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CINDY L. BRAKEBILL and JACOB R. MONTOYA,
on behalf of themselves and all others aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

RENEE J. MONTOYA, CINDY L.
BRAKEBILL and JACOB R. MONTOYA, on
behalf of themselves and all others aggrieved,

Plaintiffs,

v.

REMO, INC., a California corporation;
EMPLOYBRIDGE, LLC, a California limited
liability company; REAL TIME STAFFING
SERVICES, LLC, a California limited liability
company; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: **20STCV41176**

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 plaintiffs RENEE J. MONTOYA, CINDY L. BRAKEBILL and JACOB R.
MONTOYA ("Plaintiffs"), on behalf of themselves and all others aggrieved, and allege 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 REMO, INC., a
4 California corporation, and any of its respective subsidiaries or affiliated companies within the State
5 of California (“REMO”), EMPLOYBRIDGE, LLC, a California limited liability company, and any
6 of its respective subsidiaries or affiliated companies within the State of California
7 (“EMPLOYBRIDGE”) and REAL TIME STAFFING SERVICES, LLC, a California limited
8 liability company, and any of its respective subsidiaries or affiliated companies within the State of
9 California (“REAL TIME,” “EMPLOYBRIDGE,” and together with “REMO” and DOES 1 through
10 100, as further defined below, “Defendants”), as a proxy of the Labor and Workforce Development
11 Agency of the State of California (“LWDA”), on behalf of Plaintiffs and all other current and former
12 non-exempt employees of Defendants working within the Civil Penalty Period, as further defined
13 herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5,
14 Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*, Labor Code
15 section 2802, on behalf of all employees of Defendants working within the Civil Penalty Period
16 (collectively, “Aggrieved Employees”).

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

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

25 4. Plaintiffs are “aggrieved employees” under PAGA, as Plaintiffs were employed by
26 Defendants during the applicable statutory period and suffered one or more of the Labor Code
27 violations set forth herein. Accordingly, Plaintiffs seek to recover civil penalties, as the term “civil
28 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code

1 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA") plus
2 reasonable attorneys' fees and costs, for Plaintiffs and all other aggrieved current and former
3 employees of Defendants during the Civil Penalty Period.

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

8 6. During the period beginning one (1) year preceding the provision of notice to the
9 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),
10 Defendants violated, *inter alia*, Labor Code sections, 200, 201, 202, 203, 204, 210, 226, 226.3,
11 226.7, 246, *et seq.*, 404, 432, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198.5, 2699, 2802, 2810.3
12 and 2810.5, among others.

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

17 8. On or around July 27, 2020, Plaintiffs provided written notice pursuant to Labor
18 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
19 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
20 as well as by certified mail, with return receipt requested to Defendants, and each of them.

21 9. Plaintiffs also provided Defendants, and each of them, with notice under Labor Code
22 section 2810.3, subdivision (d) that Plaintiffs would seek to hold them liable for each other's wage
23 and hour violations under Labor Code section 2810.3 on August 27, 2020 by certified mail with
24 return receipt requested.

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

PAGA REPRESENTATIVE ALLEGATIONS

11. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiffs and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiffs 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 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 Employer's 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, to attend company meetings off the clock, to make phone calls or drive 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 overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, and for paying straight pay instead of overtime pay, to the detriment of Plaintiffs and other Aggrieved Employees.

12. At all relevant times mentioned herein, Defendants had and have a practice or policy of failing to compensate Plaintiffs and other Aggrieved Employees with minimum wages for all hours worked or otherwise under Defendants' control as a result of, without limitation, 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 Employer's 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

1 out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend
2 company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding
3 of employee time entries; editing and/or manipulation of time entries to show less hours than
4 actually worked; failing to pay reporting time pay; and failing to pay split shift premiums, to the
5 detriment of Plaintiffs and other Aggrieved Employees.

