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7 on behalf of himself and all others aggrieved

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

10
11 ALBINO NUNEZ, on behalf of himself and
all others aggrieved,

12
13 Plaintiff,

14 v.

15 CANNERY SEAFOOD OF THE PACIFIC,
LLC, a California limited liability company;
16 and DOES 1 through 100, inclusive,

17 Defendants.

CASE NO.: 30-2020-01145228-CU-OE-CXC

REPRESENTATIVE ACTION

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

DEMAND FOR JURY TRIAL

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

Assigned for all purposes to:

Judge Glenda Sanders

Dept: CX101

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27 COMES NOW plaintiff Albino Nunez ("Plaintiff"), on behalf of himself and all other
28 aggrieved employees, and alleges as follows:

INTRODUCTION

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"), on behalf of Plaintiff and all other aggrieved current and former employees of CANNERY SEAFOOD OF THE PACIFIC, LLC, a California limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California ("CANNERY" collectively with DOES 1 through 100, inclusive, as further defined below, "Defendants").

2. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiff and other non-exempt employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other aggrieved employees working over eight (8) hours in a workday or forty (40) hours in a workweek; over twelve (12) hours in a workday; and/or seven (7) consecutive workdays in a workweek without being properly compensated for all hours worked in excess of eight (8) hours in a workday or forty (40) hours in a workweek; all hours worked in excess of twelve (12) hours in a workday; and/or for all hours worked on the seventh consecutive workday in a workweek, as a result of, among other things, Defendants routinely failing to accurately track and/or pay for all hours actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by auto-deducting meal and rest periods not taken; by detrimentally rounding, manipulating and/or editing time entries to show lesser hours than actually worked during the pay period; and failing to include all remuneration, including non-discretionary bonuses and/or incentive pay, into the regular rate of pay for the purpose of calculating the overtime rate of pay, to the detriment of Plaintiff and other aggrieved employees.

3. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay minimum wages to Plaintiff and other non-exempt employees in the State of California in violation of California state wage and hour laws as a result of, including but not limited to, Defendants routinely failing to accurately track and/or pay for all hours actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by auto-deducting meal and rest periods not taken; and/or by detrimentally rounding, manipulating

1 and/or editing time entries to show lesser hours than actually worked during the pay period, to the
2 detriment of Plaintiff and other aggrieved employees.

3 4. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to provide Plaintiff and other aggrieved employees a thirty (30) minute uninterrupted,
5 timely, and complete meal period for days on which the employee worked in excess of five (5) hours
6 in a workday; a second thirty (30) minute uninterrupted, timely, and complete meal period for days
7 on which the employee worked in excess of ten (10) hours in a workday; or compensation in lieu
8 thereof, as required by California wage and hour laws.

9 5. At all relevant times mentioned herein, Defendants had and have a policy or practice
10 of failing to provide Plaintiff and other aggrieved employees paid, uninterrupted, timely, and
11 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
12 thereof, or compensation in lieu thereof, as required by California wage and hour laws.

13 6. At all relevant times mentioned herein, Defendants had and have a policy or practice
14 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
15 Plaintiff other aggrieved employees with itemized wage statements that accurately reflect gross
16 wages earned; total hours worked; net wages earned; all deductions; all applicable hourly rates in
17 effect and the corresponding number of hours worked at each hourly rate in effect during the pay
18 period; and other such information as required by Labor Code section 226, subdivision (a).

19 7. At all relevant times mentioned herein, Defendants had and have a policy or practice
20 of failing to timely pay Plaintiff and other aggrieved employees, among other wages, overtime
21 wages, minimum wages, and/or premium wages, as required by Labor Code sections 201 and 202.

22 8. At all relevant times mentioned herein, Defendants have had a policy or practice of
23 failing to provide Plaintiff and other aggrieved employees with, or permit them inspection of,
24 records pertaining to their employment, including wage statements and similar payroll documents
25 under Labor Code section 226, documents signed to obtain or hold employment under Labor Code
26 section 432, personnel records under Labor Code section 1198.5, and time records under Labor
27 Code section 1174, to the detriment of Plaintiff and all other aggrieved employees.

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1 9. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of failing to reimburse Plaintiff and other aggrieved employees with the costs they incurred,
3 including without limitation, separately laundering uniforms, in furtherance of their work duties, as
4 required by Labor Code section 2802.

5 10. At all relevant times mentioned herein, Defendants had and have a policy or practice
6 of failing to provide Plaintiff and other aggrieved employees within the State of California with their
7 uniform deposits upon separation of employment, as well as interest that accrued on deposits paid
8 to Defendants for work uniforms, as required by Labor Code section 404.

