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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 11 2021

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as an aggrieved employee, and on behalf of all other
aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CIV SB 2123095

DAVID ORTIZ, as an aggrieved employee,
and on behalf of all other aggrieved employees
under the Labor Code Private Attorneys'
General Act of 2004,

Plaintiff,

v.

ROLLING GREEN, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.:

REPRESENTATIVE ACTION

By Fax

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 558, 1174.5, 1197.1
and 2699**

DEMAND FOR JURY TRIAL

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

COMES NOW plaintiff DAVID ORTIZ ("Plaintiff"), as an aggrieved employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004, and alleges as follows:

JURISDICTION AND VENUE

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"), against ROLLING GREEN, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("ROLLING GREEN" with DOES 1 through 100, as further defined below, "Defendants"), as a proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved Employees").

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

3. Venue is proper in San Bernardino County, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, San Bernardino County is where the causes of action complained of herein arose; the county in which the employment relationship began; the county in which performance of the employment contract, or part of it, between Plaintiff and Defendants was due to be performed; the county in which the employment contract, or part of it, between Plaintiff and Defendants was actually performed. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Aggrieved Employees in San Bernardino County, and because Defendants employ numerous Aggrieved Employees in San Bernardino County.

4. Plaintiff is an "aggrieved employee" under PAGA, as Plaintiff was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term "civil

1 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
2 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
3 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
4 employees of Defendants during the Civil Penalty Period.

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

9 6. During the period beginning one (1) year preceding the provision of notice to the
10 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
11 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7,
12 227.3, 246, *et seq.*, 404, 432, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198.5, 2699, 2802,
13 and 2810.5, among others.

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

18 8. On or around September 24, 2020, Plaintiff provided written notice pursuant to Labor
19 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
20 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
21 as well as by certified mail, with return receipt requested to Defendants, and each of them.

22 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
23 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
24 calendar days of the September 24, 2020 postmarked date of the herein-described notice sent by
25 Plaintiff to the LWDA and Defendants.

26 10. On April 6, 2020, the Judicial Council of California approved Appendix I –
27 Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the
28 California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of

1 action were tolled from April 6, 2020 until October 1, 2020

2 **PAGA REPRESENTATIVE ALLEGATIONS**

3 11. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of
5 California in violation of California state wage and hour laws as a result of, without limitation,
6 Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per
7 week, and/or seven (7) straight workdays in a workweek without paying them proper overtime
8 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually
9 worked; engaging, suffering, or permitting employees to work off the clock, including, without
10 limitation, by requiring employees: to remain on-call, to suffer under Defendants' control to
11 complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including
12 answering calls), to clock out for meal periods and continue working, to don and doff uniforms
13 and/or safety equipment off the clock, to attend company meetings off the clock, to make phone
14 calls or drive off the clock; failing to include all forms of remuneration, including non-discretionary
15 bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of
16 pay for the pay periods where overtime was worked and the additional compensation was earned
17 for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time
18 entries, editing and/or manipulation of time entries to show less hours than actually worked, failing
19 to pay at the appropriate prevailing wage rates, and for paying straight pay instead of overtime pay,
20 to the detriment of Plaintiff and other Aggrieved Employees.

21 12. At all relevant times mentioned herein, Defendants had and have a practice or policy
22 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
23 worked or otherwise under Defendants' control as a result of, without limitation, failing to
24 accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-
25 call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift
26 tasks after clocking out (including answering calls), to clock out for meal periods and continue
27 working, to don and doff uniforms and/or safety equipment off the clock, to attend company
28 meetings off the clock, to make phone calls or drive off the clock; detrimental rounding of employee

1 time entries, editing and/or manipulation of time entries to show less hours than actually worked;
2 failing to pay reporting time pay; failing to pay split-shift premiums; paid time off and vacation time
3 owed; and failing to pay at the appropriate prevailing wage rates, to the detriment of Plaintiff and
4 other Aggrieved Employees.

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

15 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
16 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
17 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
18 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
19 periods all together; failing to provide a first or second rest period; requiring that they be bundled
20 together and/or with meal periods; interrupting them; requiring that employees carry cellular
21 telephones or walkie-talkies during rest periods not providing them in a timely fashion; and not
22 permitting employees to leave the premises; and/or otherwise requiring on-duty/on-call rest periods,
23 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 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross
27 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
28 hourly rates in effect during the pay period and the corresponding number of hours worked at each

hourly rate by the employee; 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).

16. At all relevant times mentioned herein, 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 and other Aggrieved Employees with documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other Aggrieved Employees.

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

18. At all relevant times herein, Defendants had and have a policy or practice of failing to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3 and applicable Wage Orders.

19. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to reimburse deposits made, including uniform deposits together with all interest owed at the separation of employment in violation of Labor Code section 404, entitling Plaintiff and other aggrieved employees to damages in the amount of the deposit and accrued interest.

20. At all relevant times mentioned herein, Defendants have had a policy or practice of failing and refusing, and continue to fail and refuse, to reimburse employees, including, without limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits, separately laundering mandatory uniforms, for the purchase of tools and safety equipment

(including, without limitation, special tree climbing boots), and for the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge of their duties, or of their obedience to the directions of Defendants, as required by Labor Code 2802.

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

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

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

24. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved Employees pursuant to PAGA.

