an employee identification number other than a social
3 security number; the name and address of the legal entity that is the employer; and all applicable hourly
4 rates in effect during the pay period and the corresponding number of hours worked at each hourly rate
5 by the employee.

6 45. "An employee suffering injury as a result of a knowing and intentional failure by an
7 employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty
8 dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per
9 employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four
10 thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." Lab.
11 Code § 226(e)(1).

12 46. An employee is deemed to suffer injury for purposes of section 226(e) if the employer
13 fails to provide an itemized wage statement showing the accurate gross wages earned and total hours
14 worked, and the employee cannot promptly and easily determine from the wage statement alone the
15 amount of the gross wages or total hours worked. Lab. Code § 226(e)(2)(B)(i).

16 47. As a result of the knowing and intentional failure to provide wage statements, Plaintiff
17 has suffered an injury pursuant to section 226(e). As a result, Defendant is liable to Plaintiff for the
18 amounts provided by California Labor Code § 226(e).

19 48. Pursuant to California Labor Code § 226(e), Plaintiff is also entitled to an award of
20 reasonable attorneys' fees and costs.

21 **FIFTH CAUSE OF ACTION**

22 **LABOR CODE § 1198.5(k) PENALTY**
23 **(AGAINST ALL DEFENDANTS AND DOES 1-5)**

24 49. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as
25 though set forth herein in full again.

26 50. The employer shall make personnel records available for inspection to the former
27 employee, or his or her representative, at reasonable intervals and at reasonable times, but "not later than
28 30 calendar days from the date the employer receives a written request." Lab. Code § 1198.5(b).

51. Defendants did not timely provide Plaintiff's personnel records.

52. "If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer." Lab. Code § 1198.5(k).

53. Because Defendant failed to timely provide the personnel records, Plaintiff is entitled to injunctive relief, for an order that Defendants turn over the records, and for an award of attorneys' fees pursuant to Lab. Code § 1198.5(l).

SIXTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT (AGAINST ALL DEFENDANTS AND DOES 1-5)

54. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

55. Pursuant to the California Labor Code Private Attorneys General Act ("PAGA"), "Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3." Lab. Code § 2699(a). "For all provisions of [the California Labor Code] except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions." Lab. Code § 2699(f).

56. A PAGA claim "is fundamentally a law enforcement action." *Arias v. Super. Ct.*, 46 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) ("[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state.").

57. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Lab. Code § 22. Under the PAGA, an “aggrieved employee” means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.”

Labor Code Violations §§ 2802, 226(a), 1198, 204

§ 2802

58. “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Lab. Code § 2802(a). In *Cochran v. Schwan’s*, the court held:

If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all. In other words, it is no concern to the employer that the employee may pass on the expense to a family member or friend, or to a carrier that has to then write off a loss. It is irrelevant whether the employee changed plans to accommodate work-related cell phone usage. Also, the details of the employee’s cell phone plan do not factor into the liability analysis. Not only does our interpretation prevent employers from passing on operating expenses, it also prevents them from digging into the private lives of their employees to unearth how they handle their finances vis-à-vis family, friends and creditors. To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed.

Cochran v. Schwan’s Home Serv., Inc., 228 Cal. App. 4th 1137, 1144–45 (2014), *review denied* (Nov. 25, 2014).

59. Here, like in *Cochran*, if an employee is required to do work-related activities on a personal cell phone, then she is incurring an expense for purposes of section 2802. Here, as in *Cochran*, to show liability under section 2802, an employee need only show that she was required or directed to use a personal cell phone to do work-related activities and was not reimbursed.

60. Plaintiff and aggrieved employees were required or directed to use personal cell phones to do work-related activities and were not reimbursed for any portion of their cell phone expenses, in violation of Labor Code § 2802(a).

61. Plaintiff and aggrieved employees were also required to use their personal vehicles to meet with Defendant's clients in the course of providing services to Defendant. Defendant did not pay for any mileage expenses of Plaintiff and aggrieved employees.

62. "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Lab. Code § 558.1(a). It is currently unknown who caused Defendant to violate Labor Code § 2802.

