

FILED
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mchapman3
By _____, Deputy
Case Number:
34-2021-00310824

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

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

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

Plaintiff,

v.

TIMBERWORKS CONSTRUCTION, INC., a
California corporation; SCOTT DOUGLAS
ROBBINS, an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.:

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]

FILED BY FAX

COMES NOW plaintiff JESUS IRIBE ("Plaintiff"), as an aggrieved employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004, and alleges as follows:

INTRODUCTION

1. This is a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against TIMBERWORKS CONSTRUCTION, INC., and any of its respective subsidiaries or affiliated companies within the State of California ("Timberworks"), SCOTT DOUGLAS ROBBINS, an individual ("Robbins" and collectively with Timberworks and DOES 1 through 100, as further defined below, "Defendants") as a proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved Employees").

PARTIES

A. Plaintiff

2. 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, building frames, conducting inspections, and maintaining quality control. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately February of 2019 through approximately May of 2020.

B. Defendants

3. Plaintiff is informed and believes and based thereon alleges that defendant Timberworks is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of California and doing business in the County of Sacramento, State of California.

4. Plaintiff is informed and believes and based thereon alleges that defendant Robbins is, and at all times relevant hereto was, an individual residing in California, as well as President of Timberworks, and DOES 1 through 100, as further defined below. Plaintiff is further informed and believes and based thereon alleges that Robbins violated, or caused to be violated, the above-referenced and below-referenced Labor Code provisions in violation of Labor Code section 558.1.

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

JOINT LIABILITY ALLEGATIONS

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

7. All of the acts and conduct described herein of each and every corporate defendant was duly authorized, ordered, and directed by the respective and collective defendant corporate employers, and the officers and management-level employees of said corporate employers. In addition thereto, said corporate employers participated in the aforementioned acts and conduct of

1 their said employees, agents, and representatives, and each of them; and upon completion of the
2 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
3 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
4 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
5 aforementioned corporate employees, agents and representatives.

6 8. Plaintiff is further informed and believes and based thereon alleges that Robbins
7 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
8 provisions in violation of Labor Code section 558.1.

9 9. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
10 unity of interest and ownership between Defendants, and each of them, that their individuality and
11 separateness have ceased to exist.

12 10. Plaintiff is informed and believes, and based thereon alleges that despite the
13 formation of the purported corporate existence of Timberworks, and DOES 1 through 50, inclusive
14 (the "Alter Ego Defendants"), they, and each of them, are one and the same with Robbins and DOES
15 51 through 100 ("Individual Defendants"), and each of them, due to, but not limited to, the following
16 reasons:

- 17 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
18 Defendants who personally committed the wrongful and illegal acts and violated the
19 laws as set forth in this Complaint, and who has hidden and currently hide behind the
20 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some
21 other wrongful or inequitable purpose;
- 22 B. The Individual Defendants derive actual and significant monetary benefits by and
23 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
24 Defendants as the funding source for the Individual Defendants' own personal
25 expenditures;
- 26 C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants
27 and the Alter Ego Defendants, while really one and the same, were segregated to
28 appear as though separate and distinct for purposes of perpetrating a fraud,

1 circumventing a statute, or accomplishing some other wrongful or inequitable
2 purpose;

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

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

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

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

22 JURISDICTION AND VENUE

23 13. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
24 of Civil Procedure section 410.10.

25 14. Venue is proper in Sacramento County, California pursuant to Code of Civil
26 Procedure sections 392, et seq. because, among other things, Sacramento County is where the causes
27 of action complained of herein arose; the county in which the employment relationship began; the
28 county in which performance of the employment contract, or part of it, between Plaintiff and

1 Defendants was due to be performed; the county in which the employment contract, or part of it,
2 between Plaintiff and Defendants was actually performed; and the county in which Defendants, or
3 some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff
4 and Class Members in Sacramento County, and because Defendants employ numerous Class
5 Members in Sacramento County.

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

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

17 17. During the period beginning one (1) year preceding the provision of notice to the
18 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),
19 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
20 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
21 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

26 19. On or around August 31, 2021, Plaintiff provided written notice pursuant to Labor
27 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'

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1 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
2 as well as by certified mail, with return receipt requested to Defendants, and each of them.

3 20. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
4 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
5 calendar days of the August 31, 2021 postmarked date of the herein-described notice sent by
6 Plaintiff to the LWDA and Defendants.

