

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Dennis Landin

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12
13 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**
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11 FRANCISCO NODAL, on behalf of himself
12 and all others aggrieved,

13 Plaintiff,

14 v.

15 SODEXO, INC., a Delaware corporation; SDH
SERVICES WEST, LLC, a Delaware limited
16 liability company; SHARP MEMORIAL
HOSPITAL, a California corporation; TIM
17 SMITH, an individual; and DOES 1 through
100, inclusive,

18 Defendants.
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CASE NO.: **20STCV40601**

REPRESENTATIVE ACTION

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

DEMAND FOR JURY TRIAL

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

COMES NOW plaintiff FRANCISCO NODAL ("Plaintiff"), on behalf of himself and all others aggrieved, 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 SODEXO, INC., a Delaware corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("SODEXO"); SDH SERVICES WEST, LLC, a Delaware limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California ("SDH"); SHARP MEMORIAL HOSPITAL, a California corporation and any of its respective subsidiaries or affiliated companies within the State of California ("SHARP"); and TIM SMITH, an individual ("SMITH" and collectively with SODEXO, SDH, SHARP, and DOES 1 through 100, as further defined below, "Defendants").

2. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiff and other non-exempt employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other aggrieved employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without Defendants paying them proper overtime wages, as a result of, without limitation, Defendants failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Defendants' control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the clock, and to make phone calls off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the

1 overtime rate of pay; and detrimentally rounding employee time entries, editing and/or manipulating
2 time entries to show less hours than actually worked, and paying straight pay instead of overtime
3 pay, to the detriment of Plaintiff and other aggrieved employees.

4 3. At all relevant times mentioned herein, Defendants had and have a practice or policy
5 of failing to compensate Plaintiff and other aggrieved employees with minimum wages for all hours
6 worked or otherwise under Defendants' control as a result of, without limitation, failing to
7 accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting
8 employees to work off the clock, including, without limitation, by requiring employees: to come
9 early to work and leave late work without being able to clock in for all that time, to suffer under
10 Defendants' control due to long lines for clocking in, to complete pre-shift tasks before clocking in
11 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
12 out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to make phone
13 calls off the clock; detrimental rounding of employee time entries; and editing and/or manipulation
14 of time entries to show less hours than actually worked, to the detriment of Plaintiff and other
15 aggrieved employees.

16 4. At all relevant times mentioned herein, Defendants had and have a policy or practice
17 of failing to provide Plaintiff and other aggrieved employees a thirty (30) minute uninterrupted,
18 timely, and complete meal period for days on which the employee worked in excess of five (5) and
19 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
20 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
21 not providing timely meal periods; failing to provide first and second meal periods; providing short
22 meal periods; requiring that employees carry cellular telephones during meal periods; and otherwise
23 requiring on-duty/on-call meal periods.

24 5. At all relevant times mentioned herein, Defendants had and have a policy or practice
25 of failing to provide Plaintiff and other aggrieved employees paid, uninterrupted, timely, and
26 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
27 thereof, or compensation in lieu thereof, including, without limitation, by compelling Plaintiff to
28 work over four-hour periods (or major fractions thereof) without authorizing and permitting Plaintiff

1 and other aggrieved employees to take uninterrupted, timely, and complete ten-minute rest periods
2 in which the employees are completely relieved of all of their duties, including, without limitation:
3 by failing to provide rest periods all together; interrupting them; requiring that employees carry
4 cellular telephones during rest periods; not providing them in a timely fashion; and otherwise
5 requiring on-duty/on-call rest periods, as required by California wage and hour laws.

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

13 7. At all relevant times mentioned herein, Defendants had and have a policy or practice
14 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
15 Plaintiff and other aggrieved employees with documents signed to obtain or hold employment under
16 Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under
17 Labor Code section 1174, making it difficult for Plaintiff and other aggrieved employees to calculate
18 their unpaid wages and/or premium payments, to the detriment of Plaintiff and other aggrieved
19 employees.

20 8. At all relevant times mentioned herein, Defendants had and have a policy or practice
21 of failing to timely pay Plaintiff and other aggrieved employees, among other wages, all wages owed
22 as a result of Defendants' practice or policy of failing to pay, among other wages, overtime wages,
23 minimum wages, and premium wages, as required by Labor Code sections 201, 202, and 203.

