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on behalf of himself and all others aggrieved

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

JOHN M. ALVARADO, on behalf of himself
and all others aggrieved,

Plaintiff,

v.

THE IRVINE COMPANY LLC, a Delaware
limited liability company; THE IRVINE
COMPANY APARTMENT
COMMUNITITES, INC., a Delaware
corporation; IRVINE MANAGEMENT
COMPANY, a Delaware corporation; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 30-2020-01150903-CU-OE-CXC

REPRESENTATIVE ACTION

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

DEMAND FOR JURY TRIAL

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

Assigned for all purposes to: Judge William Claster

Dept: CX104

COMES NOW plaintiff JOHN MARMOLEJO ALVARADO ("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 THE IRVINE COMPANY LLC, a Delaware limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California ("IRVINE COMPANY"), THE IRVINE COMPANY APARTMENT COMMUNITITES, INC., a Delaware corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("IRVINE APARTMENT"), and IRVINE MANAGEMENT COMPANY, a Delaware corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("IRVINE MANAGEMENT" and collectively with IRVINE COMPANY, IRVINE APARTMENT, and DOES 1 through 100, as further defined below, "Defendants").

2. At all relevant times mentioned herein, Defendants, at times, failed 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, on occasion, failing to accurately track and/or pay for all minutes actually worked; at times detrimentally rounding, manipulating and/or editing time entries to show lesser minutes than actually worked during the pay period; at times failing to include all forms of remuneration, including non-discretionary bonuses and/or incentive pay, into the regular rate of pay for the pay periods where overtime was worked and a non-discretionary bonus and/or incentive pay was earned, for the purpose of calculating the overtime rate of pay; on occasion engaging, suffering, or permitting employees to work off the clock, including, without limitation, by at times requiring employees to begin work duties before clocking in and continue working after clocking out; by

1 occasionally requiring employees to carry cellular telephones and/or walkie-talkies during meal
2 breaks and other off-duty times; by at times requiring employees to complete pre-shift and post-
3 shift tasks, including, without limitation, loading and unloading golf carts with materials required
4 for on-shift duties; and occasionally requiring employees park golf carts in areas several minutes
5 distance from where they clock in and out, to the detriment of Plaintiff and other aggrieved
6 employees.

7 3. At all relevant times mentioned herein, Defendants occasionally failed to pay
8 minimum wages to Plaintiff and other non-exempt employees in the State of California in violation
9 of California state wage and hour laws as a result of, including but not limited to, Defendants failing,
10 at times, to accurately track and/or pay for all minutes actually worked by, including but not limited
11 to, occasionally detrimentally rounding, manipulating and/or editing time entries to show lesser
12 minutes than actually worked during the pay period; at times engaging, suffering, or permitting
13 employees to work off the clock, including, without limitation, by occasionally requiring employees
14 to begin work duties before clocking in and continue working after clocking out; by at times
15 requiring employees to carry cellular telephones and/or walkie-talkies during meal breaks and other
16 off-duty times; by occasionally requiring employees to complete pre-shift and post-shift tasks,
17 including, without limitation, loading and unloading golf carts with materials required for on-shift
18 duties; and at times requiring employees park golf carts in areas several minutes distance from where
19 they clock in and out, to the detriment of Plaintiff and other aggrieved employees.

20 4. At all relevant times mentioned herein, Defendants, at times, failed to provide
21 Plaintiff and other aggrieved employees a thirty (30) minute uninterrupted, timely, and/or requiring
22 that employees carry cellular telephones or walkie-talkies during meal periods, and complete meal
23 period for days on which the employee worked in excess of five (5) hours in a workday; a second
24 thirty (30) minute uninterrupted, timely, and complete meal period for days on which the employee
25 worked in excess of ten (10) hours in a workday; or compensation in lieu thereof, as required by
26 California wage and hour laws.

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1 5. At all relevant times mentioned herein, Defendants, at times, failed to provide
2 Plaintiff and other aggrieved employees paid, uninterrupted, timely, and complete rest periods of at
3 least ten (10) minutes per four (4) hours worked or major fractions thereof, including by, at times,
4 requiring that employees carry cellular telephones or walkie-talkies during rest periods (*i.e.*, on-
5 duty/on-call rest periods), or provide compensation in lieu thereof, as required by California wage
6 and hour laws.

7 6. At all relevant times mentioned herein, Defendants, on occasion, failed to comply
8 with Labor Code section 226, subdivision (a) by, at times, intentionally failing to furnish Plaintiff
9 other aggrieved employees with itemized wage statements that accurately reflect all gross wages
10 earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly
11 rates in effect during the pay period and the corresponding number of hours worked at each hourly
12 rate by the employee; and other such information as required by Labor Code section 226,
13 subdivision (a).

