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on behalf of himself and all others aggrieved

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

SERGIO RODRIGUEZ, on behalf of himself
and all others aggrieved,

Plaintiff,

v.

ACRA AEROSPACE, LLC, a Delaware
limited liability company; NOVARIA
GROUP, LLC, a Texas limited liability
company; CHRIS JONES, an individual;
MARTY MICHAEL, an individual, and DOES
1 through 100, inclusive,

Defendants.

CASE NO.: 30-2020-01171373-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
Judge Randall J. Sherman

CX-105

COMES NOW plaintiff SERGIO RODRIGUEZ ("Plaintiff"), on behalf of himself and all
others aggrieved, and alleges as follows:

JURISDICTION AND VENUE

1
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"), against ACRA AEROSPACE,
4 LLC, a Delaware limited liability company, and any of its respective subsidiaries or affiliated
5 companies within the State of California ("ACRA AEROSPACE"), NOVARIA GROUP, LLC, a
6 Texas limited liability company, and any of its respective subsidiaries or affiliated companies within
7 the State of California ("NOVARIA"), CHRIS JONES, an individual ("CHRIS JONES"), and
8 MARTY MICHAEL, an individual ("MARTY MICHAEL," and together with "ACRA
9 AEROSPACE," "NOVARIA," "CHRIS JONES," and DOES 1 through 100, as further defined
10 below, "Defendants"), as a proxy of the Labor and Workforce Development Agency of the State of
11 California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt employees
12 of Defendants working within the Civil Penalty Period, as further defined herein (collectively,
13 "Aggrieved Employees").

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

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

22 4. Plaintiff is an "aggrieved employee" under PAGA, as Plaintiff was employed by
23 Defendants during the applicable statutory period and suffered one or more of the Labor Code
24 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term "civil
25 penalty" is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
26 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA") plus
27 reasonable attorneys' fees and costs, for Plaintiff and all other aggrieved current and former
28 employees of Defendants during the Civil Penalty Period.

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

6. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated, *inter alia*, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, *et seq.*, 432, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198.5, 2699, and 2810.5, among others.

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

8. On or around July 28, 2020, Plaintiff provided written notice pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of them.

9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the July 28, 2020 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

PAGA REPRESENTATIVE ALLEGATIONS

10. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiff and other Aggrieved 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 per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually

1 worked; engaging, suffering, or permitting employees to work off the clock, including, without
2 limitation, by requiring employees: to wait in line to clock-in without pay; to remain on-call, to
3 suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks
4 after clocking out, to clock out for meal periods and continue working, to don and doff uniforms
5 and/or safety equipment off the clock, to attend company meetings off the clock, to make phone
6 calls or drive off the clock; failing to include all forms of remuneration, including non-discretionary
7 bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of
8 pay for the pay periods where overtime was worked and the additional compensation was earned
9 for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time
10 entries, editing and/or manipulation of time entries to show less hours than actually worked, and for
11 paying straight pay instead of overtime pay, to the detriment of Plaintiff and other Aggrieved
12 Employees.

13 11. At all relevant times mentioned herein, Defendants had and have a practice or policy
14 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
15 worked or otherwise under Defendants' control as a result of, without limitation, failing to
16 accurately track and/or pay for all minutes actually worked; by requiring employees: wait in line to
17 clock-in without pay; to remain on-call; to suffer under Defendants' control to complete pre-shift
18 tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and
19 continue working, to don and doff uniforms and/or safety equipment off the clock, to attend
20 company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding
21 of employee time entries, editing and/or manipulation of time entries to show less hours than
22 actually worked; failing to pay reporting time pay; failing to provide paid time off and vacation time
23 owed; and failing to pay split shift premiums, to the detriment of Plaintiff and other Aggrieved
24 Employees.

25 12. At all relevant times mentioned herein, Defendants had and have a policy or practice
26 of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted,
27 timely, and complete meal period for days on which the employee worked in excess of five (5) and
28 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal

1 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
2 not providing timely meal periods; failing to provide first and second meal periods; providing short
3 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
4 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
5 periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which
6 employees worked, as required by California wage and hour laws

7 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
8 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
9 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
10 thereof, or compensation in lieu thereof, including, without limitation, by failing to record rest
11 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
12 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
13 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
14 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

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

22 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
23 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
24 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
25 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
26 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
27 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other
28 Aggrieved Employees.

