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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JORGE L. CHAVEZ, and
RIGOBERTO HERNANDEZ, as
aggrieved employees, and on behalf
of all other aggrieved employees
under the Labor Code Private
Attorneys' General Act of 2004,

Plaintiffs,

v.

DFG RESTAURANTS, INCORPORATED, a
California corporation; FRIENDLY
FRANCHISEES CORPORATION, an
unknown corporation; HARSHAD DHAROD,
an individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 21STCV44384

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]

COME NOW plaintiffs JORGE L. CHAVEZ, and RIGOBERTO HERNANDEZ
(collectively, "Plaintiffs"), as aggrieved employees, and on behalf of all other aggrieved employees
under the Labor Code Private Attorneys' General Act of 2004, and allege as follows:

1 JURISDICTION AND VENUE

2 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
3 Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against DFG
4 RESTAURANTS, INCORPORATED, a California corporation, and any of its respective
5 subsidiaries or affiliated companies within the State of California ("DFG"), FRIENDLY
6 FRANCHISEES CORPORATION, an unknown corporation, and any of its respective subsidiaries
7 or affiliated companies within the State of California ("FFC,"), HARSHAD DHAROD, an
8 individual ("DHAROD," and together with DFG, FFC, and DOES 1 through 100, as further defined
9 below, "Defendants"), as a proxy of the Labor and Workforce Development Agency of the State of
10 California ("LWDA"), on behalf of Plaintiffs and all other current and former non-exempt
11 employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as
12 it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code
13 section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*,
14 Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on
15 behalf of all employees of Defendants working within the Civil Penalty Period (collectively,
16 "Aggrieved Employees").

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

19 3. Venue is proper in Los Angeles County, California pursuant to Code of Civil
20 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the
21 causes of action complained of herein arose; the county in which the employment relationship
22 began; the county in which performance of the employment contract, or part of it, between Plaintiffs,
23 or some of them, and Defendants was due to be performed; the county in which the employment
24 contract, or part of it, between Plaintiffs, or some of them, and Defendants was actually performed;
25 and the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged
26 herein have a direct effect on Plaintiffs and Aggrieved Employees in Los Angeles County, and
27 because Defendants employ numerous Aggrieved Employees in Los Angeles County.

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

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

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

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

21 8. On or around June 4, 2021, Plaintiffs provided written notice pursuant to Labor Code
22 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation
23 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as
24 by certified mail, with return receipt requested to Defendants, and each of them.

25 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
26 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
27 calendar days of the June 4, 2021 postmarked date of the herein-described notice sent by Plaintiffs
28 to the LWDA and Defendants.

PAGA REPRESENTATIVE ALLEGATIONS

10. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiffs and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiffs and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to remain on-call, to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including answering calls from dispatch and others), to clock out for meal periods and continue working, to clock out for rest 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; 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; and detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, and for paying straight pay instead of overtime pay, to the detriment of Plaintiffs and other Aggrieved Employees.

11. At all relevant times mentioned herein, Defendants had and have a practice or policy of failing to compensate Plaintiffs and other Aggrieved Employees with minimum wages for all hours worked or otherwise under Defendants' control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including answering calls from dispatch and others), to clock out for meal periods and continue working, to clock out for rest 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; detrimental rounding of employee time entries, editing and/or

1 manipulation of time entries to show less hours than actually worked; failing to pay reporting time
2 pay; and paid time off and vacation time owed; and failing to pay split shift premiums, to the
3 detriment of Plaintiffs and other Aggrieved Employees.

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

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

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

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

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

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

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

27 19. At all relevant times mentioned herein, Defendants have had a policy or practice of
28 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft

1 Protection Act of 2011) by, among other things, failing to provide Plaintiffs and other Aggrieved
2 Employees with the rates of pay and overtime rates of pay applicable to their employment;
3 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
4 name, address, and telephone number of the workers' compensation insurance carrier; information
5 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
6 under Labor Code section 2810.5.

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

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

18 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
19 of preventing Plaintiffs and/or Aggrieved Employees from using or disclosing the skills, knowledge
20 and experience they obtained at Defendants for purposes of competing with Defendants, including,
21 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
22 a prospective employer, and from disclosing who else works at Defendants and under what
23 circumstances that they might be receptive to an offer from a rival employer. Plaintiffs are informed
24 and believe that this policy and/or practice violates Business and Professions Code sections 17200,
25 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
26 Code sections 232, 232.5, and 1197.5, subdivision (k).

27 23. Defendants had and have a policy or practice of preventing Plaintiffs and/or other
28 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants

1 to their managers or outside to private attorneys or government officials, among others, in violation
2 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
3 1102.5. In addition, Plaintiffs are informed and believe that Defendants' herein-described policies
4 and/or practices prevent Plaintiffs and/or other Aggrieved Employees from disclosing information
5 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
6 of Labor Code section 232 and 232.5.

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

14 25. Plaintiffs, in their representative capacity, seeks civil penalties under Labor Code
15 sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the
16 California Labor Code as described above, including on behalf of Plaintiffs and other Aggrieved
17 Employees pursuant to PAGA.