6 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
7 of failing to provide Plaintiffs and other Aggrieved Employees a thirty (30) minute uninterrupted,
8 timely, and complete meal period for days on which the employee worked in excess of five (5) and
9 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
10 periods or compensation in lieu thereof including, without limitation: by interrupting meal periods;
11 not providing timely meal periods; failing to provide first and second meal periods; providing short
12 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
13 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
14 periods; and auto-deducting meal periods that could not be auto-deducted by law or during which
15 employees worked, as required by California wage and hour laws

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

24 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
25 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
26 Plaintiffs and other Aggrieved Employees with itemized wage statements that accurately reflect
27 gross wages earned; total hours worked by the employee; net wages earned; all deductions; all
28 applicable hourly rates in effect during the pay period and the corresponding number of hours worked

1 at each hourly rate by the employee; and other such information as required by Labor Code section
2 226, subdivision (a).

3 16. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
5 Plaintiffs and other Aggrieved Employees with documents signed to obtain or hold employment
6 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
7 under Labor Code section 1174, making it difficult for Plaintiffs and other Aggrieved Employees to
8 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiffs and other
9 Aggrieved Employees.

10 17. At all relevant times mentioned herein, Defendants had and have a policy or practice
11 of failing to timely pay Plaintiffs and other Aggrieved Employees, among other wages, all wages
12 owed as a result of Employers' practice or policy of failing to pay, among other wages, overtime
13 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
14 Code sections 201, 202, and 203.

15 18. At all relevant times mentioned herein, Defendants have had a policy or practice of
16 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
17 limitation, Plaintiffs and other Aggrieved Employees, with their costs incurred for driving personal
18 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
19 separately laundering mandatory uniforms, for the purchase of tools and safety, and for the purchase
20 and maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge
21 of their duties, or of their obedience to the directions of Employers, as required by Labor Code 2802.

22 19. At all relevant times mentioned herein, Defendants have had a policy or practice of
23 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
24 Protection Act of 2011) by, among other things, failing to provide Plaintiffs and other Aggrieved
25 Employees with the rates of pay and overtime rates of pay applicable to their employment;
26 allowances claimed as part of the minimum wage; the regular payday designated by Employers; the
27 name, address, and telephone number of the workers' compensation insurance carrier; information
28

1 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
2 under Labor Code section 2810.5.

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

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

14 22. Plaintiffs, in Plaintiffs’ representative capacity, seeks civil penalties under Labor
15 Code sections 210, 226.3, 558, 1197.1, and 2699 for the herein-described acts, which violate the
16 California Labor Code as described above, including on behalf of Plaintiffs and other Aggrieved
17 Employees pursuant to PAGA.

18 **PARTIES**

19 **A. Plaintiff**

20 23. Plaintiff RENEE J. MONTOYA is a resident of the State of California. At all
21 relevant times herein, Plaintiffs are informed and believe, and based thereon allege that Defendants
22 employed Plaintiff RENEE J. MONTOYA as a non-exempt employee, with duties that included,
23 but were not limited to, clerical office work. Plaintiffs are informed and believe, and based thereon
24 allege that Plaintiff RENEE J. MONTOYA worked for Defendants from approximately March of
25 2011 through approximately March 20, 2020.

26 24. Plaintiff CINDY L. BRAKEBILL is a resident of the State of California. At all
27 relevant times herein, Plaintiffs are informed and believe, and based thereon allege that Defendants
28 employed Plaintiff CINDY L. BRAKEBILL as a non-exempt employee, with duties that included,

1 but were not limited to, clerical office work. Plaintiffs are informed and believe, and based thereon
2 allege that Plaintiff CINDY L. BRAKEBILL worked for Defendants from approximately September
3 of 2011 through approximately March 20, 2020.

