

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Elaine Lu

Electronically FILED by Superior Court of California, County of Los Angeles on 11/17/2021 03:53 PM Sherri R. Carter, Executive Officer/Clerk of Court, by H. Flores-Hernandez, Deputy Clerk

1 **BIBIYAN LAW GROUP, P.C.**
 David D. Bibiyan (Cal. Bar No. 287811)
 2 *david@tomorrowlaw.com*
 Jeffrey D. Klein (Cal. Bar No. 297296)
 3 *jeff@tomorrowlaw.com*
 Diego Aviles (Cal. Bar No. 315533)
 4 *diego@tomorrowlaw.com*
 8484 Wilshire Boulevard, Suite 500
 Beverly Hills, California 90211
 5 Telephone: (310) 438-5555; Fax: (310) 300-1705
 6 Attorneys for Plaintiffs, MANUEL HERNANDEZ and
 MARIA R. CASTILLO VICARIO, as aggrieved employees,
 7 and on behalf of all other aggrieved employees

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10
 11 MANUEL HERNANDEZ and MARIA R.
 CASTILLO VICARIO, as aggrieved
 12 employees, and on behalf of all other aggrieved
 employees under the Labor Code Private
 13 Attorneys' General Act of 2004,

14 Plaintiffs,

15 v.

16 THIBIANT INTERNATIONAL, INC., a
 California corporation; LEGENDARY
 17 STAFFING, INC., a California corporation;
 and DOES 1 through 100, inclusive,

18 Defendants.
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

CASE NO.: **21STCV42402**

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 MANUEL HERNANDEZ and MARIA R. CASTILLO VICARIO (“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:

INTRODUCTION

1. This is a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against THIBIANT INTERNATIONAL, INC., and any of its respective subsidiaries or affiliated companies within the State of California (“THIBIANT”), LEGENDARY STAFFING, INC., and any of its respective subsidiaries or affiliated companies within the State of California (“LEGENDARY” and collectively with THIBIANT and DOES 1 through 100, as further defined below, “Defendants”) as proxies 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”).

PARTIES

A. Plaintiffs

2. Plaintiff MANUEL HERNANDEZ is a resident of the State of California. At all relevant times herein, Plaintiff MANUEL HERNANDEZ is informed and believes, and based thereon alleges that Defendants employed Plaintiff MANUEL HERNANDEZ as a non-exempt employee, with duties that included, but were not limited to, packaging cosmetics. Plaintiff MANUEL HERNANDEZ is informed and believes that Plaintiff MANUEL HERNANDEZ worked for Defendants from approximately August of 2020 through approximately December of 2020.

3. Plaintiff MARIA R. CASTILLO VICARIO is a resident of the State of California. At all relevant times herein, Plaintiff MARIA R. CASTILLO VICARIO is informed and believes, and based thereon alleges that Defendants employed Plaintiff MARIA R. CASTILLO VICARIO as

1 a non-exempt employee, with duties that included, but were not limited to, packaging cosmetics.
2 Plaintiff MARIA R. CASTILLO VICARIO is informed and believes that Plaintiff MARIA R.
3 CASTILLO VICARIO worked for Defendants from approximately August of 2020 through
4 approximately December of 2020.

5 **B. Defendants**

6 4. Plaintiffs are informed and believe and based thereon allege that Defendant
7 THIBIANT is, and at all times relevant hereto was, a corporation organized and existing under and
8 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
9 State of California.

10 5. Plaintiffs are informed and believe, and based thereon allege, that Defendant
11 LEGENDARY is, and at all times relevant hereto was, a corporation organized and existing under
12 and by virtue of the laws of the State of California and doing business in the County of Los Angeles,
13 State of California. Plaintiffs are informed and believe, and based thereon allege, that
14 LEGENDARY is a labor contractor within the meaning of Labor Code section 2810.3 that provides
15 outplacement staffing and payroll services for various industries and professions, including for
16 THIBIANT. At all relevant times herein, LEGENDARY employed Plaintiffs and other aggrieved
17 employees within the State of California.

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

1 include THIBIANT, LEGENDARY, and any of their parent, subsidiary, or affiliated companies
2 within the State of California, and DOES 1 through 100 identified herein.