63. Labor Code § 2802 does not have a civil penalty specifically provided. Thus, Labor Code § 2699(f) is applicable to impose civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

§ 226(a)

64. "An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Lab. Code § 226(a).

65. Defendants failed to provide Plaintiff and the other co-workers with itemized wage statements showing: (2) total hours worked by the employee, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and

only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant also failed to keep itemized wage statement records of the foregoing.

66. “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the IWC, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Lab. Code § 558.1(a). It is currently unknown who caused Defendant to violate the Labor Code § 226.

67. Labor Code § 226 does not provide for its own self-contained “civil” penalty within the statute. Thus, Labor Code § 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

§ 1198

68. Labor Code § 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the IWC shall be the maximum hours of work and the standard conditions of labor for employees. Further, the “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Lab. Code § 1198.

69. Relevant Wage Orders of IWC, applicable to Defendant, such as Wage Order No. 4-2001 section 7(B), provide that “Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.”

70. As set forth above, Defendants did not provide to Plaintiff and other aggrieved employees an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for

1 which the employee is paid; (3) the name of the employee or the employee's social security number; and
2 (4) the name of the employer. As such, Defendants violated California Labor Code section 1198 by
3 violating relevant Wage Orders of the IWC.

4 71. Relevant Wage Orders of IWC, applicable to Defendant, such as Wage Order No. 4-2001
5 section 5 provide that "(A) Each workday an employee is required to report for work and does report,
6 but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the
7 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2)
8 hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than
9 the minimum wage."

10 72. Labor Code § 1198 does not provide for its own self-contained civil penalty within the
11 statute. Thus, Labor Code § 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved
12 employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period
13 for each subsequent violation.

14 73. "Any employer or other person acting on behalf of an employer, who violates, or causes
15 to be violated, any provision regulating minimum wages or hours and days of work in any order of the
16 [IWC], or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
17 held liable as the employer for such violation." Lab. Code § 558.1(a). It is currently unknown who
18 caused Defendant to violate provisions regulating minimum wages or hours and days of work in any
19 order of the IWC.

20 74. Other aggrieved employees are any current or former California employees who were
21 denied duty free rest breaks relieved of all duties, who were not paid for reporting time, and were not
22 provided compliant wage statements.

23 **§ 204**

24 75. "All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2,
25 earned by any person in any employment are due and payable twice during each calendar month, on
26 days designated in advance by the employer as the regular paydays." Lab. Code § 204(a).

27 76. Defendant failed to pay Plaintiff and her co-workers' wages twice during each calendar
28 month, on days designated in advance by Defendant as the regular paydays. As such, Defendant

1 violated Labor Code § 204(a). Labor Code § 204 does not provide for its own self-contained civil
2 penalty within the statute. Thus, Labor Code § 2699(f)(2) applies to provide a civil penalty of \$100 for
3 each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee
4 per pay period for each subsequent violation.

5 77. Other aggrieved employees are any current or former California employees who were not
6 paid wages twice a month on regular paydays.

7 ***Labor Code Violations Providing Civil Penalties Pursuant to 2699(a): §§ 558, 226.8, 226.3, 210***
8 ***§ 558***

9 78. Pursuant to Labor Code § 558(a) any employer or other person acting on behalf of an
10 employer who violates, or causes to be violated . . . any provision regulating hours and days of work in
11 any order of the IWC shall be subject to a civil penalty as follows:

12 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
13 period for which the employee was underpaid.

14 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee
15 for each pay period for which the employee was underpaid.

16 79. As set forth above, Defendant violated the above-referenced IWC wage orders as
17 applicable. As such, Defendant is subject to civil penalties for the initial violation and subsequent
18 violations. Those subject to Labor Code § 558 penalties include any “person acting on behalf of”
19 Defendant who caused Defendant to violate the Labor Code. *Reynolds v. Bement*, 36 Cal. 4th 1075,
20 1094 (2005); *Atempa v. Pedrazzani*, 27 Cal. App. 5th 809 (2018).