14 7. At all relevant times mentioned herein, Defendants, at times, failed to timely pay
15 Plaintiff and other aggrieved employees, among other wages, overtime wages, minimum wages,
16 and/or premium wages owed to them upon termination and/or resignation, as required by Labor
17 Code sections 201 and 202.

18 8. At all relevant times mentioned herein, Defendants occasionally failed to provide
19 Plaintiff and other aggrieved employees with, or permit them inspection of, records pertaining to
20 their employment, including wage statements and similar payroll documents under Labor Code
21 section 226, documents signed to obtain or hold employment under Labor Code section 432,
22 personnel records under Labor Code section 1198.5, and time records under Labor Code section
23 1174, to the detriment of Plaintiff and all other aggrieved employees.

24 9. At all relevant times mentioned herein, Defendants occasionally failed to comply
25 with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of
26 2011) by, among other things, failing to provide Plaintiff and other aggrieved employees with the
27 rates of pay and overtime rates of pay applicable to their employment; allowances claimed as part
28 of the minimum wage; the regular payday designated by Defendants; the name of the employer,

1 including any “doing business as” names used, the name, address, and telephone number of the
2 workers’ compensation insurance carrier; information regarding paid sick leave; and other pertinent
3 information required to be disclosed by Defendants under Labor Code section 2810.5.

4 10. At all relevant times mentioned herein, Defendants occasionally failed to provide
5 Plaintiff and other aggrieved employees with the amount of paid sick leave required to be provided
6 pursuant to California law (including, without limitation Labor Code section 246, *et seq.*), and also
7 did not permit its use upon request as contemplated under California laws, to the detriment of
8 Plaintiff and all other aggrieved employees.

9 11. At all relevant times mentioned herein, Defendants occasionally failed to pay
10 employees their wages in accordance with Labor Code Section 204, which requires that: “[l]abor
11 performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between
12 the 16th and 26th day of the month during which the labor was performed, and labor performed
13 between the 16th and the last day, inclusive of any calendar month, shall be paid for between the
14 1st and 10th day of the following month.”

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

19 PARTIES

20 A. Plaintiff

21 13. Plaintiff, JOHN M. ALVARADO, is a resident of the State of California. At all
22 relevant times herein, Defendants employed Plaintiff as a non-exempt employee, with duties that
23 included, without limitation, cleaning properties, within the State of California from approximately
24 May of 2017 through approximately December of 2019.

25 B. Defendants

26 14. Plaintiff is informed and believes and based thereon alleges that defendant IRVINE
27 COMPANY is, and at all times relevant hereto was, a limited liability company organized and
28 existing under and by virtue of the laws of the State of Delaware and doing business in the County

1 of Orange, State of California.

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

6 16. Plaintiff is informed and believes and based thereon alleges that defendant IRVINE
7 MANAGEMENT is, and at all times relevant hereto was, a corporation organized and existing under
8 and by virtue of the laws of the State of Delaware and doing business in the County of Orange, State
9 of California.

10 17. The true names and capacities, whether individual, corporate, associate, or otherwise,
11 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
12 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
13 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
14 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
15 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
16 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
17 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
18 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
19 policy in all respects pertinent hereto, and the acts of each joint defendant are legally attributable to
20 the other defendants. As employers of Plaintiff and other aggrieved employees throughout the
21 relevant time period, Defendants, and each of them, are either solely, or jointly and severally liable
22 for the damages alleged in Plaintiff's operative complaint. Whenever, heretofore or hereinafter,
23 reference is made to "Defendants," it shall include IRVINE COMPANY, IRVINE APARTMENT,
24 IRVINE MANAGEMENT and any of their subsidiaries or affiliated companies within the State of
25 California, as well DOES 1 through 100 identified herein.

26 **JURISDICTION**

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

1 19. Venue is proper in Orange County in California pursuant to Code of Civil Procedure
2 section 392, *et seq.* because, among other things, Orange County is where the causes of action
3 complained of herein arose; the county in which the employment relationship began; the county in
4 which performance of the employment contract, or part of it, between Plaintiff and Defendants was
5 due to be performed; and the county in which the employment contract, or part of it, between
6 Plaintiff and Defendants was actually performed.

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

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

17 22. During the period beginning one (1) year preceding the provision of notice to the
18 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
19 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 246,
20 432, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198.5, 2699, and 2810.5, among others.

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

25 24. On or around May 11, 2020, Plaintiff provided written notice under Labor Code
26 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation
27 of various, including the herein-described, provisions of the Labor Code, to the Labor and
28 Workforce Development Agency (“LWDA”), as well as by certified mail, with return receipt

1 requested to Defendants, and each of them.