24 9. At all relevant times mentioned herein, Defendants have had a policy or practice of
25 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
26 limitation, Plaintiff and other aggrieved employees, with their costs incurred in purchasing, tools
27 and safety equipment, including boots and putty knives, in addition to costs incurred in the separate
28 laundering of employee work clothes and mandatory uniforms, in direct consequence of the

1 discharge of their duties, or of their obedience to the directions of Defendants, as required by Labor
2 Code 2802.

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

11 11. At all relevant times mentioned herein, Defendants have had a policy or practice of
12 failing to provide Plaintiff and other aggrieved employees with the amount of paid sick leave
13 required to be provided pursuant to California laws, and also did not permit its use upon request as
14 contemplated under California laws. As such, Defendants would be liable for civil penalties for
15 violation of the paid sick leave regulations under Labor Code sections 558 and 2699.

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

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

26 **PARTIES**

27 **A. Plaintiff**

28 14. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff

1 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
2 exempt employee, with duties that included, but were not limited to, maintaining and cleaning the
3 floors at Sharp Memorial Hospital. Plaintiff began working for Defendants in approximately June
4 of 2015 and continues to work for Defendants as of the filing of this Complaint.

5 **B. Defendants**

6 15. Plaintiff is informed and believes and based thereon alleges that defendant SODEXO
7 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
8 the laws of the State of Delaware with a principal California business office in the County of Los
9 Angeles, State of California. At all relevant times herein, defendant SODEXO employed Plaintiff
10 and other similarly situated employees within the State of California.

11 16. Plaintiff is informed and believes and based thereon alleges that defendant SDH is,
12 and at all times relevant hereto was, a limited liability company organized and existing under and
13 by virtue of the laws of the State of Delaware and doing business in the State of California. At all
14 relevant times herein, defendant SDH employed Plaintiff and other similarly situated employees
15 within the State of California.

16 17. Plaintiff is informed and believes and based thereon alleges that defendant SHARP
17 is, and at all times relevant hereto was, an corporation organized and existing under and by virtue
18 of the laws of the State of California and doing business in the County of San Diego, State of
19 California. Plaintiff is informed and believes and based thereon alleges SHARP operates as a client
20 employer within the meaning of Labor Code section 2810.3. At all relevant times herein, defendant
21 SHARP employed Plaintiff and other similarly situated employees within the State of California.

22 18. Plaintiff is informed and believes, and based thereon alleges, that defendant SMITH
23 is an individual residing in the State of California and at all times relevant hereto, is the Senior Vice
24 President and Chief Executive Officer for SHARP'S Memorial Hospital plant located in San Diego,
25 California. In that role, Plaintiff is informed and believes that SMITH exercised control over the
26 wages, hours and/or working conditions of Plaintiff and other aggrieved employees. Plaintiff is
27 further informed and believes and based thereon alleges that, as such, SMITH violated, or caused to
28 be violated, the below-referenced Labor Code provisions and is thus liable for damages under Labor

1 Code section 558.1.

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

15 **JURISDICTION**

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

18 21. Venue is proper in Los Angeles County, California pursuant to Code of Civil
19 Procedure sections 392, et seq. because, among other things, Los Angeles County is the county in
20 which the Defendants, or some of them, reside.

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

27 23. Plaintiff seeks to recover the PAGA civil penalties through a representative action
28 permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior*

1 Court (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA
2 allegations described herein is not required.

3 24. During the period beginning one (1) year preceding the provision of notice to the
4 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
5 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 226, 226.3, 226.7,
6 246, 432, 510, 512, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198.5, 2699, 2802, and 2810.5, among
7 others.

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

12 26. On or around July 28, 2020, Plaintiff provided written notice under Labor Code
13 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation
14 of various, including the herein-described, provisions of the Labor Code, to the Labor and
15 Workforce Development Agency (“LWDA”), as well as by certified mail, with return receipt
16 requested to Defendants, and each of them.