3 **JOINT LIABILITY ALLEGATIONS**

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

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

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

20 **JURISDICTION AND VENUE**

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

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

1 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiffs
2 and Class Members in Los Angeles County, and because Defendants employ numerous Class
3 Members in Los Angeles County.

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

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

15 14. During the period beginning one (1) year preceding the provision of notice to the
16 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
17 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
18 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
19 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

24 16. On or around June 22, 2021, Plaintiffs provided written notice pursuant to Labor
25 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
26 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
27 as well as by certified mail, with return receipt requested to Defendants, and each of them.

28 / / /

17. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the June 22, 2021 postmarked date of the herein-described notice sent by Plaintiffs to the LWDA and Defendants.

PAGA REPRESENTATIVE ALLEGATIONS

18. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiffs and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiffs and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: employees to come early to work and leave late work without being able to clock in for all that time, to remain on-call, to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out and wait in line for minutes to clock in and out, to clock out for meal periods and continue working, 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, and go through security screenings and temperature checks off the clock; editing and/or manipulation of time entries to show less hours than actually worked; detrimental rounding of employee time entries; and for paying straight pay instead of overtime pay or otherwise pay the incorrect rate of pay; and failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay, to the detriment of Plaintiffs and other Aggrieved Employees.

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

1 accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting
2 employees to work off the clock, including, without limitation, by requiring employees: employees
3 to come early to work and leave late work without being able to clock in for all that time, to remain
4 on-call, to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-
5 shift tasks after clocking out and wait in line for minutes to clock in and out, to clock out for meal
6 periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to
7 attend company meetings off the clock, to make phone calls or drive off the clock, and go through
8 security screenings and temperature checks off the clock; editing and/or manipulation of time entries
9 to show less hours than actually worked; detrimental rounding of employee time entries; failing to
10 pay reporting time pay; paid time off and vacation time owed; and failing to pay split shift premiums,
11 to the detriment of Plaintiffs and other Aggrieved Employees.

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

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

1 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
3 Plaintiffs and other Aggrieved Employees with itemized wage statements that accurately reflect
4 gross wages earned; total hours worked by the employee; net wages earned; all deductions; all
5 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
6 at each hourly rate by the employee; the legal name of the employer; and other such information as
7 required by Labor Code section 226, subdivision (a).

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

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

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

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

1 without limitation cutting, writing, and measuring implements), for the purchase and maintenance
2 of cellular phones and cellular phone plans, office equipment to work from home, in direct
3 consequence of the discharge of their duties, or of their obedience to the directions of Defendants,
4 as required by Labor Code 2802.

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

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

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

24 30. At all relevant times mentioned herein, Defendants had and have a policy or practice
25 of preventing Plaintiffs and/or Aggrieved Employees from using or disclosing the skills, knowledge
26 and experience they obtained at Defendants for purposes of competing with Defendants, including,
27 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
28 a prospective employer, and from disclosing who else works at Defendants and under what

1 circumstances that they might be receptive to an offer from a rival employer. Plaintiffs are informed
2 and believe that this policy and/or practice violates Business and Professions Code sections 17200,
3 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
4 Code sections 232, 232.5, and 1197.5, subdivision (k).

5 31. Defendants had and have a policy or practice of preventing Plaintiffs and/or other
6 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
7 to their managers or outside to private attorneys or government officials, among others, in violation
8 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
9 1102.5. In addition, Plaintiffs are informed and believe that Defendants' herein-described policies
10 and/or practices prevent Plaintiffs and/or other Aggrieved Employees from disclosing information
11 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
12 of Labor Code section 232 and 232.5.

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

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

24 **FIRST CAUSE OF ACTION**

25 **(Violation of PAGA – Against All Defendants)**

26 34. Plaintiffs re-allege and incorporate by reference all of the allegations contained in
27 the preceding paragraphs of this Complaint as though fully set forth hereat.

28 / / /

1 35. Labor Code section 204, requires and required that: “[l]abor performed between the
2 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of
3 the month during which the labor was performed, and labor performed between the 16th and the last
4 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
5 month.”