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1 **PARTIES**

2 **A. Plaintiff**

3 25. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
4 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
5 exempt employee, with duties that included, but were not limited to, performing tree care. Plaintiff
6 is informed and believes that Plaintiff worked for Defendants from approximately December of
7 2018 through at least August of 2020. Plaintiff was paid (or purportedly paid) an hourly wage for
8 his services.

9 **B. Defendants**

10 26. Plaintiff is informed and believes and based thereon alleges that defendant
11 ROLLING GREEN is, and at all times relevant hereto was, a corporation organized and existing
12 under and by virtue of the laws of the State of California and doing business in the County of San
13 Bernardino, State of California.

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

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1 **JOINT LIABILITY ALLEGATIONS**

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

7 29. All of the acts and conduct described herein of each and every corporate defendant
8 was duly authorized, ordered, and directed by the respective and collective defendant corporate
9 employers, and the officers and management-level employees of said corporate employers. In
10 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
11 their said employees, agents, and representatives, and each of them; and upon completion of the
12 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
13 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
14 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
15 aforementioned corporate employees, agents and representatives.

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

18 **FIRST CAUSE OF ACTION**

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

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

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

27 33. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
28 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this

1 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
2 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
3 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
4 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
5 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

14 **SECOND CAUSE OF ACTION**

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

16 35. 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 36. Defendants had and have a policy or practice of failing to comply with Labor Code
19 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
20 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
21 wages earned; the name and address of each employer with whom they have been placed to work;
22 all applicable hourly rates in effect during the pay period and the corresponding number of hours
23 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal
24 entity securing the employer’s services if the employer is a farm labor contractor; and other such
25 information as required by Labor Code section 226, subdivision (a).

26 37. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
27 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
28 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for

1 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
2 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

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

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

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

18 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

5 43. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
6 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
7 causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and minimum
8 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
9 their employment and after their employment separation; receive accurate, itemized wage
10 statements; be provided with the opportunity to inspect employment records; be provided with
11 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of
12 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
13 of pay.

14 44. As a direct and proximate result of the herein-described Labor Code violations,
15 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
16 civil penalties for Defendants’ herein-described Labor Code violations in the amount fifty dollars
17 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
18 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

19 **FOURTH CAUSE OF ACTION**

20 **(Violation of Labor Code § 1174.5 – Against All Defendants)**

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

23 46. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
24 every person employing labor in California to “[a]llow any member of the commission or the
25 employees of the Division of Labor Standards Enforcement free access to the place of business or
26 employment of the person to secure any information or make any investigation that they are
27 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
28 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,

1 or papers of the person.”

2 47. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
3 every person employing labor in California to “[k]eep a record showing the names and addresses of
4 all employees employed and the ages of all minors.”

5 48. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
6 every person employing labor in California to “[k]eep, at a central location in the state or at the
7 plants or establishments at which employees are employed, payroll records showing the hours
8 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
9 piece rate paid to, employees employed at the respective plants or establishments. These records
10 shall be kept in accordance with rules established for this purpose by the commission, but in any
11 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
12 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
13 earned.”

14 49. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
15 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
16 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
17 member of the commission or employees of the division to inspect records pursuant to subdivision
18 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

19 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
20 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
21 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
22 inspection of records as required by Labor Code subdivision (b).

23 51. As a direct and proximate result of the herein-described Labor Code violations,
24 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
25 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
26 hundred dollars (\$500) per violation per Aggrieved Employee.

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1 **FIFTH CAUSE OF ACTION**

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

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

5 53. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
6 person acting either individually or as an officer, agent, or employee of another person, who pays
7 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
8 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
9 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
10 Section 203 as follows:

11 (1) For any initial violation that is intentionally committed, one hundred dollars
12 (\$100) for each underpaid employee for each pay period for which the
13 employee is underpaid. This amount shall be in addition to an amount
14 sufficient to recover underpaid wages, liquidated damages pursuant to Section
15 1194.2, and any applicable penalties imposed pursuant to Section 203.

16 (2) For each subsequent violation for the same specific offense, two hundred fifty
17 dollars (\$250) for each underpaid employee for each pay period for which the
18 employee is underpaid regardless of whether the initial violation is
19 intentionally committed. 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 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
23 Section 203, recovered pursuant to this section shall be paid to the affected
24 employee.”

25 54. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
26 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
27 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ wages for all hours
28 worked or otherwise under Defendants’ control due to, without limitation, routinely failing to

1 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
2 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
3 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock.

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

10 **SIXTH CAUSE OF ACTION**

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

12 56. 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 57. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
15 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
16 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
17 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
18 action brought by an aggrieved employee on behalf of himself or herself and other current or former
19 employees pursuant to the procedures specified in Labor Code section 2699.3.

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

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

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

REQUEST FOR JURY TRIAL

61. Plaintiff hereby requests a trial by jury.

PRAYER

WHEREFORE, on behalf of 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, 1174.5, 1197.1, and 2699;
- B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- C. Pre-judgment and post-judgment interest;
- 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: August 9, 2021

BIBIYAN LAW GROUP, P.C.

BY: 
DIEGO AVILES

Attorneys for Plaintiff DAVID ORTIZ, as an
aggrieved employee, and on behalf of all other
aggrieved employees under the Labor Code
Private Attorneys' General Act of 2004