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

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9
10 **FOR THE COUNTY OF MONTEREY**

11 LLUVIANA RUIZ, as an aggrieved employee,
12 and on behalf of all other aggrieved employees
under the Labor Code Private Attorneys'
General Act of 2004,

13 Plaintiff,

14 v.

15 KLEEN HARVEST, INC., a California
16 corporation; and DOES 1 through 100,
17 inclusive,

18 Defendants.

CASE NO.: 21CV003030

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]

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26 COMES NOW plaintiff LLUVIANA RUIZ ("Plaintiff"), as aggrieved employees, and on
27 behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of
28 2004, and alleges as follows:

JURISDICTION AND VENUE

1
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 KLEEN HARVEST,
4 INC., a California corporation, and any of its respective subsidiaries or affiliated companies within
5 the State of California ("KLEEN HARVEST") and DOES 1 through 100, as further defined below,
6 "Defendants"), as a proxy of the Labor and Workforce Development Agency of the State of
7 California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt employees
8 of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains
9 to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203,
10 Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code
11 section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all
12 employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved
13 Employees").

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

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

25 4. Plaintiff is an "aggrieved employee" under PAGA, as Plaintiff was employed by
26 Defendants during the applicable statutory period and suffered one or more of the Labor Code
27 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term "civil
28 penalty" is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code

1 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA") plus
2 reasonable attorneys' fees and costs, for Plaintiff and all other aggrieved current and former
3 employees of Defendants during the Civil Penalty Period.

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

8 6. During the period beginning one (1) year preceding the provision of notice to the
9 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),
10 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
11 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
12 1197.1, 1197.5, 1198.5, 2699, 2802, 2810.3, and 2810.5, among others.

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

17 8. On or around July 10, 2021, Plaintiff provided written notice pursuant to Labor Code
18 section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation
19 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as
20 by certified mail, with return receipt requested to Defendants, and each of them.

21 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
22 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
23 calendar days of the July 10, 2021 postmarked date of the herein-described notice sent by Plaintiff
24 to the LWDA and Defendants.

25 10. On April 6, 2020, the Judicial Council of California approved Appendix I –
26 Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the
27 California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of
28 action were tolled from April 6, 2020 until October 1, 2020.

PAGA REPRESENTATIVE ALLEGATIONS

11. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, working twelve (12) or more hours per day and more than eight (8) hours per day on the seventh consecutive work day in a work week 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 setting up tables with trash bags and gathering supplies), 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; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, piece-rate compensation 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; 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 Plaintiff and other Aggrieved Employees.

12. At all relevant times mentioned herein, Defendants had and have a practice or policy of failing to compensate Plaintiff 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 setting up tables with trash bags and gathering supplies), 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;

1 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
2 less hours than actually worked; failing to pay reporting time pay; paid time off and vacation time
3 owed; and failing to pay split shift premiums; failing to accurately track and record all hours worked
4 and failing to pay for non-productive time (including, without limitation, loading time, unloading
5 time, and travel time) that is separate from any piece rate compensation due, failing to pay for rest
6 and recovery periods separate and apart from any piece rate compensation due, to the detriment of
7 Plaintiff and other Aggrieved Employees.

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

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

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) and 226.2, subdivisions (a)(2)(A-

1 B)by intentionally failing to furnish Plaintiff and other Aggrieved Employees with itemized wage
2 statements that accurately reflect their total compensation for piece-rate work performed, total
3 compensation for non-productive work performed, total compensation for rest and recovery periods,
4 the total hours of non-productive time worked and the rate of pay therefor, the total hours of rest
5 and recovery periods taken and the rate of pay therefor, for overtime wages earned, the total hours
6 of overtime hours worked, and the rate(s) of pay therefor, and premium wages due for missed meal
7 and/or rest periods, the name and address of the legal entity that is the employer and if the employer
8 is a farm labor contractor, the name and address of the legal entity that secured the services of the
9 employer, among other things, as required by California wage and hour laws, and other such
10 information, as required by Labor Code sections 226.2, subdivisions (a)(2)(A-B), and 226,
11 subdivision (a).

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

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

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

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

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

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

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

27 23. At all relevant times mentioned herein, Defendants had and have a policy or practice
28 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge

1 and experience they obtained at Defendants for purposes of competing with Defendants, including,
2 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
3 a prospective employer, and from disclosing who else works at Defendants and under what
4 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
5 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
6 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
7 Code sections 232, 232.5, and 1197.5, subdivision (k).