6 36. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
7 independent and apart from, any other penalty provided in this article, every person who fails to pay
8 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
9 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
10 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
11 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
12 percent of the amount unlawfully withheld.”

13 37. At all relevant times herein, Plaintiffs are informed and believe, and based thereon
14 allege, that Defendants had and have a consistent policy or practice of failing to pay Plaintiffs and
15 other Aggrieved Employees during their employment on a timely basis as per Labor Code section
16 204.

17 38. As a direct and proximate result of the herein-described Labor Code violations, and
18 pursuant to Labor Code section 210, Plaintiffs and other Aggrieved Employees are entitled to
19 recover civil penalties for Defendants’ violations of Labor Code section 204, in the amount of one
20 hundred dollars (\$100) for each Aggrieved Employee for each initial violation per employee, and
21 two hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation in
22 connection with each payment that was made in violation of Labor Code section 204.

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

28 / / /

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

3 41. At all relevant times herein, Plaintiffs are informed and believe, and based thereon
4 allege, that Defendants, and each of them, had and have a policy or practice of failing to comply
5 with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and
6 Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned;
7 total hours worked; net wages earned; the name and address of each employer with whom they have
8 been placed to work; all applicable hourly rates in effect during the pay period and the corresponding
9 number of hours worked at each hourly rate; the legal name of the employer and/or the name and
10 address of the legal entity securing the employer’s services if the employer is a farm labor contractor;
11 and other such information as required by Labor Code section 226, subdivision (a).

12 42. As a direct and proximate result of the herein-described Labor Code violations, and
13 pursuant to Labor Code section 226.3, Plaintiffs and other Aggrieved Employees are entitled to
14 recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision (a) in the
15 amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period for the
16 initial violation, and one thousand dollars (\$1000) for each Aggrieved Employee per pay period for
17 each subsequent violation.

18 43. Labor Code section 558, subdivision (a) states: “Any employer or other person acting
19 on behalf of an employer who violates, or causes to be violated . . . any provision regulating hours
20 and days of work in any of the Industrial Welfare Commission” shall be subject to a civil penalty as
21 follows:

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

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

28 / / /

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

2 44. At all relevant times herein, Plaintiffs are informed and believe, and based thereon
3 allege, that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections
4 described herein, including causing Plaintiffs and other Aggrieved Employees not to: be paid
5 overtime wages and minimum wages; receive meal and rest periods or compensation in lieu thereof;
6 be paid timely wages during their employment and after their employment separation; receive
7 accurate, itemized wage statements; be indemnified for work expenses incurred.

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

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

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

22 48. Labor Code section 1174, subdivision (d) has required every person employing labor
23 in California to “[k]eep, at a central location in the state or at the plants or establishments at which
24 employees are employed, payroll records showing the hours worked daily by and the wages paid to,
25 and the number of piece-rate units earned by and applicable piece rate paid to, employees employed
26 at the respective plants or establishments. These records shall be kept in accordance with rules
27 established for this purpose by the commission, but in any case, shall be kept on file for not less
28 than three years. An employer shall not prohibit an employee from maintaining a personal record

1 of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

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

7 50. At all relevant times herein, Plaintiffs are informed and believe, and based thereon
8 allege, that Defendants, and each of them, have willfully failed to maintain the records required by
9 Labor Code subdivision (c), failed to maintain accurate and complete records required by Labor
10 Code subdivision (d), and/or failed to allow inspection of records as required by Labor Code
11 subdivision (b).

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

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

- 22 (1) For any initial violation that is intentionally committed, one hundred dollars
23 (\$100) for each underpaid employee for each pay period for which the
24 employee is underpaid. This amount shall be in addition to an amount
25 sufficient to recover underpaid wages, liquidated damages pursuant to Section
26 1194.2, and any applicable penalties imposed pursuant to Section 203.

