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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

EDITH FRANCO and MONICA ALFARO,
as aggrieved employees, and on behalf of all
other aggrieved employees under the Labor
Code Private Attorneys' General Act of 2004,

Plaintiffs,

v.

INLAND BEHAVIORAL AND HEALTH
SERVICES, INC., a California corporation;
TEMETRY ANN LINDSEY, an individual;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO. **CIV SB 2128930**

REPRESENTATIVE ACTION

**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 plaintiffs EDITH FRANCO ("Plaintiff Franco") and MONICA ALFARO ("Plaintiff Alfaro and with Plaintiff Franco as Plaintiffs"), as aggrieved employees, 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 INLAND BEHAVIORAL AND HEALTH SERVICES, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("IBHS"), and TEMETRY ANN LINDSEY, an individual ("LINDSEY" and IBHS, 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 Plaintiffs 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, restraints on competition, whistleblowing and freedom of speech 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 Plaintiffs, or some of them, 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; and the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct

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1 effect on Plaintiffs and Aggrieved Employees in San Bernardino County, and because Defendants
2 employ numerous Aggrieved Employees in San Bernardino County.

3 4. Plaintiffs are “aggrieved employee” under PAGA, as Plaintiffs were employed by
4 Defendants during the applicable statutory period and suffered one or more of the Labor Code
5 violations set forth herein. Accordingly, Plaintiffs seek to recover civil penalties, as the term “civil
6 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
7 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
8 reasonable attorneys’ fees and costs, for Plaintiffs and all other aggrieved current and former
9 employees of Defendants during the Civil Penalty Period.

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

14 6. During the period beginning one (1) year preceding the provision of notice to the
15 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
16 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
17 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
18 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

23 8. On or around June 24, 2021, Plaintiff Franco provided written notice pursuant to
24 Labor Code section 2699.3 online and by certified mail, with return receipt requested, of
25 Defendants’ violation of various, including the herein-described, provisions of the Labor Code, to
26 the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
27 them.

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1 9. On or around July 14, 2021, Plaintiff Alfaro provided written notice pursuant to
2 Labor Code section 2699.3 online and by certified mail, with return receipt requested, of
3 Defendants' violation of various, including the herein-described, provisions of the Labor Code, to
4 the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
5 them.

6 10. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
7 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
8 calendar days of the June 24, 2021 and the July 14, 2021 postmarked dates of the herein-described
9 notices sent by Plaintiffs to the LWDA and Defendants.

10 **PAGA REPRESENTATIVE ALLEGATIONS**

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

3 12. At all relevant times mentioned herein, Defendants had and have a practice or policy
4 of failing to compensate Plaintiffs and other Aggrieved Employees with minimum wages for all
5 hours worked or otherwise under Defendants' control as a result of, without limitation, failing to
6 accurately track and/or pay for all minutes actually worked; by requiring employees: to come early
7 to work without being able to clock in for all that time; to remain on-call; to suffer under Defendants'
8 control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out
9 (including answering calls from dispatch and others); to clock out for meal periods and continue
10 working; to don and doff uniforms and/or safety equipment off the clock; to attend company
11 meetings off the clock; to make phone calls or drive off the clock; detrimental rounding of employee
12 time entries, editing and/or manipulation of time entries to show less hours than actually worked;
13 failing to pay reporting time pay; paid time off and vacation time owed; and failing to pay split shift
14 premiums and editing and/or manipulation of time entries to show less hours than actually worked,
15 to the detriment of Plaintiffs and other Aggrieved Employees.

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

26 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of failing to provide Plaintiffs and other Aggrieved Employees paid, uninterrupted, timely, and
28 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions

1 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
2 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
3 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
4 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
5 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

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

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

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

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

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

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

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

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

23. At all relevant times mentioned herein, Defendants had and have a policy or practice of preventing Plaintiffs and/or Aggrieved Employees from using or disclosing the skills, knowledge and experience they obtained at Defendants for purposes of competing with Defendants, including, without limitation, preventing Employees from disclosing their wages in negotiating a new job with a prospective employer, and from disclosing who else works at Defendants and under what circumstances that they might be receptive to an offer from a rival employer. Plaintiffs are informed and believe that this policy and/or practice violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor Code sections 232, 232.5, and 1197.5, subdivision (k).

