

OCT 23 2020

BY MUM
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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN BERNARDINO**

15 VALERIE J. FOWLER, on behalf of herself
16 and all others aggrieved,

17 Plaintiff,

18 v.

19 LAUREL AVENUE, LLC, a Delaware limited
20 liability company; STEVE POWELL, an
21 individual; and DOES 1 through 100,
22 inclusive,

23 Defendants.

CASE NO.:

CIV DS 2022866

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]

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27 COMES NOW plaintiff VALERIE J. FOWLER ("Plaintiff"), on behalf of herself and all
28 others aggrieved, and alleges as follows:

By Fax

1 **JURISDICTION AND VENUE**

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 LAUREL AVENUE,
4 LLC, a Delaware limited liability company, and any of its respective subsidiaries or affiliated
5 companies within the State of California ("Laurel"), and STEVE POWELL ("Powell" and together
6 with "Laurel" and DOES 1 through 100, as further defined below, "Defendants"), as a proxy of the
7 Labor and Workforce Development Agency of the State of California ("LWDA"), on behalf of
8 Plaintiff and all other current and former non-exempt employees of Defendants working within the
9 Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to
10 comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor
11 Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and
12 freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period
13 (collectively, "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 San Bernardino County, California pursuant to Code of Civil
17 Procedure sections 392, *et seq.* because, among other things, San Bernardino County is where the
18 causes of action complained of herein arose; the county in which the employment relationship
19 began; the county in which performance of the employment contract, or part of it, between Plaintiff
20 and Defendants was due to be performed; and the county in which the employment contract, or part
21 of it, between 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.

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

5 6. During the period beginning one (1) year preceding the provision of notice to the
6 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
7 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
8 226.3, 226.7, 246, *et seq.*, 432, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198.5, 2699, 2802, and
9 2810.5, among others.

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

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

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

22 **PAGA REPRESENTATIVE ALLEGATIONS**

23 10. At all relevant times mentioned herein, Defendants had and have a policy or practice
24 of failing to pay overtime wages to Plaintiffs and other Aggrieved Employees in the State of
25 California in violation of California state wage and hour laws as a result of, without limitation,
26 Plaintiffs and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours
27 per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime
28 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 remain on-call, to come early to work and leave late work
3 without being able to clock in for all that time, to suffer under Defendants' control due to long lines
4 for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out,
5 to clock out for meal periods and continue working, to clock out for rest periods, to don and doff
6 uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make
7 phone calls or drive off the clock; failing to include all forms of remuneration, including non-
8 discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the
9 regular rate of pay for the pay periods where overtime was worked and the additional compensation
10 was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee
11 time entries, editing and/or manipulation of time entries to show less hours than actually worked;
12 for paying straight pay instead of overtime pay, to the detriment of Plaintiff and other Aggrieved
13 Employees.

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

27 12. At all relevant times mentioned herein, Defendants had and have a policy or practice
28 of failing to provide Plaintiffs and other Aggrieved Employees a thirty (30) minute uninterrupted,

1 timely, and complete meal period for days on which the employee worked in excess of five (5) and
2 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
3 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
4 not providing timely meal periods; failing to provide first and second meal periods; providing short
5 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
6 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
7 periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which
8 employees worked, as required by California wage and hour laws

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

17 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
18 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
19 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross
20 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours worked at each
22 hourly rate by the employee; the legal name of the employer and/or the name and address of the legal
23 entity securing the employer's services if the employer is a farm labor contractor; and other such
24 information as required by Labor Code section 226, subdivision (a).

25 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
26 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
27 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
28 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records

1 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
2 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiffs and other
3 Aggrieved Employees.

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

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

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

25 19. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
26 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
27 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
28

1 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
2 all other Aggrieved Employees.

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

9 21. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
10 Code sections 210, 226.3, 558, 1197.1, and 2699 for the herein-described acts, which violate the
11 California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
12 Employees pursuant to PAGA.

13 PARTIES

14 A. Plaintiff

15 22. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
16 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
17 exempt employee, with duties that included, but were not limited to, examining and caring for
18 patients. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately
19 April of 2017 through at least October of 2019.

20 B. Defendants

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

25 24. Plaintiff is informed and believes and based thereon alleges that defendant Powell is,
26 and at all times relevant hereto was, an individual residing in California, as well as regional director
27 for Laurel, and DOES 1 through 100, as further defined below. Plaintiff is further informed and
28 believes and based thereon alleges that Powell violated, or caused to be violated, the above-

1 referenced and below-referenced Labor Code provisions in violation of Labor Code section 558.1.

2 25. 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 Laurel, Powell, and any of their parent, subsidiary, or affiliated companies within the State
14 of California, as well as DOES 1 through 100 identified herein.

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

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

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

1 aforementioned corporate employees, agents and representatives.

2 28. Plaintiff is further informed and believes and based thereon alleges that Powell
3 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
4 provisions in violation of Labor Code section 558.1.

5 29. Plaintiff is informed and believes, and based thereon alleges, that despite the
6 formation of the purported corporate existence of Laurel, Powell, and DOES 1 through 50, inclusive
7 (the "Alter Ego Defendants"), they, and each of them, are one and the same with DOES 51 through
8 100 ("Individual Defendants"), and each of them, due to, but not limited to, the following reasons:

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

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

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

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

28 e. The recognition of the separate existence of the Individual Defendants from

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

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

9 30. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
10 thereon alleges that defendants Laurel, Powell, and DOES 1-100, and each of them, are joint
11 employers.

12 **FIRST CAUSE OF ACTION**

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

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

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

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

28 / / /

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

SECOND CAUSE OF ACTION

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

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

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

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

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

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

40. Pursuant to Labor Code section 226.3, Plaintiff 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)

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

42. 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;

/ / /

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

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the 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.”

47. 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 minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to remain on call, 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, to attend company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries; editing and/or manipulation of time entries to show less hours than actually worked; failing to pay reporting time pay; and failing to pay split shift premiums.

48. 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

1 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
2 subsequent violation.

3 **FIFTH CAUSE OF ACTION**

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

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

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

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

19 52. Plaintiff is informed and believes and based thereon alleges that Defendants, and
20 each of them, violated the Labor Code sections described herein, including, without limitation, for
21 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
22 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
23 employment and after employment separation; provide employees the opportunity to inspect
24 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
25 work duties; provide notice as required under Labor Code section 2810.5; and provide the proper
26 accrual and use of paid sick leave, entitling Plaintiff and other Aggrieved Employees to civil
27 penalties for each of these Labor Code violations in the amounts set forth in Labor Code section
28 2699, subdivision (f).

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

REQUEST FOR JURY TRIAL

54. Plaintiff hereby requests a trial by jury.

PRAYER

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

- A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 558.1, 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 22, 2020

BIBIYAN LAW GROUP, P.C.

BY:

Ina Ehr. Vi

SARA EHSANI-NIA

DAVID D. BIBIYAN

Attorneys for Plaintiff VALERIE J.
FOWLER, on behalf of herself and all others
aggrieved