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

21 **PAGA REPRESENTATIVE ALLEGATIONS**

22 28. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
23 aggrieved employees have not been paid, during the relevant time period, wages for all time worked,
24 including overtime wages, as a result of, without limitation, Defendants failing to pay overtime
25 wages to Plaintiff and other non-exempt employees in the State of California in violation of
26 California state wage and hour laws as a result of, without limitation, Plaintiff and other aggrieved
27 employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight
28 workdays in a workweek without Defendants paying them proper overtime wages, as a result of,

1 without limitation, Defendants failing to accurately track and/or pay for all minutes actually worked;
2 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
3 by requiring employees: to come early to work and leave late work without being able to clock in
4 for all that time, to suffer under Employer's control due to long lines for clocking in, to complete
5 pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods
6 and continue working, to clock out for rest periods, to don and doff uniforms and/or safety
7 equipment off the clock, to make phone calls off the clock; failing to include all forms of
8 remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms
9 of remuneration into the regular rate of pay for the pay periods where overtime was worked and the
10 additional compensation was earned for the purpose of calculating the overtime rate of pay;
11 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
12 less hours than actually worked, and for paying straight pay instead of overtime pay, to the detriment
13 of Plaintiff and other aggrieved employees in the State of California. As such, Plaintiff is informed
14 and believes, and based thereon alleges, that Defendants violated Labor Code sections 510 and 1194,
15 and applicable Wage Orders based on their practice of providing total compensation that is less than
16 the required legal overtime compensation, entitling Plaintiff and other aggrieved employees to relief
17 under, without limitation, these sections. In addition, Defendants would also be liable for civil
18 penalties pursuant to Labor Code sections 558, 558.1, and 2699.

19 29. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
20 aggrieved employees have not been paid, during the relevant time period, wages for all time worked,
21 including minimum wages, as a result of, without limitation, Defendants requiring employees: to
22 come early to work and leave late work without being able to clock in for all that time, to suffer
23 under Employer's control due to long lines for clocking in, to complete pre-shift tasks before
24 clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
25 working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the
26 clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries;
27 and editing and/or manipulation of time entries to show less hours than actually worked, to the
28 detriment of Plaintiff and other aggrieved employees in the State of California. As such, Plaintiff

1 is informed and believes, and based thereon alleges, that Defendants violated, without limitation,
2 Labor Code section 1197 and applicable Wage Orders, based on their continued failure to pay
3 minimum wages, entitling Plaintiff and other aggrieved employees to relief under, without
4 limitation, Labor Code sections 1194 and 1194.2. Defendants would also be liable for civil penalties
5 pursuant to Labor Code sections 558, 558.1, 1197.1, and 2699.

6 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
7 and have policy or practice of failing to provide Plaintiff and other aggrieved employees thirty (30)
8 minute uninterrupted, timely, and complete meal periods for days on which the employee worked
9 in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and
10 complete 30-minute meal periods or compensation in lieu thereof including, without limitation, by
11 interrupting meal periods; not providing timely meal periods; failing to provide first and second
12 meal periods; providing short meal periods; requiring that employees carry cellular telephones
13 during meal periods; and otherwise requiring on-duty/on-call meal periods. As such, Plaintiff is
14 informed and believes, and based thereon alleges, that Defendants violated Labor Code section 512,
15 entitling Plaintiff and other aggrieved employees to premium payments under Labor Code section
16 226.7. Defendants would also be liable for civil penalties pursuant to Labor Code sections 558,
17 558.1, and 2699.

18 31. Plaintiff is informed and believes, and based thereon alleges, Defendants had and
19 have a policy or practice of failing to provide Plaintiff and other aggrieved employees paid,
20 uninterrupted, timely, and complete rest periods of at least ten (10) minutes per four (4) hours
21 worked or major fractions thereof, or compensation in lieu thereof, including, without limitation: by
22 failing to provide rest periods all together; requiring that they be bundled together and/or with meal
23 periods; interrupting them; requiring that employees carry cellular telephones during rest periods;
24 not providing them in a timely fashion; and otherwise requiring on-duty/on-call rest periods, as
25 required under (the) applicable Wage Order(s). As such, Plaintiff is informed and believes, and
26 based thereon alleges, that he and other aggrieved employees are entitled to relief under, without
27 limitation, Labor Code section 226.7. Defendants would also be liable for civil penalties pursuant
28 to Labor Code sections 558, 558.1, and 2699.