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

17 12. At all relevant times mentioned herein, Defendants have had a policy or practice of
18 failing to provide Plaintiff and other aggrieved employees with the amount of paid sick leave
19 required to be provided pursuant California laws (including, without limitation Labor Code section
20 246, *et seq.*), and also did not permit its use upon request as contemplated under California laws, to
21 the detriment of Plaintiff and all other aggrieved employees.

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

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1 14. Plaintiff, in his representative capacity, seeks civil penalties under Labor Code
2 sections 210, 226.3, 558, 1197.1, and 2699 for the herein-described acts, which violate the California
3 Labor Code as described above, including on behalf of himself and other aggrieved employees
4 pursuant to PAGA.

5 **PARTIES**

6 **A. Plaintiff**

7 15. Plaintiff is a resident of the State of California. At all relevant times herein,
8 Defendants employed Plaintiff as a non-exempt employee, with duties that included, without
9 limitation, bussing tables, serving food, and assisting wait staff, within the State of California from
10 approximately 2001 through some point in the past calendar year.

11 **B. Defendants**

12 16. Plaintiff is informed and believes, and based thereon alleges, that defendant
13 CANNERY is, and at all times relevant hereto was, a limited liability company organized and
14 existing under and by virtue of the laws of the State of California, and doing business in the County
15 of Orange, State of California.

16 17. The true names and capacities, whether individual, corporate, associate, or otherwise,
17 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
18 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474,
19 and Plaintiff will amend this complaint to show their true names and capacities when the same have
20 been ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the
21 defendants designated herein as DOE is legally responsible in some manner for the unlawful acts
22 referred to herein, and that Plaintiff's damages were proximately caused by their conduct. Plaintiff
23 is informed and believes and based thereon alleges that the Defendants collectively acted in all
24 respects pertinent to this action as joint employers, and that each defendant acted in all respects
25 pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business
26 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable
27 to the other defendants.

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1 18. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 collectively acted, in all respects pertinent to this action, as joint employers, and that each defendant
3 acted in all respects pertinent to this action as the agent of the other defendant(s) and carried out a
4 joint scheme, business plan, or policy in all respects pertinent hereto. The acts of each defendant
5 are legally attributable to the other defendants, and each defendant is jointly and severally liable for
6 the acts and/or omissions of the other defendants, and each of them.

7 **JURISDICTION**

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

10 20. Venue is proper in Orange County, California pursuant to Code of Civil Procedure
11 sections 392, *et seq.* because, among other things, Orange County is where: the causes of action
12 complained of herein arose; the county in which the employment relationship began; the county in
13 which performance of the employment contract, or part of it, between Plaintiff and Defendants was
14 due to be performed; the county in which the employment contract, or part of it, between Plaintiff
15 and Defendants was actually performed; and the county in which the employment contract between
16 Plaintiff and Defendants, or part of it, was breached by Defendants; and the county in which
17 Defendants, or some of them, reside. Finally, venue is proper in Orange County as the unlawful
18 acts alleged herein have a direct effect on Plaintiff and other aggrieved employees within Orange
19 County and the State of California.

20 21. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by
21 Defendants during the applicable statutory period and suffered one or more of the Labor Code
22 violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of himself and all other
23 aggrieved current and former employees of Defendants, the civil penalties provided by PAGA plus
24 reasonable attorneys’ fees and costs, as the term “civil penalty” is defined under *ZB N.A. v. Superior*
25 *Court* (2019) 8 Cal.5th 175.

26 22. Plaintiff seeks to recover the PAGA civil penalties through a representative action
27 permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior*
28 *Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA

1 allegations described herein is not required.

2 23. During the period beginning one (1) year preceding the provision of notice to the
3 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
4 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 246,
5 404, 432, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198.5, 2699, 2802, and 2810.5, among others.

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

10 25. On or around March 4, 2020, Plaintiff provided written notice under Labor Code
11 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation
12 of various, including the herein-described, provisions of the Labor Code, to the Labor and
13 Workforce Development Agency (“LWDA”), as well as by certified mail, with return receipt
14 requested to Defendants, and each of them.

15 26. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
16 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
17 calendar days of the March 4, 2020 postmarked date of the herein-described notice sent by Plaintiff
18 to the LWDA and Defendants.

