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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 ALAMEDA
10

11 AGUSTIN PEDROZA LABRA, on behalf of
12 himself and all others aggrieved,

13 Plaintiff,

14 v.

15 ROSS DRESS FOR LESS, INC., a Virginia
corporation; ROSS STORES, INC., a
16 Delaware corporation; MICHAEL
KOBAYASHI, an individual; and DOES 1
17 through 100, inclusive,

18 Defendants.
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ENDORSED
FILED
ALAMEDA COUNTY

JUN 25 2020

CLERK OF THE SUPERIOR COURT

By TANIA PIERCE

CASE NO.: Rg20065903

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 AGUSTIN PEDROZA LABRA (“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 ROSS DRESS FOR LESS, INC., a Virginia corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“DRESS FOR LESS”), ROSS STORES, INC., a Delaware corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“ROSS STORES”), and MICHAEL KOBAYASHI, an individual (“KOBAYASHI” and collectively with DRESS FOR LESS, ROSS STORES 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, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock; detrimentally rounding, manipulating and/or editing time entries to show lesser minutes than actually worked during the pay period; 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, for the pay periods where overtime was worked and a non-discretionary bonus and/or incentive pay was provided, to the detriment of Plaintiff and other aggrieved employees.

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1 3. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of, failing to pay minimum wages to Plaintiff and other non-exempt employees in the State of
3 California in violation of California state wage and hour laws as a result of, including but not limited
4 to, Defendants failing to accurately track and/or pay for all minutes actually worked; engaging,
5 suffering, or permitting employees to work off the clock; and detrimentally rounding, and
6 manipulating and/or editing time entries to show lesser minutes than actually worked during the pay
7 period, to the detriment of Plaintiff and other aggrieved employees.

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

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

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

25 7. At all relevant times mentioned herein, Defendants had and have a policy or practice
26 of, on occasion, failing to timely pay Plaintiff and other aggrieved employees, among other wages,
27 overtime wages, minimum wages, and/or premium wages owed to them upon termination and/or
28 resignation, as required by Labor Code sections 201 and 202.

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

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

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

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

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

PARTIES

A. Plaintiff

13. Plaintiff, AGUSTIN PEDROZA LABRA, is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, unloading trucks and pallets, wrapping product, and labeling. Plaintiff began working for Defendants in approximately September of 2015 and worked through approximately the end April of 2019.

B. Defendants

14. Plaintiff is informed and believes and based thereon alleges that defendant DRESS FOR LESS is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of Virginia and doing business in the County of Alameda, State of California.

15. Plaintiff is informed and believes and based thereon alleges that defendant ROSS STORES 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 Alameda, State of California.

16. Plaintiff is informed and believes and based thereon alleges that defendant KOBAYASHI is, and at all times relevant hereto was, an individual residing in California, as well as president of DRESS FOR LESS, ROSS STORES, and DOES 1 through 100, as further defined below. Plaintiff is further informed and believes and based thereon alleges that KOBAYASHI 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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17. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each joint defendant are legally attributable to the other defendants. As employers of Plaintiff and other aggrieved employees throughout the relevant time period, Defendants, and each of them, are either solely, or jointly and severally liable for the damages alleged in Plaintiff's operative complaint. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall include DRESS FOR LESS, ROSS STORES, KOBAYASHI, and any of its parent, subsidiary, or affiliated companies within the State of California, as well DOES 1 through 100 identified herein.

JURISDICTION

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

19. Venue is proper in Alameda County, California pursuant to Code of Civil Procedure sections 392, et seq. because, among other things, Alameda County is where Defendants, or some of them reside, and because Defendants employ numerous Class Members in Alameda County and the State of California.

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

1 Court (2019) 8 Cal.5th 175.

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

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

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

14 24. On or around April 21, 2020, Plaintiff provided written notice under Labor Code
15 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation
16 of various, including the herein-described, provisions of the Labor Code, to the Labor and
17 Workforce Development Agency (“LWDA”), as well as by certified mail, with return receipt
18 requested to Defendants, and each of them.