1 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
2 and have a policy or practice of failing to furnish Plaintiff and other aggrieved employees with
3 itemized wage statements that accurately reflect: gross wages earned; total hours worked by the
4 employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate by the employee; and
6 other such information as required by Labor Code section 226, subdivision (a). Consequently, since
7 Defendants have failed to comply with Labor Code section 226, subdivision (a), Plaintiff and other
8 aggrieved employees would be entitled to recover penalties under, without limitation, Labor Code
9 section 226, subdivision (e). Defendants would also be liable for civil penalties pursuant to Labor
10 Code sections 226.3, 558, 558.1, and 2699.

11 33. At all relevant times mentioned herein, Defendants had and have a policy or practice
12 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
13 Plaintiff and other aggrieved employees with documents signed to obtain or hold employment under
14 Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under
15 Labor Code section 1174, making it difficult for Plaintiff and other aggrieved employees to calculate
16 their unpaid wages and/or premium payments, to the detriment of Plaintiff and other aggrieved
17 employees.

18 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
19 and have a policy or practice of failing or refusing to timely pay compensation to Plaintiff and other
20 terminated or resigned employees, including but not limited to, all wages owed as a result of
21 Defendants' practice or policy of failing to pay, among other wages, overtime wages, minimum
22 wages, and premium wages. As such, Defendants would be liable for waiting time penalties for
23 having violated California Labor Code sections 201, 202, and 203. Defendants would also be liable
24 for civil penalties pursuant to Labor Code sections 558, 558.1, and 2699.

25 35. Plaintiff is informed and believes, and based thereon alleges that Defendants have,
26 and at all times relevant hereto had, a policy or practice of failing to comply with the notice
27 requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among
28 other things, failing to provide Mr. Delgado and other aggrieved employees with the rates of pay

1 and overtime rates of pay applicable to their employment, allowances claimed as part of the
2 minimum wage, the regular payday designated by Employers, the name of the employer, including
3 any "doing business as" names used, the name, address and telephone number of the workers'
4 compensation insurance carrier, information regarding paid sick leave, and other pertinent
5 information required to be disclosed by Defendants under Labor Code section 2810.5. As such,
6 Plaintiff is informed and believes, and based thereon alleges, that the failure to provide such
7 information, including rates of pay that are in effect, has permitted Employers to pay employees at
8 rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in
9 California. As a result of these violations, Defendants are liable for civil penalties pursuant to Labor
10 Code sections 558, 558.1, and 2699.

11 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
12 and have a policy or practice of failing to reimburse Plaintiff and other aggrieved employees with
13 their costs incurred in purchasing tools and safety equipment, including boots and putty knives, in
14 addition to costs incurred in the separate laundering of employee work clothes and mandatory
15 uniforms, in direct consequence of the discharge of their duties, or of their obedience to the
16 directions of Defendants, as required by Labor Code 2802.

17 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
18 and have a policy or practice of failing to provide Plaintiff and other aggrieved employees with the
19 amount of paid sick leave required to be provided pursuant to California laws, and also did not
20 permit its use upon request as contemplated under California laws. As such, Defendants would be
21 liable for civil penalties under Labor Code sections 558, 558.1, and 2699.

22 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
23 and have a policy or practice of failing to pay Plaintiff and other aggrieved employees their wages
24 in accordance with Labor Code section 204, which requires that "[l]abor performed between the 1st
25 and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of
26 the month during which the labor was performed, and labor performed between the 16th and the last
27 day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following
28 month." Plaintiff is informed and believes and based thereon alleges that Defendants did not and

1 do not pay their employees in accordance with Labor Code Section 204. As such, Defendants would
2 be liable for civil penalties pursuant to Labor Code sections 210, 558, 558.1, and 2699.

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

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

14 **FIRST CAUSE OF ACTION**

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

16 41. 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 42. 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 43. 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 44. At all relevant times herein, Defendants have had a consistent policy or practice of
3 failing to pay Plaintiff and aggrieved employees during their employment on a timely basis as per
4 Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other aggrieved
5 employees or former employees he seeks to represent are entitled to recover civil penalties for
6 Defendants’ violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for
7 each aggrieved employee or former employee for each initial violation per employee, and two
8 hundred dollars (\$200) for each aggrieved employee or former employee for each subsequent
9 violation in connection with each payment that was made in violation of Labor Code section 204.

