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12 on behalf of herself and all others aggrieved

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SOLANO**

15 CANDIDA ARACELY TORRES, on behalf
16 of herself and all others aggrieved,

17 Plaintiff,

18 v.

19 PRIMAL PET FOODS, INC., a California
20 corporation; and DOES 1 through 100,
21 inclusive,

22 Defendants.

FILED/ENDORSED
Clerk of the Superior Court

AUG 24 2020

By **D. CINMINO**
DEPUTY CLERK

CASE NO.: **FCS055248**

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 TO
JUDGE E. Bradley Nelson
FOR ALL PURPOSES

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27 COMES NOW plaintiff CANDIDA ARACELY TORRES ("Plaintiff"), on behalf of herself
28 and all other aggrieved employees, and alleges as follows:

PAGA COMPLAINT

INTRODUCTION

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2 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
3 Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), on behalf of Plaintiff and all
4 other aggrieved current and former employees of PRIMAL PET FOODS, INC., a California
5 corporation, and any of its respective subsidiaries or affiliated companies within the State of
6 California ("PRIMAL PET FOODS" and collectively with DOES 1 through 100, as further defined
7 below, "Defendants").

8 2. At all relevant times mentioned herein, Defendants had and have a policy or practice
9 of, failing to pay overtime wages to Plaintiff and other non-exempt employees in the State of
10 California in violation of California state wage and hour laws as a result of, without limitation,
11 Plaintiff and other aggrieved employees working over eight (8) hours in a workday or forty (40)
12 hours in a workweek; over twelve (12) hours in a workday; and/or seven (7) consecutive workdays
13 in a workweek without being properly compensated for all hours worked in excess of eight (8) hours
14 in a workday or forty (40) hours in a workweek; all hours worked in excess of twelve (12) hours in
15 a workday; and/or for all hours worked on the seventh consecutive workday in a workweek, as a
16 result of, among other things, failing to accurately track and/or pay for all minutes actually worked
17 by, including but not limited to, detrimentally rounding, manipulating and/or editing time entries to
18 show lesser minutes than actually worked during the pay period; engaging, suffering, or permitting
19 employees to work off the clock, including, without limitation, for time spent donning and doffing
20 mandatory uniforms; requiring employees to begin work duties before clocking in and continue
21 working after clocking out; requiring employees to wait in line for minutes at a time to clock in and
22 clock out; and requiring employees to check in with security before clocking in, to the detriment of
23 Plaintiff and other aggrieved employees.

24 3. At all relevant times mentioned herein, Defendants had and have a policy or practice
25 of, failing to pay minimum wages to Plaintiff and other non-exempt employees in the State of
26 California in violation of California state wage and hour laws as a result of, including but not limited
27 to, Defendants failing to accurately detrimentally rounding, manipulating and/or editing time entries
28 to show lesser minutes than actually worked during the pay period; engaging, suffering, or

1 permitting employees to work off the clock, including, without limitation, for time spent donning
2 and doffing mandatory uniforms; requiring employees to begin work duties before clocking in and
3 continue working after clocking; and requiring employees to wait in line for minutes at a time to
4 clock in and clock out; requiring employees to check in with security before clocking in, to the
5 detriment of Plaintiff and other aggrieved employees.

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

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

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

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

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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 herself and other aggrieved employees pursuant to PAGA.

PARTIES

A. Plaintiff

13. Plaintiff, CANDIDA ARACELY TORRES, 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, operating machinery and packing items. Plaintiff began working for Defendants in approximately May of 2017 and worked through approximately May of 2019.

B. Defendants

14. Plaintiff is informed and believes and based thereon alleges that defendant PRIMAL PET FOODS is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of California and doing business in the County of Solano, State of California.

15. 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

1 for the damages alleged in Plaintiff's operative complaint. Whenever, heretofore or hereinafter,
2 reference is made to "Defendants," it shall include PRIMAL PET FOODS, and any of their parent,
3 subsidiary, or affiliated companies within the State of California, as well DOES 1 through 100
4 identified herein.