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

23 **PAGA REPRESENTATIVE ALLEGATIONS**

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

1 employees working over eight (8) hours in a workday or forty (40) hours in a workweek; over twelve
2 (12) hours in a workday; and/or seven (7) consecutive workdays in a workweek without being
3 properly compensated for all hours worked in excess of eight (8) hours in a workday or forty (40)
4 hours in a workweek; all hours worked in excess of twelve (12) hours in a workday; and/or for all
5 hours worked on the seventh consecutive workday in a workweek, as a result of, among other things,
6 Defendants, failing to accurately track and/or pay for all minutes actually worked; engaging,
7 suffering, or permitting employees to work off the clock; detrimentally rounding, manipulating
8 and/or editing time entries to show lesser minutes than actually worked during the pay period; and
9 failing to include all forms of remuneration, including non-discretionary bonuses and/or incentive
10 pay, into the regular rate of pay for the purpose of calculating the overtime rate of pay, for the pay
11 periods where overtime was worked and a non-discretionary bonus and/or incentive pay was
12 provided, to the detriment of Plaintiff and other aggrieved employees in the State of California. As
13 such, Plaintiff is informed and believes, and based thereon alleges, that Defendants violated Labor
14 Code sections 510 and 1194, and applicable Wage Orders based on their practice of providing total
15 compensation that is less than the required legal overtime compensation, entitling Plaintiff and other
16 aggrieved employees to relief under, without limitation, these sections. In addition, Defendants
17 would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

18 27. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
19 aggrieved employees have, not been paid, during the relevant time period, wages for all time
20 worked, including minimum wages, as a result of, without limitation, Defendants routinely failing
21 to pay Plaintiff or other aggrieved employees' wages for all hours worked or otherwise under
22 Defendants' control due to, without limitation, failing to accurately track and/or pay for all minutes
23 actually worked; engaging, suffering, or permitting employees to work off the clock; and
24 detrimentally rounding, and manipulating and/or editing time entries to show lesser minutes than
25 actually worked during the pay period, to the detriment of Plaintiff and other aggrieved employees.
26 As such, Plaintiff is informed and believes, and based thereon alleges, that Defendants violated,
27 without limitation, Labor Code section 1197 and applicable Wage Orders, based on their continued
28 failure to pay minimum wages, entitling Plaintiff and other aggrieved employees to relief under,

1 without limitation, Labor Code sections 1194 and 1194.2. Defendants would also be liable for civil
2 penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

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

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

22 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
23 and have a policy or practice of, failing to furnish Plaintiff other aggrieved employees with itemized
24 wage statements that accurately reflect all gross wages earned; total hours worked by the employee;
25 net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate by the employee; and other such
27 information as required by Labor Code section 226, subdivision (a). Consequently, since
28 Defendants would have failed to comply with Labor Code section 226, subdivision (a), Plaintiff and

1 other aggrieved employees would be entitled to recover penalties under, without limitation, Labor
2 Code section 226, subdivision (e). Defendants would also be liable for civil penalties pursuant to
3 Labor Code sections 226.3, 558 and 2699.

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

10 32. At all relevant times mentioned herein, Defendants have had a policy or practice of,
11 failing to provide Plaintiff and other aggrieved employees with, or permit them inspection of,
12 records pertaining to their employment, including wage statements and similar payroll documents
13 under Labor Code section 226, documents signed to obtain or hold employment under Labor Code
14 section 432, personnel records under Labor Code section 1198.5, and time records under Labor
15 Code section 1174, to the detriment of Plaintiff and all other aggrieved employees. As a result of
16 these violations, Defendants are liable for civil penalties pursuant to Labor Code sections 558 and
17 2699.

18 33. Plaintiff is informed and believes, and based thereon alleges that Defendants have,
19 and at all times relevant hereto had, a policy or practice of failing to comply with the notice
20 requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among
21 other things, failing to provide Plaintiff and other aggrieved employees with the rates of pay and
22 overtime rates of pay applicable to their employment; allowances claimed as part of the minimum
23 wage; the regular payday designated by Defendants; the name of the employer, including any “doing
24 business as” names used; the name, address, and telephone number of the workers’ compensation
25 insurance carrier; information regarding paid sick leave; and other pertinent information required to
26 be disclosed by Defendants under Labor Code section 2810.5. As such, Plaintiff is informed and
27 believes, and based thereon alleges that the failure to provide such information, including rates of
28 pay that are in effect, has permitted Defendants to pay employees at rates of pay that were not agreed

1 upon, in violation of overtime wage and minimum wage laws in California. As a result of these
2 violations, Defendants are liable for civil penalties pursuant to Labor Code sections 558 and 2699.