4 25. Plaintiff JACOB R. MONTOYA is a resident of the State of California. At all
5 relevant times herein, Plaintiffs are informed and believe, and based thereon allege that Defendants
6 employed Plaintiff JACOB R. MONTOYA as a non-exempt employee, with duties that included,
7 but were not limited to, packaging products and operating machinery. Plaintiffs are informed and
8 believe, and based thereon allege that Plaintiff JACOB R. MONTOYA worked for Defendants from
9 approximately July of 2016 through approximately September 3, 2019.

10 **B. Defendants**

11 26. Plaintiffs are informed and believe and based thereon allege that defendant REMO
12 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
13 the laws of the State of California and doing business in the County of Los Angeles, State of
14 California.

15 27. Plaintiffs are informed and believe and based thereon allege that defendant
16 EMPLOYBRIDGE is, and at all times relevant hereto was, a limited liability company organized
17 and existing under and by virtue of the laws of the State of California and doing business in the
18 County of Los Angeles, State of California. Plaintiffs are informed and believe, and based thereon
19 allege, that EMPLOYBRIDGE is a labor contractor within the meaning of Labor Code section
20 2810.3 that provides outplacement staffing and payroll services for various industries and
21 professions, including for REMO. At all relevant times herein, EMPLOYBRIDGE employed
22 Plaintiffs and other Aggrieved Employees within the State of California.

23 28. Plaintiffs are informed and believe and based thereon allege that defendant REAL
24 TIME is, and at all times relevant hereto was, a limited liability company organized and existing
25 under and by virtue of the laws of the State of California and doing business in the County of Los
26 Angeles, State of California. Plaintiffs are informed and believe, and based thereon allege, that
27 REAL TIME is a labor contractor within the meaning of Labor Code section 2810.3 that provides
28 outplacement staffing and payroll services for various industries and professions, including for

1 REMO. At all relevant times herein, REAL TIME employed Plaintiffs and other Aggrieved
2 Employees within the State of California.

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

16 **AGENCY AND JOINT EMPLOYER ALLEGATIONS**

17 30. Plaintiffs are informed and believe, and based thereon allege, that at all times
18 mentioned herein, each of the defendants was the agent, principal, employee, employer,
19 representative, joint venture or co-conspirator of each of the other defendants, either actually or
20 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
21 employment, joint venture, and conspiracy.

22 31. All of the acts and conduct described herein of each and every corporate defendant
23 was duly authorized, ordered, and directed by the respective and collective defendant corporate
24 employers, and the officers and management-level employees of said corporate employers. In
25 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
26 their said employees, agents, and representatives, and each of them; and upon completion of the
27 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
28 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,

1 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
2 aforementioned corporate employees, agents and representatives.

3 32. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
4 thereon allege that defendants REMO, EMPLOYBRIDGE, REALTIME, and DOES 1-100, and
5 each of them, are joint employers.

6 **FIRST CAUSE OF ACTION**

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

8 33. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
9 and incorporate each by reference as though fully set forth hereat.

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

15 35. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
16 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
17 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
18 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
19 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
20 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
21 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

22 36. At all relevant times herein, Defendants have had a consistent policy or practice of
23 failing to pay Plaintiffs and/or Aggrieved Employees during their employment on a timely basis as
24 per Labor Code section 204. Thus, pursuant to Labor Code section 210. Plaintiffs and other
25 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
26 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
27 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
28 for each subsequent violation in connection with each payment that was made in violation of Labor

1 Code section 204.

2 **SECOND CAUSE OF ACTION**

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

4 37. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
5 and incorporate each by reference as though fully set forth hereat.

6 38. Defendants had and have a policy or practice of failing to comply with Labor Code
7 section 226, subdivision (a) by intentionally failing to furnish Plaintiffs with itemized wage
8 statements that accurately reflect gross wages earned; total hours worked; net wages earned; the
9 name and address of each employer with whom they have been placed to work; all applicable hourly
10 rates in effect during the pay period and the corresponding number of hours worked at each hourly
11 rate; the legal name of the employer and/or the name and address of the legal entity securing the
12 employer's services if the employer is a farm labor contractor; and other such information as required
13 by Labor Code section 226, subdivision (a).

