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7 on behalf of himself and all others aggrieved

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUL 01 2020

L. VILLANUEVA

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF RIVERSIDE**

10
11 ANTHONY QUINN RUSSELL, on behalf of
12 himself and all others aggrieved,

13 Plaintiff,

14 v.

15 CIMC REEFER TRAILER, INC., a Delaware
16 corporation; STAFFMARK INVESTMENT,
17 LLC, a Delaware limited liability company;
SHUAI SHAN, an individual; and DOES 1
through 100, inclusive

18 Defendants.

CASE NO.: **RIC 2002 480**

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]

COMES NOW plaintiff ANTHONY QUINN RUSSELL ("Plaintiff"), on behalf of himself and all other 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 CIMC REEFER TRAILER, INC., a Delaware corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("CIMC"), STAFFMARK INVESTMENT, LLC, a Delaware limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California ("STAFFMARK"), and SHUAI SHAN, an individual ("MR. SHAN" and collectively with CIMC, STAFFMARK, and DOES 1 through 100, 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 minutes actually worked, including but not limited to, donning and doffing equipment; paying overtime hours at the regular rate of pay; and failing to include all forms of 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 failing to accurately track and/or pay for all minutes actually worked, including but

1 not limited to, minutes spent waiting in lines to clock in and donning and doffing equipment, 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 by the employee; net wages earned; all deductions; all applicable
17 hourly rates in effect during the pay period and the corresponding number of hours worked at each
18 hourly rate; 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, purchasing required steel-toe boots and in separately laundering their
4 uniforms, in furtherance of their work duties, as required by Labor Code section 2802.

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

13 11. At all relevant times mentioned herein, Defendants have had a policy or practice of
14 failing to provide Plaintiff and other aggrieved employees with the amount of paid sick leave
15 required to be provided pursuant to California law (including, without limitation Labor Code section
16 246, *et seq.*), and also did not permit its use upon request as contemplated under California laws, to
17 the detriment of Plaintiff and all other aggrieved employees.

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

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

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PARTIES

A. Plaintiff

14. Plaintiff, ANTHONY QUINN RUSSELL, is a resident of the State of California. At all relevant times herein, Defendants employed Plaintiff as a non-exempt employee, with duties that included, without limitation, building and manufacturing refrigerated trailers within the State of California. Plaintiff began working for Defendants in approximately August of 2018 and worked through approximately April of 2019.

B. Defendants

15. Plaintiff is informed and believes and based thereon alleges that defendant CIMC is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of Delaware and doing business in the County of Riverside, State of California.

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

17. Plaintiff is informed and believes and based thereon alleges that defendant MR. SHAN is, and at all times relevant hereto was, an individual residing in California, as well as Plant Manager for CIMC, and DOES 1 through 100, as further defined below. Plaintiff is further informed and believes and based thereon alleges that MR. SHAN violated, or caused to be violated, the above-referenced and below-referenced Labor Code provisions in violation of Labor Code section 558.1.

18. Plaintiff is informed and believes and based thereon alleges that MR. SHAN employed Plaintiff and other aggrieved employees of CIMC, STAFFMARK, and DOES 1 through 50 within the relevant statutory period, by, among other things, exercising control over their wages, hours and/or working conditions. Plaintiff is further informed and believes and based thereon alleges that MR. SHAN violated, or caused to be violated, the above-referenced and below-referenced Labor Code provisions in violation of Labor Code section 558.1.

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

JURISDICTION

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

21. Venue is proper in Riverside County, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, Riverside 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 Plaintiff and Defendants was due to be performed; and the county in which the employment contract, or part of it, between Plaintiff and Defendants was actually performed. Finally, venue is proper in Riverside County as the unlawful acts alleged herein have a direct effect on Plaintiff and other aggrieved employees within Riverside County and the State of California.

25 22. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by
26 Defendants during the applicable statutory period and suffered one or more of the Labor Code
27 violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of himself and all other
28 aggrieved current and former employees of Defendants, the civil penalties provided by PAGA plus

1 reasonable attorneys' fees and costs, as the term "civil penalty" is defined under *ZB N.A. v. Superior*
2 *Court* (2019) 8 Cal.5th 175.

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

7 24. During the period beginning one (1) year preceding the provision of notice to the
8 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),
9 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 246,
10 432, 510, 512, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198.5, 2699, 2802, and 2810.5, among others.

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

15 26. On or around April 23, 2020, Plaintiff provided written notice under Labor Code
16 section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation
17 of various, including the herein-described, provisions of the Labor Code, to the Labor and
18 Workforce Development Agency ("LWDA"), as well as by certified mail, with return receipt
19 requested to Defendants, and each of them.