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

6 **PAGA REPRESENTATIVE ALLEGATIONS**

7 26. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
8 aggrieved employees have not been paid, at times during the relevant time period, wages for all time
9 worked, including overtime wages, as a result of, without limitation, Defendants occasionally failing
10 to pay overtime wages to Plaintiff and other non-exempt employees in the State of California in
11 violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other
12 aggrieved employees working over eight (8) hours in a workday or forty (40) hours in a workweek;
13 over twelve (12) hours in a workday; and/or seven (7) consecutive workdays in a workweek without
14 being properly compensated for all hours worked in excess of eight (8) hours in a workday or forty
15 (40) hours in a workweek; all hours worked in excess of twelve (12) hours in a workday; and/or for
16 all hours worked on the seventh consecutive workday in a workweek, as a result of, among other
17 things, Defendants, failing, at times, to accurately track and/or pay for all minutes actually worked;
18 occasionally detrimentally rounding, manipulating and/or editing time entries to show lesser
19 minutes than actually worked during the pay period; at times failing to include all forms of
20 remuneration, including non-discretionary bonuses and/or incentive pay, into the regular rate of pay
21 for the pay periods where overtime was worked and a non-discretionary bonus and/or incentive pay
22 was earned, for the purpose of calculating the overtime rate of pay; occasionally engaging, suffering,
23 or permitting employees to work off the clock, including, without limitation, by requiring employees
24 to begin work duties before clocking in and continue working after clocking out; by, at times,
25 requiring employees to carry cellular telephones and/or walkie-talkies during meal breaks and other
26 off-duty times; by occasionally requiring employees to complete pre-shift and post-shift tasks,
27 including, without limitation, loading and unloading golf carts with materials required for on-shift
28 duties; and requiring employees park golf carts in areas several minutes distance from where they

1 clock in and out, to the detriment of Plaintiff and other aggrieved employees in the State of
2 California. As such, Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 violated Labor Code sections 510 and 1194, and applicable Wage Orders based on their occasional
4 practice of providing total compensation that is less than the required legal overtime compensation,
5 entitling Plaintiff and other aggrieved employees to relief under, without limitation, these sections.
6 In addition, Defendants would also be liable for civil penalties pursuant to Labor Code sections 558
7 and 2699.

8 27. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
9 aggrieved employees have, at times, not been paid, during the relevant time period, wages for all
10 time worked, including minimum wages, as a result of, without limitation, Defendants occasionally
11 failing to accurately track and/or pay for all minutes actually worked by, including but not limited
12 to, at times detrimentally rounding, manipulating and/or editing time entries to show lesser minutes
13 than actually worked during the pay period; occasionally engaging, suffering, or permitting
14 employees to work off the clock, including, without limitation, by, at times, requiring employees to
15 begin work duties before clocking in and continue working after clocking out; by occasionally
16 requiring employees to carry cellular telephones and/or walkie-talkies during meal breaks and other
17 off-duty times; by, at times, requiring employees to complete preshift and postshift tasks, including,
18 without limitation, loading and unloading golf carts with materials required for on-shift duties; and
19 occasionally requiring employees park golf carts in areas several minutes distance from where they
20 clock in and out, to the detriment of Plaintiff and other aggrieved employees. As such, Plaintiff is
21 informed and believes, and based thereon alleges, that Defendants violated, without limitation,
22 Labor Code section 1197 and applicable Wage Orders, based on their occasional failure to pay
23 minimum wages, entitling Plaintiff and other aggrieved employees to relief under, without
24 limitation, Labor Code sections 1194 and 1194.2. Defendants would also be liable for civil penalties
25 pursuant to Labor Code sections 558, 1197.1, and 2699.

26 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants, on
27 occasion, failed to provide Plaintiff and other aggrieved employees a thirty (30) minute
28 uninterrupted, timely, and complete meal period for days on which the employee worked in excess

1 of five (5) hours in a workday; a second thirty (30) minute uninterrupted, timely, and complete meal
2 period for days on which the employee worked in excess of ten (10) hours in a workday; or
3 compensation in lieu thereof, including, without limitation, by, at times, interrupting meal periods,
4 not providing timely meal periods, failing to provide first and second meal periods all together,
5 providing short meal periods, auto-deducting meal periods not taken, and/or requiring that
6 employees carry cellular telephones or walkie-talkies during meal periods (*i.e.*, on-duty/on-call meal
7 periods). As such, Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 violated Labor Code section 512, entitling Plaintiff and other aggrieved employees to premium
9 payments under Labor Code section 226.7. Defendants would also be liable for civil penalties
10 pursuant to Labor Code sections 558 and 2699.