10 **SECOND CAUSE OF ACTION**

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

12 45. 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 46. 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 47. 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 48. 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 49. 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 50. Pursuant to Labor Code section 226.3, Plaintiff and other aggrieved employees he
6 seeks to represent are entitled to recover civil penalties for Defendants' violation of Labor Code
7 section 226, subdivision (a) in the amount of two hundred fifty dollars (\$250) for each aggrieved
8 current or former employee per pay period for the initial violation, and one thousand dollars (\$1,000)
9 for each aggrieved current or former employee per pay period for each subsequent violation.

10 **THIRD CAUSE OF ACTION**

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

12 51. 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 52. 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 a. For any initial violation, fifty dollars (\$50) for each underpaid employee and
19 for each pay period for which the employee was underpaid in addition to an
20 amount sufficient to recover underpaid wages;
- 21 b. For each subsequent violation, one hundred dollars (\$100) for each underpaid
22 employee for each pay period for which the employee was underpaid in
23 addition to an amount sufficient to recover underpaid wages;
- 24 c. Wages recovered pursuant to this section shall be paid to the affected
25 employee."

26 53. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
27 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
28 causing Plaintiff and other aggrieved employees not to: be paid overtime wages and minimum

1 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
2 their employment and after their employment separation; receive accurate, itemized wage
3 statements; be provided with the opportunity to inspect employment records; be provided with
4 notice as required under Labor Code section 2810.5; and be provided with the proper accrual and
5 use of paid sick leave.

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

9 **FOURTH CAUSE OF ACTION**

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

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

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

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

24 b. For each subsequent violation for the same specific offense, two hundred fifty
25 dollars (\$250) for each underpaid employee for each pay period for which the
26 employee is underpaid regardless of whether the initial violation is
27 intentionally committed. This amount shall be in addition to an amount
28 sufficient to recover underpaid wages, liquidated damages pursuant to Section

1 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

5 57. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
6 Plaintiff and aggrieved employees not to be paid minimum wages as a result of Defendants, without
7 limitation, routinely failing to pay Plaintiff or other aggrieved employees’ wages for all hours
8 worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
9 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
10 time entries; paying straight pay instead of overtime pay or otherwise failing to pay overtime hours
11 at the proper overtime rate of pay; and engaging, suffering, or permitting employees to work off the
12 clock.

13 58. As a direct and proximate result of Defendants’ conduct, Plaintiff and other
14 aggrieved employees are entitled to recover directly from Defendants civil penalties pursuant to
15 Labor Code section 1197.1.

16 **FIFTH CAUSE OF ACTION**

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

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

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

26 61. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
27 Code except those for which a civil penalty is specifically provided, the established civil penalty for
28 a violation of those provisions is as follows: if, at the time of the alleged violation, the person

1 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
2 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
3 employee per pay period for each subsequent violation.

4 62. Plaintiff is informed and believes and based thereon alleges that Defendants, and
5 each of them, violated the Labor Code sections described herein, including, without limitation, for
6 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
7 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
8 employment and after employment separation; provide employees the opportunity to inspect
9 employment records; reimburse aggrieved employees for costs incurred in furtherance of their work
10 duties; provide notice as required under Labor Code section 2810.5; and provide the proper accrual
11 and use of paid sick leave, entitling Plaintiff and other aggrieved employees to civil penalties for
12 each of these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision
13 (f).

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

17 **REQUEST FOR JURY TRIAL**

18 64. Plaintiff hereby requests a trial by jury.

19 **PRAYER**

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

- 22 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 558.1,
23 1197.1, and 2699;
- 24 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
25 210, 226.3, 558, 558.1, 1197.1, and 2699;
- 26 C. Pre-judgment and post-judgment interest;
- 27 D. For costs of suit incurred herein; and

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E. Such other and further relief as the Court deems just and proper.

Dated: October 22, 2020

BIBIYAN LAW GROUP, P.C.

BY: 
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DIEGO AVILES
Attorneys for Plaintiff FRANCISCO NODAL
on behalf of himself and all others aggrieved