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

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

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

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

25 **FIRST CAUSE OF ACTION**

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

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

39. 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.”

40. 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.”

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

SECOND CAUSE OF ACTION

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

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

43. Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; all applicable hourly rates in effect during

1 the pay period and the corresponding number of hours worked at each hourly rate; and other such
2 information as required by Labor Code section 226, subdivision (a).

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

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

10 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
11 and have a policy or practice of, failing to furnish non-exempt employees, including, without
12 limitation, Plaintiff, with itemized wage statements that accurately reflect all gross wages earned;
13 total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in
14 effect during the pay period and the corresponding number of hours worked at each hourly rate by
15 the employee; and other such information as required by Labor Code section 226, subdivision (a).

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

21 **THIRD CAUSE OF ACTION**

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

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

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

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

9 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
10 each of them, on occasion violated, or caused to be violated, the Labor Code sections described
11 herein, including causing Plaintiff and other aggrieved employees not to, among other things: be
12 paid overtime wages and minimum wages; receive meal and rest periods or compensation in lieu
13 thereof; be paid timely wages during their employment and after their employment separation;
14 receive accurate, itemized wage statements; be provided with the opportunity to inspect employment
15 records; and be provided with notice as required under Labor Code section 2810.5.

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

19 **FOURTH CAUSE OF ACTION**

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

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

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

- 1 a. For any initial violation that is intentionally committed, one hundred dollars
2 (\$100) for each underpaid employee for each pay period for which the
3 employee is underpaid. This amount shall be in addition to an amount
4 sufficient to recover underpaid wages, liquidated damages pursuant to Section
5 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 6 b. For each subsequent violation for the same specific offense, two hundred fifty
7 dollars (\$250) for each underpaid employee for each pay period for which the
8 employee is underpaid regardless of whether the initial violation is
9 intentionally committed. This amount shall be in addition to an amount
10 sufficient to recover underpaid wages, liquidated damages pursuant to Section
11 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 12 c. Wages, liquidated damages, and any applicable penalties imposed pursuant to
13 Section 203, recovered pursuant to this section shall be paid to the affected
14 employee.”

15 54. Plaintiff is informed and believes, and based thereon alleges, that Defendants on
16 occasion caused Plaintiff and aggrieved employees not be paid minimum wages as a result of
17 Defendants, without limitation, by failing to accurately track and/or pay for all minutes actually
18 worked; engaging, suffering, or permitting employees to work off the clock; and detrimentally
19 rounding, and manipulating and/or editing time entries to show lesser minutes than actually worked
20 during the pay period.

21 55. As a direct and proximate result of Defendants’ conduct, Plaintiff and other
22 aggrieved employees are entitled to recover directly from Defendants civil penalties pursuant to
23 Labor Code section 1197.1.

24 **FIFTH CAUSE OF ACTION**

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

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

28 57. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other

1 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
2 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
3 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
4 action brought by an aggrieved employee on behalf of himself or herself and other current or former
5 employees pursuant to the procedures specified in Labor Code section 2699.3.

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

12 59. Plaintiff is informed and believes and based thereon alleges that Defendants, and
13 each of them, violated the Labor Code sections described herein, including, without limitation, for
14 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
15 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
16 employment and after employment separation; provide employees the opportunity to inspect
17 employment records; provide and pay for sick leave; and provide notice as required under Labor
18 Code section 2810.5 entitling Plaintiff and other aggrieved employees to civil penalties for each of
19 these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

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

23 **REQUEST FOR JURY TRIAL**

24 61. Plaintiff hereby requests a trial by jury.

25 **PRAYER**

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

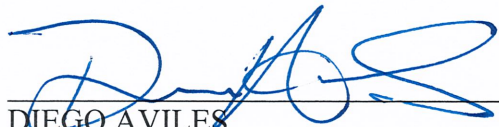
28 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 558.1,

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

Dated: June 25, 2020

BIBIYAN LAW GROUP, P.C.

BY: 
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DAVID D. BIBIYAN
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on behalf of himself and all other aggrieved employees