24. Defendants had and have a policy or practice of preventing Plaintiffs and/or other Aggrieved Employees from disclosing violations of state and federal law, either within Defendants to their managers or outside to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. In addition, Plaintiffs are informed and believe that Defendants’ herein-described policies and/or practices prevent Plaintiffs and/or other Aggrieved Employees from disclosing information about unsafe or discriminatory working conditions, or about wage and hour violations in violation of Labor Code section 232 and 232.5.

25. Defendants had and have a policy or practice of preventing Plaintiffs and/or other Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose wages, working conditions, and illegal conduct, including, without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5, subdivision (k). Plaintiffs are informed and believe that this lawful conduct includes the exercise of Plaintiffs’ and/or other Aggrieved Employee’s constitutional rights of freedom of speech and economic liberty.

26. Plaintiffs, in Plaintiffs’ representative capacity, seek civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate

1 the California Labor Code as described above, including on behalf of Plaintiffs and other Aggrieved
2 Employees pursuant to PAGA.

3 **PARTIES**

4 **A. Plaintiff**

5 27. Plaintiff Franco is a resident of the State of California. At all relevant times herein,
6 Plaintiff Franco is informed and believes, and based thereon alleges that Defendants employed
7 Plaintiff Franco as a non-exempt employee, with duties that included, but were not limited to,
8 teaching nutrition classes to women and children. Plaintiff Franco is informed and believes that
9 Plaintiff Franco worked for Defendants from approximately February of 2013 through
10 approximately October of 2020.

11 28. Plaintiff Alfaro is a resident of the State of California. At all relevant times herein,
12 Plaintiff Alfaro is informed and believes, and based thereon alleges that Defendants employed
13 Plaintiff Alfaro as a non-exempt employee, with duties that included, but were not limited to,
14 teaching infant nourishment classes to new mothers. Plaintiff Alfaro is informed and believes that
15 Plaintiff Alfaro worked for Defendants from approximately December of 2018 through
16 approximately November of 2020.

17 **B. Defendants**

18 29. Plaintiffs are informed and believe and based thereon alleges that defendant IBHS
19 is, and at all times relevant hereto was, a limited liability company organized and existing under and
20 by virtue of the laws of the State of California and doing business in the County of San Bernardino,
21 State of California.

22 30. Plaintiffs are informed and believe and based thereon allege that defendant
23 LINDSEY is, and at all times relevant hereto was, an individual residing in California, as well as
24 Chief Executive Officer and President for IBHS, and DOES 1 through 100, as further defined below.
25 Plaintiffs are further informed and believe and based thereon allege that LINDSEY violated, or
26 caused to be violated, the above-referenced and below-referenced Labor Code provisions in
27 violation of Labor Code section 558.1.

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

JOINT LIABILITY ALLEGATIONS

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

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

1 34. Plaintiffs are informed and believe, and based thereon allege, that despite the
2 formation of the purported corporate existence of IBHS, and DOES 1 through 50, inclusive (the
3 “Alter Ego Defendants”), they, and each of them, are one and the same with LINDSEY and DOES
4 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following
5 reasons:

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

11 b. The Individual Defendants derive actual and significant monetary benefits by
12 and through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego Defendants as
13 the funding source for the Individual Defendants’ own personal expenditures;

14 c. Plaintiffs are informed and believe, and thereon allege, that the Individual
15 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear
16 as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
17 accomplishing some other wrongful or inequitable purpose;

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

25 e. The recognition of the separate existence of the Individual Defendants from
26 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to
27 insulate themselves from liability to Plaintiffs for violations to the Civil Code, Government Code,
28 and other statutory violations. The corporate existence of these defendants should thus be

disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiffs herein;

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

35. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based thereon allege that Defendants, and each of them, are joint employers.

FIRST CAUSE OF ACTION

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

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

37. At all relevant times herein, Labor Code section 204, requires and required 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.”

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

39. At all relevant times herein, Defendants have had a consistent policy or practice of failing to pay Plaintiffs and/or Aggrieved Employees during their employment on a timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiffs 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

1 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
2 for each subsequent violation in connection with each payment that was made in violation of Labor
3 Code section 204.

4 **SECOND CAUSE OF ACTION**

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

6 40. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
7 and incorporates each by reference as though fully set forth hereat.

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

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

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

23 44. Plaintiffs are informed and believe, and based thereon allege, that Defendants had
24 and have a policy or practice of failing to furnish non-exempt employees, including, without
25 limitation, Plaintiffs, with itemized wage statements that accurately reflect gross wages earned; total
26 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
27 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
28 name of the employer and/or the name and address of the legal entity securing the employer's services

1 if the employer is a farm labor contractor; and other such information as required by Labor Code
2 section 226, subdivision (a).