19 **PAGA REPRESENTATIVE ALLEGATIONS**

20 27. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
21 aggrieved employees have not been paid, during the relevant time period, wages for all time worked,
22 including overtime wages, as a result of, without limitation, Defendants failing to pay overtime
23 wages to Plaintiff and other non-exempt employees in the State of California in violation of
24 California state wage and hour laws as a result of, without limitation, Plaintiff and other aggrieved
25 employees working over eight (8) hours in a workday or forty (40) hours in a workweek; over twelve
26 (12) hours in a workday; and/or seven (7) consecutive workdays in a workweek without being
27 properly compensated for all hours worked in excess of eight (8) hours in a workday or forty (40)
28 hours in a workweek; all hours worked in excess of twelve (12) hours in a workday; and/or for all

1 hours worked on the seventh consecutive workday in a workweek, as a result of, among other things,
2 Defendants routinely failing to accurately track and/or pay for all hours actually worked; engaging,
3 suffering, or permitting employees to work off the clock, including, without limitation, by auto-
4 deducting meal and rest periods not taken; by detrimentally rounding, manipulating and/or editing
5 time entries to show lesser hours than actually worked during the pay period; and failing to include
6 all remuneration, including non-discretionary bonuses and/or incentive pay, into the regular rate of
7 pay for the purpose of calculating the overtime rate of pay by Plaintiff and other aggrieved
8 employees in the State of California. As such, Plaintiff is informed and believes, and based thereon
9 alleges, that Defendants violated Labor Code sections 510 and 1194, and applicable Wage Orders
10 based on their practice of providing total compensation that is less than the required legal overtime
11 compensation, entitling Plaintiff and other aggrieved employees to relief under, without limitation,
12 these sections. In addition, Defendants would also be liable for civil penalties pursuant to Labor
13 Code sections 558 and 2699.

14 28. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
15 aggrieved employees have not been paid, during the relevant time period, wages for all time worked,
16 including minimum wages, as a result of, without limitation, Defendants routinely failing to
17 accurately track and/or pay for all hours actually worked; engaging, suffering, or permitting
18 employees to work off the clock, including, without limitation, by auto-deducting meal and rest
19 periods not taken; and/or by detrimentally rounding, manipulating and/or editing time entries to
20 show lesser hours than actually worked during the pay period by Plaintiff and other aggrieved
21 employees in the State of California. As such, Plaintiff is informed and believes, and based thereon
22 alleges, that Defendants violated, without limitation, Labor Code section 1197 and applicable Wage
23 Orders, based on their continued failure to pay minimum wages, entitling Plaintiff and other
24 aggrieved employees to relief under, without limitation, Labor Code sections 1194 and 1194.2.
25 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1,
26 and 2699.

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1 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
2 and have policy or practice of failing to provide Plaintiff and other aggrieved employees a thirty
3 (30) minute uninterrupted, timely, and complete meal period for days on which the employee
4 worked in excess of five (5) hours in a workday; a second thirty (30) minute uninterrupted, timely,
5 and complete meal period for days on which the employee worked in excess of ten (10) hours in a
6 workday; or compensation in lieu thereof, including, without limitation, by interrupting meal
7 periods, not providing timely meal periods, failing to provide first and second meal periods all
8 together, providing short meal periods, and/or auto-deducting meal periods even when they were
9 not taken. As such, Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 violated Labor Code section 512, entitling Plaintiff and other aggrieved employees to premium
11 payments under Labor Code section 226.7. Defendants would also be liable for civil penalties
12 pursuant to Labor Code sections 558 and 2699.

13 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
14 and have a policy or practice of failing to provide Plaintiff and other aggrieved employees paid,
15 uninterrupted, timely, and complete rest periods of at least ten (10) minutes per four (4) hours
16 worked or major fractions thereof, or compensation in lieu thereof as required under (the) applicable
17 Wage Order(s). As such, Plaintiff is informed and believes, and based thereon alleges, that he and
18 other aggrieved employees are entitled to relief under, without limitation, Labor Code section 226.7.
19 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

20 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
21 and have a policy or practice of failing to furnish Plaintiff other aggrieved employees with itemized
22 wage statements that accurately reflect gross wages earned; total hours worked; net wages earned;
23 the name and address of each employer with whom they have been placed to work; all applicable
24 hourly rates in effect during the pay period and the corresponding number of hours worked at each
25 hourly rate; and other such information as required by Labor Code section 226, subdivision (a).
26 Consequently, since Defendants would have failed to comply with Labor Code section 226,
27 subdivision (a), Plaintiff and other aggrieved employees would be entitled to recover penalties
28 under, without limitation, Labor Code section 226, subdivision (e). Defendants would also be liable

1 for civil penalties pursuant to Labor Code sections 226.3, 558 and 2699.