20 27. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
21 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
22 calendar days of the April 23, 2020 postmarked date of the herein-described notice sent by Plaintiff
23 to the LWDA and Defendants.

24 **PAGA REPRESENTATIVE ALLEGATIONS**

25 28. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
26 aggrieved employees have not been paid, during the relevant time period, wages for all time worked,
27 including overtime wages, as a result of, without limitation, Defendants failing to pay overtime
28 wages to Plaintiff and other non-exempt employees in the State of California in violation of

1 California state wage and hour laws as a result of, without limitation, Plaintiff and other aggrieved
2 employees working over eight (8) hours in a workday or forty (40) hours in a workweek; over twelve
3 (12) hours in a workday; and/or seven (7) consecutive workdays in a workweek without being
4 properly compensated for all hours worked in excess of eight (8) hours in a workday or forty (40)
5 hours in a workweek; all hours worked in excess of twelve (12) hours in a workday; and/or for all
6 hours worked on the seventh consecutive workday in a workweek, as a result of, among other things,
7 Defendants routinely failing to accurately track and/or pay for all minutes actually worked,
8 including but not limited to, donning and doffing equipment; paying overtime hours at the regular
9 rate of pay; and failing to include all forms of remuneration, including non-discretionary bonuses
10 and/or incentive pay, into the regular rate of pay for the purpose of calculating the overtime rate of
11 pay, to the detriment of Plaintiff and other aggrieved employees in the State of California. As such,
12 Plaintiff is informed and believes, and based thereon alleges, that Defendants violated Labor Code
13 sections 510 and 1194, and applicable Wage Orders based on their practice of providing total
14 compensation that is less than the required legal overtime compensation, entitling Plaintiff and other
15 aggrieved employees to relief under, without limitation, these sections. In addition, Defendants
16 would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

17 29. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
18 aggrieved employees have not been paid, during the relevant time period, wages for all time worked,
19 including minimum wages, as a result of, without limitation, Defendants failing to accurately track
20 and/or pay for all minutes actually worked, including but not limited to, minutes spent waiting in
21 lines to clock in and donning and doffing equipment, to the detriment of Plaintiff and other similarly
22 situated employees. As such, Plaintiff is informed and believes, and based thereon alleges, that
23 Defendants violated, without limitation, Labor Code section 1197 and applicable Wage Orders,
24 based on their continued failure to pay minimum wages, entitling Plaintiff and other aggrieved
25 employees to relief under, without limitation, Labor Code sections 1194 and 1194.2. Defendants
26 would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

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1 30. 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, and/or providing short meal periods. As such, Plaintiff is informed and believes, and based
9 thereon alleges, that Defendants violated Labor Code section 512, entitling Plaintiff and other
10 aggrieved employees to premium payments under Labor Code section 226.7. Defendants would
11 also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

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

19 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
20 and have a policy or practice of failing to furnish Plaintiff other aggrieved employees with itemized
21 wage statements that accurately reflect gross wages earned; total hours worked; net wages earned;
22 the name and address of each employer with whom they have been placed to work; all applicable
23 hourly rates in effect during the pay period and the corresponding number of hours worked at each
24 hourly rate; and other such information as required by Labor Code section 226, subdivision (a).
25 Consequently, since Defendants would have failed to comply with Labor Code section 226,
26 subdivision (a), Plaintiff and other aggrieved employees would be entitled to recover penalties
27 under, without limitation, Labor Code section 226, subdivision (e). Defendants would also be liable
28 for civil penalties pursuant to Labor Code sections 226.3, 558 and 2699.

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

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

15 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
16 and have a policy or practice of failing to reimburse Plaintiff and other aggrieved employees for
17 their costs incurred, including but not limited to, purchasing required steel-toe boots and in
18 separately laundering their uniforms, as required by Labor Code section 2802. Defendants would
19 also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

20 36. Plaintiff is informed and believes, and based thereon alleges that Defendants have,
21 and at all times relevant hereto had, a policy or practice of failing to comply with the notice
22 requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among
23 other things, failing to provide Plaintiff and other aggrieved employees with the rates of pay and
24 overtime rates of pay applicable to their employment; allowances claimed as part of the minimum
25 wage; the regular payday designated by Defendants; the name, address, and telephone number of
26 the workers' compensation insurance carrier; information regarding paid sick leave; and other
27 pertinent information required to be disclosed by Defendants under Labor Code section 2810.5. As
28 such, Plaintiff is informed and believes, and based thereon alleges that the failure to provide such

1 information, including rates of pay that are in effect, has permitted Defendants to pay employees at
2 rates of pay that were not agreed upon, in violation of overtime wage and minimum wage laws in
3 California. As a result of these violations, Defendants are liable for civil penalties pursuant to Labor
4 Code sections 558 and 2699.