5 JURISDICTION

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

8 17. Venue is proper in Solano County, California pursuant to Code of Civil Procedure
9 sections 392, *et seq.* because, among other things, Solano County is where: the causes of action
10 complained of herein arose; the county in which the employment relationship began; the county in
11 which performance of the employment contract, or part of it, between Plaintiff and Defendants was
12 due to be performed; the county in which the employment contract, or part of it, between Plaintiff
13 and Defendants was actually performed; and the county in which the employment contract between
14 Plaintiff and Defendants, or part of it, was breached by Defendants; and the county in which
15 Defendants, or some of them, reside.

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

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

26 20. During the period beginning one (1) year preceding the provision of notice to the
27 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),
28 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 226, 226.3, 210, 246,

1 432, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198.5, 2699, and 2810.5, among others.

2 21. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
3 such as Plaintiff, on behalf of herself and all other aggrieved current and former employees within
4 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
5 specified in Labor Code section 2699.3.

6 22. On or around May 15, 2020, Plaintiff provided written notice under Labor Code
7 section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation
8 of various, including the herein-described, provisions of the Labor Code, to the Labor and
9 Workforce Development Agency ("LWDA"), as well as by certified mail, with return receipt
10 requested to Defendants, and each of them.

11 23. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
12 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
13 calendar days of the May 15, 2020 postmarked date of the herein-described notice sent by Plaintiff
14 to the LWDA and Defendants.

15 **PAGA REPRESENTATIVE ALLEGATIONS**

16 24. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
17 aggrieved employees have, not been paid, during the relevant time period, wages for all time
18 worked, including overtime wages, as a result of, without limitation, Defendants failing to pay
19 overtime wages to Plaintiff and other non-exempt employees in the State of California in violation
20 of California state wage and hour laws as a result of, without limitation, Plaintiff and other aggrieved
21 employees working over eight (8) hours in a workday or forty (40) hours in a workweek; over twelve
22 (12) hours in a workday; and/or seven (7) consecutive workdays in a workweek without being
23 properly compensated for all hours worked in excess of eight (8) hours in a workday or forty (40)
24 hours in a workweek; all hours worked in excess of twelve (12) hours in a workday; and/or for all
25 hours worked on the seventh consecutive workday in a workweek, as a result of, among other things,
26 Defendants, failing to accurately track and/or pay for all minutes actually worked by, including but
27 not limited to, detrimentally rounding, manipulating and/or editing time entries to show lesser
28 minutes than actually worked during the pay period; engaging, suffering, or permitting employees

1 to work off the clock, including, without limitation, for time spent donning and doffing mandatory
2 uniforms; requiring employees to begin work duties before clocking in and continue working after
3 clocking out; requiring employees to wait in line for minutes at a time to clock in and clock out; and
4 requiring employees to check in with security before clocking in, to the detriment of Plaintiff and
5 other aggrieved employees in the State of California. As such, Plaintiff is informed and believes,
6 and based thereon alleges, that Defendants violated Labor Code sections 510 and 1194, and
7 applicable Wage Orders based on their practice of providing total compensation that is less than the
8 required legal overtime compensation, entitling Plaintiff and other aggrieved employees to relief
9 under, without limitation, these sections. In addition, Defendants would also be liable for civil
10 penalties pursuant to Labor Code sections 558 and 2699.

11 25. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
12 aggrieved employees have, not been paid, during the relevant time period, wages for all time
13 worked, including minimum wages, as a result of, without limitation, Defendants routinely failing
14 to pay Plaintiff or other aggrieved employees' wages for all hours worked or otherwise under
15 Defendants' control due to, without limitation, failing to accurately detrimentally rounding,
16 manipulating and/or editing time entries to show lesser minutes than actually worked during the pay
17 period; engaging, suffering, or permitting employees to work off the clock, including, without
18 limitation, for time spent donning and doffing mandatory uniforms; requiring employees to begin
19 work duties before clocking in and continue working after clocking; and requiring employees to
20 wait in line for minutes at a time to clock in and clock out; requiring employees to check in with
21 security before clocking in, to the detriment of Plaintiff and other aggrieved employees. As such,
22 Plaintiff is informed and believes, and based thereon alleges, that Defendants violated, without
23 limitation, Labor Code section 1197 and applicable Wage Orders, based on their continued failure
24 to pay minimum wages, entitling Plaintiff and other aggrieved employees to relief under, without
25 limitation, Labor Code sections 1194 and 1194.2. Defendants would also be liable for civil penalties
26 pursuant to Labor Code sections 558, 1197.1, and 2699.