18 PARTIES

19 A. Plaintiffs

20 26. Plaintiff JORGE L. CHAVEZ is a resident of the State of California. At all relevant
21 times herein, Plaintiffs are informed and believe, and based thereon allege that Defendants employed
22 Plaintiff JORGE L. CHAVEZ as a non-exempt employee, with duties that included, but were not
23 limited to, supervising restaurant operations, from approximately November of 2010 through at least
24 December of 2020.

25 27. Plaintiff RIGOBERTO HERNANDEZ is a resident of the State of California. At all
26 relevant times herein, Plaintiffs are informed and believe, and based thereon allege that Defendants
27 employed Plaintiff RIGOBERTO HERNANDEZ as a non-exempt employee, with duties that
28 included, but were not limited to, maintaining restaurant inventory, from approximately January of

1 2018 through at least March of 2021.

2 **B. Defendants**

3 28. Plaintiffs are informed and believe and based thereon allege that defendant DFG is,
4 and at all times relevant hereto was, a corporation organized and existing under and by virtue of the
5 laws of the State of California and doing business in the County of Los Angeles, State of California.

6 29. Plaintiffs are informed and believe and based thereon allege that defendant FFC is,
7 and at all times relevant hereto was, an unknown corporation and doing business in the County of
8 Los Angeles, State of California.

9 30. Plaintiffs are informed and believe, and based thereon allege, that defendant
10 DHAROD is, and at all times relevant hereto was, an individual residing in California, as well as
11 owner/principal of both DFG and FFC, and DOES 1 through 100, as further defined below. Plaintiffs
12 are further informed and believe, and based thereon allege, that DHAROD violated, or caused to be
13 violated, the above-referenced and below-referenced Labor Code provisions in violation of Labor
14 Code section 558.1.

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

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1 **JOINT LIABILITY ALLEGATIONS**

2 32. Plaintiffs are informed and believe, 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 33. 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 34. Plaintiffs are informed and believe, and based thereon allege, that despite the
17 formation of the purported corporate existence of DFG, FFC, and DOES 1 through 50, inclusive
18 (the "Alter Ego Defendants"), they, and each of them, are one and the same with DHAROD and
19 DOES 51 through 100 ("Individual Defendants"), and each of them, due to, but not limited to, the
20 following reasons:

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

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

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

5 d. Plaintiffs are informed and believes, and thereon alleges, that the business
6 affairs of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times
7 mentioned herein were, so mixed and intermingled that the same cannot reasonably be segregated,
8 and the same are inextricable confusion. The Alter Ego Defendants are, and at all relevant times
9 mentioned herein were, used by the Individual Defendants as mere shells and conduits for the
10 conduct of certain of their, and each of their affairs. The Alter Ego Defendants are, and at all relevant
11 times mentioned herein were, the alter egos of the Individual Defendants;

12 e. The recognition of the separate existence of the Individual Defendants from
13 the Alter Ego Defendants would promote injustice insofar as it would permit these defendants to
14 insulate themselves from liability to Plaintiffs for violations to the Civil Code, Government Code,
15 and other statutory violations. The corporate existence of these defendants should thus be
16 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
17 and injustice to Plaintiffs herein;

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

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

23 **FIRST CAUSE OF ACTION**

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

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

27 37. At all relevant times herein, Labor Code section 204, requires and required that:
28 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for

1 between the 16th and 26th day of the month during which the labor was performed, and labor
2 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
3 between the 1st and 10th day of the following month.”

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

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

19 **SECOND CAUSE OF ACTION**

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

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

23 41. Defendants had and have a policy or practice of failing to comply with Labor Code
24 section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Aggrieved Employees
25 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
26 wages earned; the name and address of each employer with whom they have been placed to work;
27 all applicable hourly rates in effect during the pay period and the corresponding number of hours
28 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal

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

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

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

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

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

23 **THIRD CAUSE OF ACTION**

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

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

27 47. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person
28 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating

1 hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil
2 penalty as follows:

- 3 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
4 pay period for which the employee was underpaid in addition to an amount sufficient
5 to recover underpaid wages;
- 6 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
7 employee for each pay period for which the employee was underpaid in addition to
8 an amount sufficient to recover underpaid wages;
- 9 (3) Wages recovered pursuant to this section shall be paid to the affected employee."

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

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

24 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

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

57. Plaintiffs reallege each and every allegation set forth in the preceding paragraphs and incorporate each by reference as though fully set forth hereat.

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

- (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

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

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

SIXTH CAUSE OF ACTION

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

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

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

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

1 employee per pay period for each subsequent violation.

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

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

16 **REQUEST FOR JURY TRIAL**

17 66. 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 C. Pre-judgment and post-judgment interest;
- 26 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: December 1, 2021

BIBIYAN LAW GROUP, P.C.

BY: 

JEFFREY D. KLEIN

DAVID D. BIBIYAN
Attorneys for Plaintiffs JORGE L. CHAVEZ
and RIGOBERTO HERNANDEZ, as
aggrieved employees, and on behalf of all
other aggrieved employees under the Labor
Code Private Attorneys' General Act of 2004