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

8 **THIRD CAUSE OF ACTION**

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

10 46. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
11 and incorporates each by reference as though fully set forth hereat.

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

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

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

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

23 48. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and
24 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
25 causing Plaintiffs and other Aggrieved Employees not to: be paid overtime wages and minimum
26 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
27 their employment and after their employment separation; receive accurate, itemized wage
28 statements; be provided with the opportunity to inspect employment records; be provided with

1 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of
2 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
3 of pay.

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

9 **FOURTH CAUSE OF ACTION**

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

11 50. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
12 and incorporates each by reference as though fully set forth hereat.

13 51. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
14 every person employing labor in California to “[a]llow any member of the commission or the
15 employees of the Division of Labor Standards Enforcement free access to the place of business or
16 employment of the person to secure any information or make any investigation that they are
17 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
18 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
19 or papers of the person.”

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

23 53. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
24 every person employing labor in California to “[k]eep, at a central location in the state or at the
25 plants or establishments at which employees are employed, payroll records showing the hours
26 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
27 piece rate paid to, employees employed at the respective plants or establishments. These records
28 shall be kept in accordance with rules established for this purpose by the commission, but in any

1 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
2 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
3 earned.”

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

9 55. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
10 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
11 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
12 inspection of records as required by Labor Code subdivision (b).

13 56. As a direct and proximate result of the herein-described Labor Code violations,
14 pursuant to Labor Code section 1174.5, Plaintiffs and other Aggrieved Employees are entitled to
15 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
16 hundred dollars (\$500) per violation per Aggrieved Employee.

17 **FIFTH CAUSE OF ACTION**

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

19 57. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
20 and incorporates each by reference as though fully set forth hereat.

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

27 (1) For any initial violation that is intentionally committed, one hundred dollars
28 (\$100) for each underpaid employee for each pay period for which the

1 employee is underpaid. This amount shall be in addition to an amount
2 sufficient to recover underpaid wages, liquidated damages pursuant to Section
3 1194.2, and any applicable penalties imposed pursuant to Section 203.

4 (2) For each subsequent violation for the same specific offense, two hundred fifty
5 dollars (\$250) for each underpaid employee for each pay period for which the
6 employee is underpaid regardless of whether the initial violation is
7 intentionally committed. This amount shall be in addition to an amount
8 sufficient to recover underpaid wages, liquidated damages pursuant to Section
9 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

13 59. Plaintiffs are informed and believe, and based thereon allege, that Defendants caused
14 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
15 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ wages for all
16 hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
17 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
18 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
19 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock.

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

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1 **SIXTH CAUSE OF ACTION**

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

3 61. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
4 and incorporates each by reference as though fully set forth hereat.

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

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

17 64. Plaintiffs are informed and believe and based thereon allege that Defendants, and
18 each of them, violated the Labor Code sections described herein, including, without limitation, for
19 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
20 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
21 employment and after employment separation; provide employees the opportunity to inspect
22 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
23 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual
24 and use of paid sick leave; paying employees all owed paid time off and vacation time owed by
25 separation at the proper rate of pay; and placing restraints on competition, whistleblowing and
26 freedom of speech, entitling Plaintiffs and other Aggrieved Employees to civil penalties for each of
27 these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

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1 65. Moreover, Plaintiffs and other Aggrieved Employees within the State of California
2 whom they seek to represent are entitled to an award of reasonable attorneys' fees and costs in
3 connection with their herein-described claims for civil penalties.

4 **REQUEST FOR JURY TRIAL**

5 66. Plaintiffs hereby requests a trial by jury.

6 **PRAYER**

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

- 9 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
10 1174.5, 1197.1, and 2699;
11 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
12 210, 226.3, 558, 1174.5, 1197.1, and 2699;
13 C. Pre-judgment and post-judgment interest;
14 D. For costs of suit incurred herein; and
15 E. Such other and further relief as the Court deems just and proper.

16 Dated: September 30, 2021

BIBIYAN LAW GROUP, P.C.

17
18 BY: 

19 MALALAI ANBARI

20 DAVID D. BIBIYAN

21 Attorneys for Plaintiffs EDITH FRANCO and
22 MONICA ALFARO, as aggrieved employees,
23 and on behalf of all other aggrieved employees
24 under the Labor Code Private Attorneys'
25 General Act of 2004
26
27
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