11 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 occasionally failed to provide Plaintiff and other aggrieved employees paid, uninterrupted, timely,
13 and complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
14 thereof, including by, at times, requiring that employees carry cellular telephones or walkie-talkies
15 during rest periods (*i.e.*, on-duty/on-call rest periods), or provide or compensation in lieu thereof as
16 required under (the) applicable Wage Order(s). As such, Plaintiff is informed and believes, and
17 based thereon alleges, that he and other aggrieved employees are entitled to relief under, without
18 limitation, Labor Code section 226.7. Defendants would also be liable for civil penalties pursuant
19 to Labor Code sections 558 and 2699.

20 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants, at
21 times, failed to furnish Plaintiff other aggrieved employees with itemized wage statements that
22 accurately reflect all gross wages earned; total hours worked by the employee; net wages earned; all
23 deductions; all applicable hourly rates in effect during the pay period and the corresponding number
24 of hours worked at each hourly rate by the employee; and other such information as required by
25 Labor Code section 226, subdivision (a). Consequently, since Defendants would have occasionally
26 failed to comply with Labor Code section 226, subdivision (a), Plaintiff and other aggrieved
27 employees would be entitled to recover penalties under, without limitation, Labor Code section 226,
28 subdivision (e). Defendants would also be liable for civil penalties pursuant to Labor Code sections

1 226.3, 558 and 2699.

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

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

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

28 / / /

34. Plaintiff is informed and believes, and based thereon alleges, that Defendants occasionally failed to provide Plaintiff and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to California law (including, without limitation, Labor Code section 246, *et seq.*), and also, at times, did not permit its use upon request as contemplated under California law. As such, Defendants would be liable for civil penalties for violation of the paid sick leave regulations under Labor Code sections 558 and 2699.

35. Plaintiff is informed and believes, and based thereon alleges, that Defendants have, at times, failed to pay Plaintiff and other aggrieved employees their wages in accordance with Labor Code section 204, which requires 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.” As such, Plaintiff is informed and believes, and based thereon alleges, that Defendants occasionally did not and do not pay their employees in accordance with Labor Code section 204. Defendants would be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

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

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

FIRST CAUSE OF ACTION

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

38. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs 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

1 between the 16th and 26th day of the month during which the labor was performed, and labor
2 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
3 between the 1st and 10th day of the following month.”

4 40. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
5 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
6 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
7 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
8 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
9 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
10 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

11 41. At all relevant times herein, Defendants have, at times, failed to pay Plaintiff and
12 aggrieved employees during their employment on a timely basis as per Labor Code section 204.
13 Thus, pursuant to Labor Code section 210, Plaintiff and other aggrieved employees or former
14 employees he seeks to represent are entitled to recover civil penalties for Defendants’ occasional
15 violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for each
16 aggrieved employee or former employee for each initial violation per employee, and two hundred
17 dollars (\$200) for each aggrieved employee or former employee for each subsequent violation in
18 connection with each payment that was made in violation of Labor Code section 204.

19 **SECOND CAUSE OF ACTION**

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

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

23 43. Defendants occasionally failed to comply with Labor Code section 226, subdivision
24 (a) by intentionally failing to furnish Plaintiff with itemized wage statements that accurately reflect
25 gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during
26 the pay period and the corresponding number of hours worked at each hourly rate; and other such
27 information as required by Labor Code section 226, subdivision (a).

28 / / /

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

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

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

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

THIRD CAUSE OF ACTION

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

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

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

/ / /

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

50. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each of them, at times 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.

51. 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)

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

53. 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 54. 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, by, at times, failing to pay Plaintiff or other aggrieved employees’ wages for all hours
18 worked or otherwise under Defendants’ control due to, without limitation, occasionally failing to
19 accurately track and/or pay for all minutes actually worked by, including but not limited to, at times
20 detrimentally rounding, manipulating and/or editing time entries to show lesser minutes than
21 actually worked during the pay period; occasionally engaging, suffering, or permitting employees
22 to work off the clock, including, without limitation, by, at times, requiring employees to begin work
23 duties before clocking in and continue working after clocking out; by occasionally requiring
24 employees to carry cellular telephones and/or walkie-talkies during meal breaks and other off-duty
25 times; by at times requiring employees to complete pre-shift and post-shift tasks, including, without
26 limitation, loading and unloading golf carts with materials required for on-shift duties; and requiring
27 employees park golf carts in areas several minutes distance from where they clock in and out.

28 / / /

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

FIFTH CAUSE OF ACTION

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

56. 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.

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

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

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

/ / /

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

REQUEST FOR JURY TRIAL

61. Plaintiff hereby requests a trial by jury.

PRAYER

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

- A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 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: July 23, 2020

BIBIYAN LAW GROUP, P.C.

BY:

SARA EHSANI-NIA

DAVID D. BIBIYAN

Attorneys for Plaintiff JOHN M. ALVARADO, on
behalf of himself and all other aggrieved employees