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

19 40. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in
20 this section are in addition to any other penalty provided by law."

21 41. Plaintiffs are informed and believe, and based thereon allege, that Defendants had
22 and have a policy or practice of failing to furnish non-exempt employees, including, without
23 limitation, Plaintiffs, with itemized wage statements that accurately reflect gross wages earned; total
24 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
25 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
26 name of the employer and/or the name and address of the legal entity securing the employer's services
27 if the employer is a farm labor contractor; and other such information as required by Labor Code
28 section 226, subdivision (a).

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

THIRD CAUSE OF ACTION

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

43. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs and incorporate each by reference as though fully set forth hereat.

44. 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:

- (1) 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;
- (2) 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;
- (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

45. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections described herein, including causing Plaintiffs and other Aggrieved Employees not to: 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; be provided with notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate

1 of pay.

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

7 **FOURTH CAUSE OF ACTION**

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

9 47. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
10 and incorporate each by reference as though fully set forth hereat.

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

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

22 (2) For each subsequent violation for the same specific offense, two hundred fifty
23 dollars (\$250) for each underpaid employee for each pay period for which the
24 employee is underpaid regardless of whether the initial violation is
25 intentionally committed. This amount shall be in addition to an amount
26 sufficient to recover underpaid wages, liquidated damages pursuant to Section
27 1194.2, and any applicable penalties imposed pursuant to Section 203.

28 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to

1 Section 203, recovered pursuant to this section shall be paid to the affected
2 employee.”

3 49. Plaintiffs are informed and believe, and based thereon allege, that Defendants caused
4 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
5 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ wages for all
6 hours worked or otherwise under Defendants’ control due to, without limitation, failing to accurately
7 track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to
8 work off the clock, including, without limitation, by requiring employees: to come early to work
9 and leave late work without being able to clock in for all that time, to suffer under Employer’s
10 control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift
11 tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest
12 periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings
13 off the clock, to make phone calls or drive off the clock; detrimental rounding of employee time
14 entries; editing and/or manipulation of time entries to show less hours than actually worked; failing
15 to pay reporting time pay; and failing to pay split shift premiums.

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

22 **FIFTH CAUSE OF ACTION**

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

24 51. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
25 and incorporate each by reference as though fully set forth hereat.

26 52. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
27 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
28 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or

1 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
2 action brought by an aggrieved employee on behalf of himself or herself and other current or former
3 employees pursuant to the procedures specified in Labor Code section 2699.3.

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

10 54. Plaintiffs are informed and believe and based thereon allege that Defendants, and
11 each of them, violated the Labor Code sections described herein, including, without limitation, for
12 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
13 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
14 employment and after employment separation; provide employees the opportunity to inspect
15 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
16 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual
17 and use of paid sick leave, entitling Plaintiffs and other Aggrieved Employees to civil penalties for
18 each of these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision
19 (f).

20 55. Moreover, Plaintiffs and other Aggrieved Employees within the State of California
21 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
22 connection with their herein-described claims for civil penalties.

23 **REQUEST FOR JURY TRIAL**

24 56. Plaintiffs hereby request a trial by jury.

25 **PRAYER**

26 **WHEREFORE**, on behalf of Plaintiffs and Aggrieved Employees, Plaintiffs pray for
27 judgment against Defendants as follows:

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

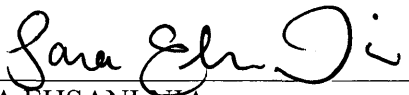
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1197.1, and 2699;

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

Dated: October 27, 2020

BIBIYAN LAW GROUP, P.C.

BY: 
SARA EHSANI-NIA
DAVID D. BIBIYAN
Attorneys for Plaintiffs, RENEE J.
MONTTOYA, CINDY L. BRAKEBILL and
JACOB R. MONTTOYA, on behalf of
themselves and all others aggrieved