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1 26. 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 27. 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 she 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 28. 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 all gross wages earned; total hours worked by the employee;
22 net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee; and other such
24 information as required by Labor Code section 226, subdivision (a). Consequently, since
25 Defendants would have failed to comply with Labor Code section 226, subdivision (a), Plaintiff and
26 other aggrieved employees would be entitled to recover penalties under, without limitation, Labor
27 Code section 226, subdivision (e). Defendants would also be liable for civil penalties pursuant to
28 Labor Code sections 226.3, 558 and 2699.

1 29. 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 30. 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 31. Plaintiff is informed and believes, and based thereon alleges that Defendants have,
16 and at all times relevant hereto had, a policy or practice of failing to comply with the notice
17 requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among
18 other things, failing to provide Plaintiff and other aggrieved employees with the rates of pay and
19 overtime rates of pay applicable to their employment; allowances claimed as part of the minimum
20 wage; the regular payday designated by Defendants; the name of the employer, including any “doing
21 business as” names used; the name, address, and telephone number of the workers’ compensation
22 insurance carrier; information regarding paid sick leave; and other pertinent information required to
23 be disclosed by Defendants under Labor Code section 2810.5. As such, Plaintiff is informed and
24 believes, and based thereon alleges that the failure to provide such information, including rates of
25 pay that are in effect, has permitted Defendants to pay employees at rates of pay that were not agreed
26 upon, in violation of overtime wage and minimum wage laws in California. As a result of these
27 violations, Defendants are liable for civil penalties pursuant to Labor Code sections 558 and 2699.

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

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

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

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

23 **FIRST CAUSE OF ACTION**

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

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

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37. 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.”

38. 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.”

39. 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 she 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)

40. 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.

41. 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 42. 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 43. 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 44. 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 45. Pursuant to Labor Code section 226.3, Plaintiff and other aggrieved employees she
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 46. 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 47. 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:

- 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.”

48. 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, among other things: 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; and be provided with notice as required under Labor Code section 2810.5.

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

FOURTH CAUSE OF ACTION

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

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

51. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to 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 52. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
16 Plaintiff and aggrieved employees not be paid minimum wages as a result of Defendants, without
17 limitation, failing to accurately detrimentally rounding, manipulating and/or editing time entries to
18 show lesser minutes than actually worked during the pay period; engaging, suffering, or permitting
19 employees to work off the clock, including, without limitation, for time spent donning and doffing
20 mandatory uniforms; requiring employees to begin work duties before clocking in and continue
21 working after clocking; and requiring employees to wait in line for minutes at a time to clock in and
22 clock out; requiring employees to check in with security before clocking in, to the detriment of
23 Plaintiff and other aggrieved employees.

24 53. 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 1197.1.

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1 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

28 / / /

1 **REQUEST FOR JURY TRIAL**

2 59. Plaintiff hereby requests a trial by jury.

3 **PRAYER**

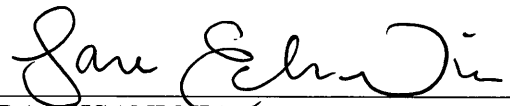
4 **WHEREFORE**, on behalf of herself and all others aggrieved, Plaintiff prays for judgment
5 against Defendants as follows:

- 6 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1197.1,
7 and 2699;
- 8 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
9 210, 226.3, 558, 1197.1, and 2699;
- 10 C. Pre-judgment and post-judgment interest;
- 11 D. For costs of suit incurred herein; and
- 12 E. Such other and further relief as the Court deems just and proper.

13
14 Dated: August 24, 2020

BIBIYAN LAW GROUP, P.C.

15
16 BY:



17 SARA EHSANI-NIA

18 DAVID D. BIBIYAN

19 Attorneys for Plaintiff CANDIDA ARACELY
20 TORRES, on behalf of herself and all other aggrieved
21 employees
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