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

11 **PAGA REPRESENTATIVE ALLEGATIONS**

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

1 compensation was earned for the purpose of calculating the overtime rate of pay, to the detriment
2 of Plaintiff and other Aggrieved Employees.

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

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

25 25. At all relevant times mentioned herein, Defendants had and have a policy or practice
26 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
27 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
28 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest

1 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
2 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
3 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
4 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

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

12 27. 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 Plaintiff and other
18 Aggrieved Employees.

19 28. 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 29. 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 30. 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 equipment (including
6 without limitation cutting, writing, and measuring implements), for the purchase and maintenance
7 of cellular phones and cellular phone plans, office equipment to work from home, in direct
8 consequence of the discharge of their duties, or of their obedience to the directions of Defendants,
9 as required by Labor Code 2802.

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

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

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

1 34. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
3 and experience they obtained at Defendants for purposes of competing with Defendants, including,
4 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
5 a prospective employer, and from disclosing who else works at Defendants and under what
6 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
7 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
8 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
9 Code sections 232, 232.5, and 1197.5, subdivision (k).

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

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

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

1 **FIRST CAUSE OF ACTION**

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

3 38. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs of this Complaint as though fully set forth hereat.

5 39. Labor Code section 204, requires and required that: “[l]abor performed between the
6 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of
7 the month during which the labor was performed, and labor performed between the 16th and the last
8 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
9 month.”

10 40. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
11 independent and apart from, any other penalty provided in this article, every person who fails to pay
12 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
13 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
14 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
15 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
16 percent of the amount unlawfully withheld.”

17 41. At all relevant times herein, Plaintiff is informed and believes, and based thereon
18 alleges, that Defendants had and have a consistent policy or practice of failing to pay Plaintiff and
19 during their employment on a timely basis as per Labor Code section 204.

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

26 43. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
27 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
28 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for

1 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
2 deduction statement or fails to keep the records required in subdivision (a) of Section 226."

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

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

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

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

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

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

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

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

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

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

22 51. Labor Code section 1174, subdivision (c) has required every person employing labor
23 in California to "[k]eep a record showing the names and addresses of all employees employed and
24 the ages of all minors."

25 52. Labor Code section 1174, subdivision (d) has required every person employing labor
26 in California to "[k]eep, at a central location in the state or at the plants or establishments at which
27 employees are employed, payroll records showing the hours worked daily by and the wages paid to,
28 and the number of piece-rate units earned by and applicable piece rate paid to, employees employed

1 at the respective plants or establishments. These records shall be kept in accordance with rules
2 established for this purpose by the commission, but in any case, shall be kept on file for not less
3 than three years. An employer shall not prohibit an employee from maintaining a personal record
4 of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

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

10 54. At all relevant times herein, Plaintiff is informed and believes, and based thereon
11 alleges, that Defendants, and each of them, have willfully failed to maintain the records required by
12 Labor Code subdivision (c), failed to maintain accurate and complete records required by Labor
13 Code subdivision (d), and/or failed to allow inspection of records as required by Labor Code
14 subdivision (b).

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

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

- 25 (1) For any initial violation that is intentionally committed, one hundred dollars
26 (\$100) for each underpaid employee for each pay period for which the
27 employee is underpaid. This amount shall be in addition to an amount

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1 sufficient to recover underpaid wages, liquidated damages pursuant to Section
2 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

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

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

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

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

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

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

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

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

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

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

16 **REQUEST FOR JURY TRIAL**

17 64. Plaintiff hereby requests a trial by jury.

18 **PRAYER**

19 **WHEREFORE**, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays 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;

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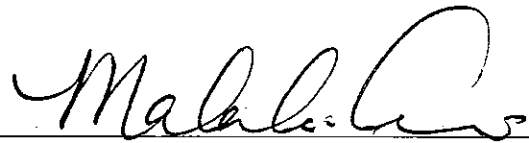
D. For costs of suit incurred herein; and

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

Dated: November 4, 2021

BIBIYAN LAW GROUP, P.C.

BY:



MALALAI ANBARI

DAVID D. BIBIYAN

Attorneys for Plaintiff JESUS IRIBE, as an
aggrieved employee, and on behalf of all other
aggrieved employees under the Labor Code
Private Attorneys' General Act of 2004,