1 16. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
3 owed as a result of Employers' practice or policy of failing to pay, among other wages, overtime
4 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
5 Code sections 201, 202, and 203.

6 17. At all relevant times herein, Defendants had and have a policy or practice of failing
7 to pay aggrieved employees their paid time off and vacation time owed upon separation of
8 employment as wages at their final rate of pay in violation of Labor Code section 227.3 and
9 applicable Wage Orders.

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

18 19. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
19 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
20 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
21 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
22 all other Aggrieved Employees.

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

21. Plaintiff, in Plaintiff's 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 Plaintiff and other Aggrieved Employees pursuant to PAGA.

PARTIES

A. Plaintiff

22. Plaintiff 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, fulfilling shipping and receiving orders. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately February of 1986 through at least January of 2020.

B. Defendants

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

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

25. Plaintiff is informed and believes and based thereon alleges that defendant CHRIS JONES is, and at all times relevant hereto was, an individual residing in the County of Orange, State of California as well as President & CEO for ACRA AEROSPACE and DOES 1 through 50, as further defined below. Plaintiff is further informed and believes and based thereon alleges that CHRIS JONES violated, or caused to be violated, the above-referenced and below-referenced Labor Code provisions in violation of Labor Code section 558.1.

26. Plaintiff is informed and believes and based thereon alleges that defendant MARTY MICHAEL is, and at all times relevant hereto was, an individual residing in the County of Orange,

1 State of California as well as General Manager for ACRA AEROSPACE and DOES 1 through 50,
2 as further defined below. Plaintiff is further informed and believes and based thereon alleges that
3 MARTY MICHAEL violated, or caused to be violated, the above-referenced and below-referenced
4 Labor Code provisions in violation of Labor Code section 558.1.

5 27. The true names and capacities, whether individual, corporate, associate, or otherwise,
6 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
7 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
8 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
9 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
10 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
11 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
12 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
13 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
14 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
15 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
16 include ACRA AEROSPACE, NOVARIA, CHRIS JONES, MARTY MICHAEL, and any of their
17 parent, subsidiary, or affiliated companies within the State of California, as well as DOES 1 through
18 100 identified herein.

19 **AGENCY, ALTER EGO AND JOINT EMPLOYER ALLEGATIONS**

20 28. Plaintiff is informed and believes, and based thereon alleges, that at all times
21 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
22 representative, joint venture or co-conspirator of each of the other defendants, either actually or
23 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
24 employment, joint venture, and conspiracy.

25 29. All of the acts and conduct described herein of each and every corporate defendant
26 was duly authorized, ordered, and directed by the respective and collective defendant corporate
27 employers, and the officers and management-level employees of said corporate employers. In
28 addition thereto, said corporate employers participated in the aforementioned acts and conduct of

1 their said employees, agents, and representatives, and each of them; and upon completion of the
2 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
3 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
4 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
5 aforementioned corporate employees, agents and representatives.

6 30. Plaintiff is informed and believes, and based thereon alleges, that despite the
7 formation of the purported corporate existence of ACRA AEROSPACE, NOVARIA, and DOES 1
8 through 50, inclusive (the "Alter Ego Defendants"), they, and each of them, are one and the same
9 with CHRIS JONES, MARTY MICHAEL, and DOES 51 through 100 ("Individual Defendants"),
10 and each of them, due to, but not limited to, the following reasons:

11 a. The Alter Ego Defendants are completely dominated and controlled by the
12 Individual Defendants, CHRIS JONES and MARTY MICHAEL, who personally committed the
13 wrongful and illegal acts and violated the laws as set forth in this Complaint, and who have hidden
14 and currently hide behind the Alter Ego Defendants to perpetrate frauds, circumvent statutes, or
15 accomplish some other wrongful or inequitable purpose;

16 b. The Individual Defendants derive actual and significant monetary benefits by
17 and through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego Defendants as
18 the funding source for the Individual Defendants' own personal expenditures;

19 c. Plaintiff is informed and believes, and thereon alleges, that the Individual
20 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear
21 as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
22 accomplishing some other wrongful or inequitable purpose;

23 d. Plaintiff is informed and believes, and thereon alleges, that the business affairs
24 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned
25 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same
26 are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein
27 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of
28

1 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
2 herein were, the alter egos of the Individual Defendants;

3 e. The recognition of the separate existence of the Individual Defendants from
4 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to
5 insulate themselves from liability to Plaintiff for violations to the Civil Code, Government Code,
6 and other statutory violations. The corporate existence of these defendants should thus be
7 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
8 and injustice to Plaintiff herein;

9 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
10 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be
11 disregarded.