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

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

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

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

10 43. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
11 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
12 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
13 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
14 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
15 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
16 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

17 44. At all relevant times herein, Defendants have had a consistent policy or practice of
18 failing to pay Plaintiff and aggrieved employees during their employment on a timely basis as per
19 Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other aggrieved
20 employees or former employees he seeks to represent are entitled to recover civil penalties for
21 Defendants’ violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for
22 each aggrieved employee or former employee for each initial violation per employee, and two
23 hundred dollars (\$200) for each aggrieved employee or former employee for each subsequent
24 violation in connection with each payment that was made in violation of Labor Code section 204.

25 **SECOND CAUSE OF ACTION**

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

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

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

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

12 48. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
13 this section are in addition to any other penalty provided by law.”

14 49. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
15 and have a policy or practice of failing to furnish non-exempt employees, including, without
16 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
17 hours worked; net wages earned; the name and address of each employer with whom they have been
18 placed to work; all applicable hourly rates in effect during the pay period and the corresponding
19 number of hours worked at each hourly rate; and other such information as required by Labor Code
20 section 226, subdivision (a).

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

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1 **THIRD CAUSE OF ACTION**

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

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

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

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

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

15 c. Wages recovered pursuant to this section shall be paid to the affected employee.”

16 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
17 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
18 causing Plaintiff and other aggrieved employees not to: be paid overtime wages and minimum
19 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
20 their employment and after their employment separation; receive accurate, itemized wage
21 statements; be provided with the opportunity to inspect employment records; to be reimbursed for
22 work expenses; be provided with notice as required under Labor Code section 2810.5; and be
23 provided with the proper accrual and use of paid sick leave.

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

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1 **FOURTH CAUSE OF ACTION**

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

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

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

11 a. For any initial violation that is intentionally committed, one hundred dollars (\$100)
12 for each underpaid employee for each pay period for which the employee is
13 underpaid. This amount shall be in addition to an amount sufficient to recover
14 underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable
15 penalties imposed pursuant to Section 203.

16 b. For each subsequent violation for the same specific offense, two hundred fifty dollars
17 (\$250) for each underpaid employee for each pay period for which the employee is
18 underpaid regardless of whether the initial violation is intentionally committed. This
19 amount shall be in addition to an amount sufficient to recover underpaid wages,
20 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed
21 pursuant to Section 203.

22 c. Wages, liquidated damages, and any applicable penalties imposed pursuant to
23 Section 203, recovered pursuant to this section shall be paid to the affected
24 employee.”

25 57. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
26 Plaintiff and aggrieved employees not to be paid minimum wages as a result of Defendants, without
27 limitation, routinely failing to pay Plaintiff or other aggrieved employees’ wages for all hours
28 worked or otherwise under Defendants’ control due to, without limitation, failing to accurately track

1 and/or pay for all hours actually worked and failing to pay overtime hours at the proper rate of pay
2 during the pay period, to the detriment of Plaintiff and other similarly aggrieved employees.

3 58. 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 1197.1.

6 **FIFTH CAUSE OF ACTION**

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

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

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

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

22 62. Plaintiff is informed and believes and based thereon alleges that Defendants, and
23 each of them, violated the Labor Code sections described herein, including, without limitation, for
24 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
25 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
26 employment and after employment separation; provide employees the opportunity to inspect
27 employment records; reimburse work-related expenses; provide notice as required under Labor
28 Code section 2810.5; and provide the proper accrual and use of paid sick leave, entitling Plaintiff

1 and other aggrieved employees to civil penalties for each of these Labor Code violations in the
2 amounts set forth in Labor Code section 2699, subdivision (f).

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

6 **REQUEST FOR JURY TRIAL**

7 64. Plaintiff hereby requests a trial by jury.

8 **PRAYER**

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

- 11 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
12 1197.1, and 2699;
13 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
14 210, 226.3, 558, 558.1, 1197.1, and 2699;
15 C. Pre-judgment and post-judgment interest;
16 D. For costs of suit incurred herein; and
17 E. Such other and further relief as the Court deems just and proper.

18
19 Dated: June 29, 2020

BIBIYAN LAW GROUP, P.C.

20
21 BY: 

DIEGO AVILES

22 DAVID D. BIBIYAN

23 Attorneys for Plaintiff ANTHONY QUINN RUSSELL,
24 on behalf of himself and all other aggrieved employees
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