27 / / /

28 / / /

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

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

10 53. At all relevant times herein, Plaintiffs are informed and believe, and based thereon
11 allege, that Defendants, and each of them, caused Plaintiffs and Aggrieved Employees not to be paid
12 minimum wages as a result of Defendants, without limitation, for the reasons set forth herein,
13 including, without limitation, for routinely failing to pay Plaintiffs or other Aggrieved Employees’
14 wages for all hours worked or otherwise under Defendants’ control due to, without limitation, failing
15 to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting
16 employees to work off the clock, including, without limitation, by requiring employees: to come
17 early to work and leave late work without being able to clock in for all that time, to suffer under
18 Employer’s control due to long lines for clocking in, to complete pre-shift tasks before clocking in
19 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
20 out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend
21 company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding
22 of employee time entries; editing and/or manipulation of time entries to show less hours than
23 actually worked; and failing to pay split shift premiums. In addition, Employee and other aggrieved
24 employees were required to report to work, and did report, but were not put to work and/or were
25 furnished less than half their usual or scheduled day’s work without being paid for half the usual or
26 scheduled work at their regular rate of pay.

27 / / /

28 / / /

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

7 **Penalties for Violation of California Labor Code Section 2698, et seq.**

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

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

20 57. At all relevant times herein, Plaintiffs are informed and believe, and based thereon
21 allege, that Defendants, and each of them, violated the Labor Code sections described herein,
22 including, without limitation, for the failure to: pay overtime wages and minimum wages; provide
23 meal and rest periods or compensation in lieu thereof; provide accurate, itemized wage statements;
24 keep and produce complete and accurate payroll and personnel records; pay timely wages during
25 employment and after the cessation of the employment relationship; provide employees the
26 opportunity to inspect employment records; reimburse Aggrieved Employees for costs incurred in
27 furtherance of their work duties as required under Labor Code section 2802; provide notice as
28 required under Labor Code section 2810.5; provide the proper accrual and use of paid sick leave;

1 paying employees all owed paid time off and vacation time owed by separation at the proper rate of
2 pay; placing restraints on competition, whistleblowing and freedom of speech; and failing to comply
3 with Covid-19 safety protocols set forth in Labor Code sections 6401, 6402, 6403 and 6409.6,
4 entitling Plaintiffs and other Aggrieved Employees to civil penalties for each of these Labor Code
5 violations in the amounts set forth in Labor Code section 2699, subdivision (f).

6 58. As a direct and proximate result of the herein-described Labor Code violations, and
7 pursuant to Labor Code section 2699, subdivision (g), among other authorities, Plaintiffs and
8 similarly Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of
9 the herein and therein described Labor Code violations during the Civil Penalty Period in the amount
10 of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation,
11 and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent
12 violation.

13 59. Moreover, Plaintiffs and Aggrieved Employees are also entitled to an award of
14 reasonable attorneys' fees and costs in connection with their herein-described claims for civil
15 penalties.

16 **REQUEST FOR JURY TRIAL**

17 60. Plaintiffs hereby requests a trial by jury.

18 **PRAYER**

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

21 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
22 1174.5, 1197.1, and 2699;

23 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
24 210, 226.3, 558, 1174.5, 1197.1, and 2699;

25 / / /

26 / / /

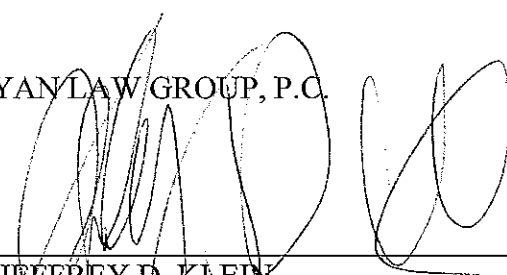
27 / / /

28 / / /

- 1 C. Pre-judgment and post-judgment interest;
2 D. For costs of suit incurred herein; and
3 E. Such other and further relief as the Court deems just and proper.

4
5 Dated: November 17, 2021

BIBIYAN LAW GROUP, P.C.

6
7 BY: 

8 JEFFREY D. KLEIN

9 DAVID D. BIBIYAN

10 Attorneys for Plaintiffs MANUEL
11 HERNANDEZ and MARIA R. CASTILLO
12 VICARIO, as aggrieved employees, and on
13 behalf of all other aggrieved employees under
14 the Labor Code Private Attorneys' General
15 Act of 2004
16
17
18
19
20
21
22
23
24
25
26
27
28