12 31. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
13 thereon alleges that Defendants, and each of them, are joint employers.

14 **FIRST CAUSE OF ACTION**

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

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

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

23 34. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
24 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
25 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
26 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
27 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
28 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for

1 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

2 35. At all relevant times herein, Defendants have had a consistent policy or practice of
3 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
4 per Labor Code section 204. Thus, pursuant to Labor Code section 210. Plaintiff and other
5 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
6 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
7 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
8 for each subsequent violation in connection with each payment that was made in violation of Labor
9 Code section 204.

10 **SECOND CAUSE OF ACTION**

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

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

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

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

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

27 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
28 and have a policy or practice of failing to furnish non-exempt employees, including, without

1 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
2 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
3 corresponding number of hours worked at each hourly rate in effect during the pay period; and other
4 such information as required by Labor Code section 226, subdivision (a).

5 41. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
6 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
7 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
8 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
9 period for each subsequent violation.

10 **THIRD CAUSE OF ACTION**

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

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

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

18 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
19 pay period for which the employee was underpaid in addition to an amount sufficient
20 to recover underpaid wages;

21 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
22 employee for each pay period for which the employee was underpaid in addition to
23 an amount sufficient to recover underpaid wages;

24 (3) Wages recovered pursuant to this section shall be paid to the affected employee."

25 44. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
26 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
27 causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and minimum
28 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during

1 their employment and after their employment separation; receive accurate, itemized wage
2 statements; be provided with the opportunity to inspect employment records; be provided with
3 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of
4 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
5 of pay.

6 45. As a direct and proximate result of the herein-described Labor Code violations,
7 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
8 civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars
9 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
10 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

11 **FOURTH CAUSE OF ACTION**

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

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

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

21 (1) For any initial violation that is intentionally committed, one hundred dollars
22 (\$100) for each underpaid employee for each pay period for which the
23 employee is underpaid. This amount shall be in addition to an amount
24 sufficient to recover underpaid wages, liquidated damages pursuant to Section
25 1194.2, and any applicable penalties imposed pursuant to Section 203.

26 (2) For each subsequent violation for the same specific offense, two hundred fifty
27 dollars (\$250) for each underpaid employee for each pay period for which the
28 employee is underpaid regardless of whether the initial violation is

intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

48. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ wages for all hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of time entries; and engaging, suffering, or permitting employees to work off the clock.

49. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each subsequent violation.

FIFTH CAUSE OF ACTION

(Civil Penalties Under Labor Code § 2699 – 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 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.

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

7 53. Plaintiff is informed and believes and based thereon alleges that Defendants, and
8 each of them, violated the Labor Code sections described herein, including, without limitation, for
9 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
10 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
11 employment and after employment separation; provide employees the opportunity to inspect
12 employment records; provide notice as required under Labor Code section 2810.5; provide the
13 proper accrual and use of paid sick leave; and paying employees all owed paid time off and vacation
14 time owed by separation at the proper rate of pay, entitling Plaintiff and other Aggrieved Employees
15 to civil penalties for each of these Labor Code violations in the amounts set forth in Labor Code
16 section 2699, subdivision (f).

17 54. Moreover, Plaintiff and other Aggrieved Employees within the State of California
18 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
19 connection with their herein-described claims for civil penalties.

20 **REQUEST FOR JURY TRIAL**

21 55. Plaintiff hereby requests a trial by jury.

22 **PRAYER**

23 **WHEREFORE**, on behalf of Plaintiff and Aggrieved Employees. Plaintiff prays for
24 judgment against Defendants as follows:

25 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
26 1197.1, and 2699;

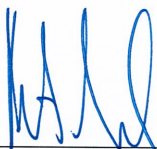
27 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
28 210, 226.3, 558, 1197.1, and 2699;

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- 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: November 19, 2020

BIBIYAN LAW GROUP, P.C.



BY: _____
ANTON SWAIN-GIL
DAVID D. BIBIYAN
Attorneys for Plaintiff SERGIO RODRIGUEZ
on behalf of himself and all others aggrieved