2 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
3 and have a policy or practice of failing or refusing to timely pay compensation to Plaintiff and other
4 terminated or resigned employees within the State of California, among other wages, overtime
5 wages, minimum wages, and/or premium wages. As such, Defendants would be liable for waiting
6 time penalties for having violated California Labor Code sections 201, 202, and 203. Defendants
7 would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

8 33. At all relevant times mentioned herein, Defendants have had a policy or practice of
9 failing to provide Plaintiff and other aggrieved employees with, or permit them inspection of,
10 records pertaining to their employment, including wage statements and similar payroll documents
11 under Labor Code section 226, documents signed to obtain or hold employment under Labor Code
12 section 432, personnel records under Labor Code section 1198.5, and time records under Labor
13 Code section 1174, to the detriment of Plaintiff and all other aggrieved employees. As a result of
14 these violations, Defendants are liable for civil penalties pursuant to Labor Code sections 558 and
15 2699.

16 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
17 and have a policy or practice of failing to reimburse Plaintiff and other aggrieved employees for
18 their costs incurred, including but not limited to, the separate laundering of uniforms, in furtherance
19 of their work duties, as required by Labor Code section 2802. Defendants would also be liable for
20 civil penalties pursuant to Labor Code sections 558 and 2699.

21 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
22 and have a policy or practice of failing to provide Plaintiff and other aggrieved employees within
23 the State of California with their uniform deposits upon separation of employment, as well as interest
24 that accrued on deposits paid to Defendants for work uniforms, as required by Labor Code section
25 404. Defendants would also be liable for civil penalties pursuant to Labor Code sections 558 and
26 2699.

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1 36. Plaintiff is informed and believes, and based thereon alleges that Defendants have,
2 and at all times relevant hereto had, a policy or practice of failing to comply with the notice
3 requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among
4 other things, failing to provide Plaintiff and other aggrieved employees with the rates of pay and
5 overtime rates of pay applicable to their employment; allowances claimed as part of the minimum
6 wage; the regular payday designated by Defendants; the name, address, and telephone number of
7 the workers' compensation insurance carrier; information regarding paid sick leave; and other
8 pertinent information required to be disclosed by Defendants under Labor Code section 2810.5. As
9 such, Plaintiff is informed and believes, and based thereon alleges that the failure to provide such
10 information, including rates of pay that are in effect, has permitted Defendants to pay employees at
11 rates of pay that were not agreed upon, in violation of overtime wage and minimum wage laws in
12 California. As a result of these violations, Defendants are liable for civil penalties pursuant to Labor
13 Code sections 558 and 2699.

14 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
15 and have a policy or practice of failing to provide Plaintiff and other aggrieved employees with the
16 amount of paid sick leave required to be provided pursuant to California laws (including, without
17 limitation, Labor Code section 246, *et seq.*), and also did not permit its use upon request as
18 contemplated under California laws. As such, Defendants would be liable for civil penalties for
19 violation of the paid sick leave regulations under Labor Code sections 558 and 2699.

20 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
21 and have a policy or practice of failing to pay Plaintiff and other aggrieved employees their wages
22 in accordance with Labor Code section 204, which requires that "[l]abor performed between the 1st
23 and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of
24 the month during which the labor was performed, and labor performed between the 16th and the last
25 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
26 month." As such, Plaintiff is informed and believes, and based thereon alleges, that Defendants did
27 not and do not pay their employees in accordance with Labor Code section 204. Defendants would
28 be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

39. Plaintiff and other aggrieved employees at all times pertinent hereto were not exempt from receiving overtime wages, minimum wages, meal breaks or compensation in lieu thereof, rest breaks or compensation in lieu thereof, accurate wage statements, timely pay of wages during their employment and after their employment separation, the opportunity to inspect employment records, indemnification of work expenses, reimbursement of uniform deposits, the proper accrual and use of paid sick leave, and other such provisions of California law and the implementing rules and regulations of the IWC California Wage Orders.

40. As a result of these violations, Defendants are liable for civil penalties under PAGA.

FIRST CAUSE OF ACTION

(Civil Penalties Under Labor Code § 210 – Against All Defendants)

41. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

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

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

44. At all relevant times herein, Defendants have had a consistent policy or practice of failing to pay Plaintiff and aggrieved employees during their employment on a timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other aggrieved employees or former employees he seeks to represent are entitled to recover civil penalties for

1 Defendants' violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for
2 each aggrieved employee or former employee for each initial violation per employee, and two
3 hundred dollars (\$200) for each aggrieved employee or former employee for each subsequent
4 violation in connection with each payment that was made in violation of Labor Code section 204.