21 ***§ 226.8***

22 80. “It is unlawful for any person or employer to engage in . . . [w]illful misclassification of
23 an individual as an independent contractor.” Lab. Code § 226.8(a)(1). Defendant willfully misclassified
24 Plaintiff and other co-workers as independent contractors while in reality they were employees.
25 Defendant retained the right to exercise, and did in fact exercise, control over the wages, hours, and
26 working conditions of Plaintiff and co-workers. In addition, Plaintiff and co-workers performed work
27 that was within the usual course of the Defendant’s business. Civil penalties for violating section
28 226.8(a) range from \$5,000 to \$25,000 per violation. Lab. Code § 226.8(b)(c).

1 **§ 226.3**

2 81. “Any employer who violates subdivision (a) of section 226 shall be subject to a civil
3 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation
4 and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which
5 the employer fails to provide the employee a wage deduction statement or fails to keep the records
6 required in subdivision (a) of Section 226.” Lab. Code § 226.3. This section “sets out a civil penalty for
7 all violations of section 226.” *Raines v. Coastal Pacific Food Distribs., Inc.*, 23 Cal. App. 5th 667, 675
8 (2018). Because Defendants violated California Labor Code section 226(a), Defendants are subject to
9 civil penalties under section 226.3 applicable to Plaintiff and other current and former aggrieved
10 employees.

11 **§ 210**

12 82. Pursuant to Labor Code § 210(a), in addition to, and entirely independent and apart from,
13 any other penalty provided in this article, every person who fails to pay the wages of each employee as
14 provided in Section 204 shall be subject to a civil penalty as follows:

15 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
16 employee.

17 (2) For each subsequent violation, two hundred dollars (\$200) for each failure to pay each
18 employee, plus 25 percent of the amount unlawfully withheld.

19 83. As discussed above, Defendant violated Labor Code § 204. As such, Defendant is
20 subject to civil penalties “plus 25 percent of the amount unlawfully withheld,” as civil penalties pursuant
21 to section 210(a).

22 84. Other aggrieved employees are any current or former California employees who were not
23 paid wages twice a month on regular paydays.

24 ***Exhaustion of Administrative Remedies***

25 85. On March 3, 2020, Plaintiff provided notice to the California Labor and Workforce
26 Development Agency (“LWDA”), pursuant to Labor Code § 2699.3, detailing the specific provisions of
27 the foregoing Labor Code sections that have been violated, including the facts and theories to support
28 the violations. The LWDA file number is LWDA-CM-776011-20. The notice was sent to the following

Defendants by certified mail on or about March 3, 2020, to Guillermo Frias, CEO of CALEDONIAN, (7019 0140 0000 7526 8408). Plaintiff submitted a \$75.00 fee to the LWDA.

86. The LWDA has not, within 65 days of Plaintiff's Notice of violations of the Labor Code, sent Plaintiff notice that it intends to investigate the violations. Defendants have not sent any notice to the LWDA attempting to cure the alleged violations of Labor Code §§ 226(a)(8) and 226.3. Thus, Plaintiff has exhausted her administrative remedies, pursuant to Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699.

PRAYER

WHEREFORE, Plaintiff prays:

1. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
2. For a \$750 statutory penalty pursuant to Labor Code section 1198.5.
3. For a \$750 statutory penalty pursuant to Labor Code section 226.
4. For compensatory general and special damages, in an amount according to proof at the time of trial.
5. For reimbursement and indemnification for all work-related expenditures, in an amount according to proof at the time of trial.
6. For statutory penalties pursuant to the California Labor Code.
7. For liquidated damages pursuant to the California Labor Code.
8. For reasonable attorneys' fees pursuant to the California Labor Code and Code of Civil Procedure.
9. For compensatory special damages, in an amount according to proof at the time of trial.
10. For costs of suit including expert witness fees.
11. For prejudgment interest.
12. For such other and further relief as the Court may deem proper.

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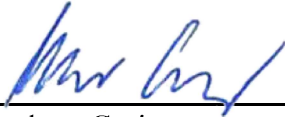
DEMAND FOR JURY TRIAL

Plaintiff ALBA VELASCO hereby demands a trial by jury.

Dated: May 21, 2020

GUTIERREZ DERHAM LAW FIRM LLP

By:



Matthew Gutierrez
Attorneys for Plaintiff, ALBA VELASCO,
individually and as a proxy for the State of
California