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Attorneys for Plaintiff, CARMEN GUILLEN GARCIA,
as an aggrieved employee, and on behalf of all other
aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

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

Plaintiff,

v.

AMERICAN LICORICE COMPANY, a
Delaware corporation; JOHN R. NELSON, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: **22CV007973**

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 plaintiff CARMEN GUILLEN GARCIA ("Plaintiff"), 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:

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

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

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

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

18 8. On or around July 28, 2021, Plaintiff provided written notice pursuant to Labor Code
19 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation
20 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as
21 by certified mail, with return receipt requested to Defendants, and each of them.

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

26 **PAGA REPRESENTATIVE ALLEGATIONS**

27 10. At all relevant times mentioned herein, Defendants had and have a policy or practice
28 of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of

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

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

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

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

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

27 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
28 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish

1 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
2 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
3 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
4 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other
5 Aggrieved Employees.

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

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

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

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

1 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
2 under Labor Code section 2810.5.

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

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

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

23 23. Defendants had and have a policy or practice of preventing Plaintiff and/or other
24 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
25 to their managers or outside to private attorneys or government officials, among others, in violation
26 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
27 1102.5. In addition, Plaintiff is informed and believes that Defendants’ herein-described policies
28 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information

1 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
2 of Labor Code section 232 and 232.5.

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

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

14 **PARTIES**

15 **A. Plaintiff**

16 26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
17 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
18 exempt employee, with duties that included, but were not limited to, operating and maintaining
19 machinery. Plaintiff is informed and believes that Plaintiff worked for Defendants from
20 approximately January of 2019 through approximately March of 2021.

21 **B. Defendants**

22 27. Plaintiff is informed and believes and based thereon alleges that defendant ALC is,
23 and at all times relevant hereto was, a corporation organized and existing under and by virtue of the
24 laws of the State of Delaware and doing business in the County of Alameda, State of California.

25 28. Plaintiff is informed and believes and based thereon alleges that defendant NELSON
26 is, and at all times relevant hereto was, an individual residing in California, as well as Chief Financial
27 Officer for ALC, and DOES 1 through 100, as further defined below. Plaintiff is further informed

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1 and believes and based thereon alleges that NELSON violated, or caused to be violated, the above-
2 referenced and below-referenced Labor Code provisions in violation of Labor Code section 558.1.

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

16 **JOINT LIABILITY ALLEGATIONS**

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

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

1 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
2 aforementioned corporate employees, agents and representatives.

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

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

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

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

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

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

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

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

12 **FIRST CAUSE OF ACTION**

13 **(Civil Penalties under the Private Attorneys General Act (2004) – Against All Defendants)**

14 34. Plaintiff realleges and incorporates by reference all of the allegations contained in
15 the preceding paragraphs as though fully set forth hereat.

16 **Civil Penalties Under Labor Code § 210**

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

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

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

9 Civil Penalties Under Labor Code § 226.3

10 38. Defendants had and have a policy or practice of failing to comply with Labor Code
11 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
12 with itemized wage statements that accurately reflect: reflect gross wages earned; total hours
13 worked; net wages earned; all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate; and other such information as required
15 by Labor Code section 226, subdivision (a).

16 39. 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 40. 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 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
24 and have a policy or practice of failing to furnish non-exempt employees, including, without
25 limitation, Plaintiff's itemized wage statements that accurately reflect: reflect gross wages earned;
26 total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and
27 the corresponding number of hours worked at each hourly rate; and other such information as
28 required by Labor Code section 226, subdivision (a).

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

Violation of Labor Code § 558

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

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

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

46. Wages recovered pursuant to this section shall be paid to the affected employee.

47. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections described herein, including causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employer, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information.

48. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars

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1 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
2 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

3 Violation of Labor Code § 1174.5

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

11 50. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
12 every person employing labor in California to "[k]eep a record showing the names and addresses of
13 all employees employed and the ages of all minors."

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

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

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1 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
2 willfully failed keep adequate or accurate time records including wage statements and similar
3 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
4 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
5 under Labor Code section 1174.

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

10 Violation of Labor Code § 1197.1

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

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

21 57. For each subsequent violation for the same specific offense, two hundred fifty
22 dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid
23 regardless of whether the initial violation is intentionally committed. This amount shall be in
24 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section
25 1194.2, and any applicable penalties imposed pursuant to Section 203.

26 58. Wages, liquidated damages, and any applicable penalties imposed pursuant to
27 Section 203, recovered pursuant to this section shall be paid to the affected employee."

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1 59. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
2 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
3 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees' to pay minimum wages
4 for all hours worked, entitling Employee and other aggrieved employees to actual and liquidated
5 damages.

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

12 Civil Penalties Under Labor Code § 2699

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

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

25 63. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
26 each of them, violated the Labor Code sections described herein, including, without limitation, for
27 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
28 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the

1 name of the employer, including any "doing business as" names used, the name, address and
2 telephone number of the workers' compensation insurance carrier, information regarding paid sick
3 leave, and other pertinent information required to be disclosed by Employer under Labor Code
4 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of paid
5 sick leave required to be provided pursuant to California and local laws.

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

9 **REQUEST FOR JURY TRIAL**

10 65. Plaintiff hereby requests a trial by jury.

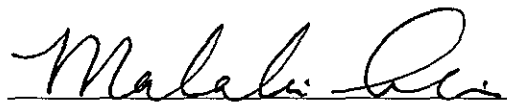
11 **PRAYER**

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

- 14 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
15 1174.5, 1197.1, and 2699;
16 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
17 210, 226.3, 558, 1174.5, 1197.1, and 2699;
18 C. Pre-judgment and post-judgment interest;
19 D. For costs of suit incurred herein; and
20 E. Such other and further relief as the Court deems just and proper.

21 Dated: March 3, 2022

BIBIYAN LAW GROUP, P.C.

22
23 BY: 
24

MALALAI ANBARI

DAVID D. BIBIYAN

25 Attorneys for Plaintiff CARMEN GUILLEN
26 GARCIA, as an aggrieved employee, and on
27 behalf of all other aggrieved employees under
28 the Labor Code Private Attorneys' General
Act of 2004