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

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

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

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PARTIES**A. Plaintiff**

27. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, loading and unloading produce as well as packing products on a farm. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately June of 2020 through on or about July of 2020. Plaintiff is informed and believes that she was paid (or purportedly paid) both as an hourly employee and as a piece-rate employee.

B. Defendants

28. Plaintiff is informed and believes and based thereon alleges that defendant KLEEN HARVEST is, and at all times relevant hereto, a corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business in Salinas, California. Plaintiff is informed and believes and based thereon alleges that KLEEN HARVEST is a privately-held company specializing in farming. Plaintiff is further informed and believes that KLEEN HARVEST is a farm labor contractor that also does business under Tom Bengard Ranch, Inc. or provides labor services to Tom Bengard Ranch, Inc.

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

1 include KLEEN HARVEST, and any of their parent, subsidiary, or affiliated companies within the
2 State of California, as well as DOES 1 through 100 identified herein.

3 **JOINT LIABILITY ALLEGATIONS**

4 30. Plaintiff is informed and believes, and based thereon alleges, that at all 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 31. 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 32. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
19 thereon alleges that Defendants, and each of them, are joint employers.

20 **FIRST CAUSE OF ACTION**

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

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

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

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

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

16 **SECOND CAUSE OF ACTION**

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

18 37. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
 19 and incorporates each by reference as though fully set forth hereat.

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

28 / / /

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

44. 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:

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

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

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

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

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

22 **FOURTH CAUSE OF ACTION**

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

24 47. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
25 and incorporates each by reference as though fully set forth hereat.

26 48. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
27 every person employing labor in California to “[a]llow any member of the commission or the
28 employees of the Division of Labor Standards Enforcement free access to the place of business or

1 employment of the person to secure any information or make any investigation that they are
2 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
3 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
4 or papers of the person.”

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

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

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

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

26 53. As a direct and proximate result of the herein-described Labor Code violations,
27 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
28 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five

1 hundred dollars (\$500) per violation per Aggrieved Employee.

2 **FIFTH CAUSE OF ACTION**

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

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

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

12 (1) For any initial violation that is intentionally committed, one hundred dollars
13 (\$100) for each underpaid employee for each pay period for which the
14 employee is underpaid. This amount shall be in addition to an amount
15 sufficient to recover underpaid wages, liquidated damages pursuant to Section
16 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

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

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

1 worked or otherwise under Defendants' control due to, without limitation, routinely failing to
 2 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
 3 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
 4 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock.

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

11 **SIXTH CAUSE OF ACTION**

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

13 58. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
 14 and incorporates each by reference as though fully set forth hereat.

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

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

27 61. Plaintiff is informed and believes and based thereon alleges that Defendants, and
 28 each of them, violated the Labor Code sections described herein, including, without limitation, for

1 the failure to: pay overtime wages and minimum wages; failed to pay its piece-rate employees for
 2 non-productive time and rest and recovery time; provide meal and rest periods or compensation in
 3 lieu thereof; provide accurate, itemized wage statements; pay timely wages during employment and
 4 after employment separation; provide employees the opportunity to inspect employment records;
 5 reimburse Aggrieved Employees for costs incurred in furtherance of their work duties; provide
 6 notice as required under Labor Code section 2810.5; provide the proper accrual and use of paid sick
 7 leave; paying employees all owed paid time off and vacation time owed by separation at the proper
 8 rate of pay; and placing restraints on competition, whistleblowing and freedom of speech, entitling
 9 Plaintiff and other Aggrieved Employees to civil penalties for each of these Labor Code violations
 10 in the amounts set forth in Labor Code section 2699, subdivision (f).

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

14 **REQUEST FOR JURY TRIAL**

15 63. Plaintiff hereby requests a trial by jury.

16 **PRAYER**

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

- 19 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
 20 1174.5, 1197.1, and 2699;
- 21 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
 22 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 23 C. Pre-judgment and post-judgment interest;
- 24 D. For costs of suit incurred herein; and

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1 E. Such other and further relief as the Court deems just and proper.

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4 Dated: September 24, 2021

BIBIYAN LAW GROUP, P.C.

5
6 BY:


DIEGO AVILES

7 DAVID D. BIBIYAN

8 Attorneys for Plaintiff LLUVIANA RUIZ, as
9 an aggrieved employee, and on behalf of all
10 other aggrieved employees under the Labor
11 Code Private Attorneys' General Act of 2004,
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