5 **SECOND CAUSE OF ACTION**

6 **(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)**

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

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

15 47. 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 48. 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 49. 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; the name and address of each employer with whom they have been
26 placed to work; all applicable hourly rates in effect during the pay period and the corresponding
27 number of hours worked at each hourly rate; and other such information as required by Labor Code
28 section 226, subdivision (a).

50. Pursuant to Labor Code section 226.3, Plaintiff and other aggrieved employees he seeks to represent are entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision (a) in the amount of two hundred fifty dollars (\$250) for each aggrieved current or former employee per pay period for the initial violation, and one thousand dollars (\$1,000) for each aggrieved current or former employee per pay period for each subsequent violation.

THIRD CAUSE OF ACTION

(Violation of Labor Code § 558 – Against All Defendants)

51. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

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

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

53. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections described herein, including causing Plaintiff and other aggrieved employees not to: be paid overtime wages and minimum wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during their employment and after their employment separation; receive accurate, itemized wage statements; be provided with the opportunity to inspect employment records; be reimbursed for work expenses; be reimbursed for uniform deposits and interest accrued thereon; be provided with notice

1 as required under Labor Code section 2810.5; and be provided with the proper accrual and use of
2 paid sick leave.

3 54. As a direct and proximate result of Defendants' conduct, Plaintiff and other
4 aggrieved employees are entitled to recover directly from Defendants civil penalties pursuant to
5 Labor Code section 558 in amounts to be determined at trial.

6 **FOURTH CAUSE OF ACTION**

7 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

8 55. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
9 and incorporates each by reference as though fully set forth hereat.

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

- 16 a. For any initial violation that is intentionally committed, one hundred dollars
17 (\$100) for each underpaid employee for each pay period for which the
18 employee is underpaid. This amount shall be in addition to an amount
19 sufficient to recover underpaid wages, liquidated damages pursuant to Section
20 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 21 b. For each subsequent violation for the same specific offense, two hundred fifty
22 dollars (\$250) for each underpaid employee for each pay period for which the
23 employee is underpaid regardless of whether the initial violation is
24 intentionally committed. This amount shall be in addition to an amount
25 sufficient to recover underpaid wages, liquidated damages pursuant to Section
26 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 27 c. Wages, liquidated damages, and any applicable penalties imposed pursuant to
28 Section 203, recovered pursuant to this section shall be paid to the affected

1 employee.”

2 57. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
3 Plaintiff and aggrieved employees not to be paid minimum wages as a result of Defendants, without
4 limitation, routinely failing to pay Plaintiff or other aggrieved employees’ wages for all hours
5 worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
6 accurately track and/or pay for all hours actually worked; engaging, suffering, or permitting
7 employees to work off the clock, including, without limitation, by auto-deducting meal and rest
8 periods not taken; and/or by detrimentally rounding, manipulating and/or editing time entries to
9 show lesser hours than actually worked during the pay period by Plaintiff and aggrieved employees
10 in the State of California.

11 58. As a direct and proximate result of Defendants’ conduct, Plaintiff and other
12 aggrieved employees are entitled to recover directly from Defendants civil penalties pursuant to
13 Labor Code section 1197.1.

14 **FIFTH CAUSE OF ACTION**

15 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

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

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

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

1 employee per pay period for each subsequent violation.

2 62. Plaintiff is informed and believes and based thereon alleges that Defendants, and
3 each of them, violated the Labor Code sections described herein, including, without limitation, for
4 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
5 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
6 employment and after employment separation; provide employees the opportunity to inspect
7 employment records; reimburse work expenses; reimburse uniform deposits and pay interest
8 accrued thereon; provide notice as required under Labor Code section 2810.5; and provide the
9 proper accrual and use of paid sick leave, entitling Plaintiff and other aggrieved employees to civil
10 penalties for each of these Labor Code violations in the amounts set forth in Labor Code section
11 2699, subdivision (f).

63. Moreover, Plaintiff and other aggrieved current and former employees within the State of California whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in connection with their herein-described claims for civil penalties.

[illegible]

16 64. Plaintiff hereby requests a trial by jury.

17 | PRAYER

18 **WHEREFORE**, on behalf of himself and all others aggrieved, Plaintiff prays for
19 judgment against Defendants as follows:

- 20 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
21 1197.1, and 2699;
- 22 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
23 210, 226.3, 558, 1197.1, and 2699;
- 24 C. Pre-judgment and post-judgment interest;
- 25 D. For costs of suit incurred herein; and

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

Dated: May 8, 2020

BIBIYAN LAW GROUP, P.C.

BY: 

DIEGO AVILES
DAVID D. BIBIYAN
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himself and all other aggrieved employees