

FILED
OCT 29 2021

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By _____
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12 as an aggrieved employee, and on behalf of all other
13 aggrieved employees

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT 30, FOR ALL
PURPOSES

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 SUMMONS ISSUED

16 FOR THE COUNTY OF CONTRA COSTA

17 C21 - 02242

18 ELMER N. RODRIGUEZ, as an aggrieved
19 employee, and on behalf of all other aggrieved
20 employees under the Labor Code Private
21 Attorneys' General Act of 2004,

CASE NO.:

22 REPRESENTATIVE ACTION

23 COMPLAINT UNDER THE LABOR
24 CODE PRIVATE ATTORNEYS'
25 GENERAL ACT OF 2004 FOR CIVIL
26 PENALTIES UNDER LABOR CODE
27 SECTIONS 210, 226.3, 558, 1174.5, 1197.1
28 and 2699

Plaintiff,

v.

29 GONSALVES & SANTUCCI, INC., a
30 California Corporation; and DOES 1 through
31 100, inclusive,

32 DEMAND FOR JURY TRIAL

Defendants.

[Amount in Controversy Greater Than
\$25,000.00]

By Fax

33 COMES NOW plaintiff ELMER N. RODRIGUEZ ("Plaintiff"), as aggrieved employees,
34 and on behalf of all other aggrieved employees under the Labor Code Private Attorneys' General
35 Act of 2004, and alleges as follows:

PAGA COMPLAINT

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4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil 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 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 August 23, 2021, Plaintiff provided written notice pursuant to Labor
18 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
19 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
20 as well as 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 August 23, 2021 postmarked date of the herein-described notice sent by
24 Plaintiff to the LWDA and Defendants.

25 **PAGA REPRESENTATIVE ALLEGATIONS**

26 10. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of
28 California in violation of California state wage and hour laws as a result of, without limitation,

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

16 11. At all relevant times mentioned herein, Defendants had and have a practice or policy
17 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
18 worked or otherwise under Defendants' control as a result of, without limitation, failing to
19 accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-
20 call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift
21 tasks after clocking out (including answering calls from dispatch and others), to clock out for meal
22 periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to
23 attend company meetings off the clock, to make phone calls or drive off the clock; detrimental
24 rounding of employee time entries, editing and/or manipulation of time entries to show less hours
25 than actually worked; failing to pay reporting time pay; paid time off and vacation time owed; and
26 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 Plaintiffs 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, assisting with construction
19 projects. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately
20 February of 2020 through approximately December of 2020.

21 B. Defendants

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

26 28. The true names and capacities, whether individual, corporate, associate, or otherwise,
27 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
28 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.

1 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
2 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
3 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
4 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
5 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
6 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
7 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
8 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
9 include GONSALVES, and any of their parent, subsidiary, or affiliated companies within the State
10 of California, as well as DOES 1 through 100 identified herein.

11 JOINT LIABILITY ALLEGATIONS

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

17 30. All of the acts and conduct described herein of each and every corporate defendant
18 was duly authorized, ordered, and directed by the respective and collective defendant corporate
19 employers, and the officers and management-level employees of said corporate employers. In
20 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
21 their said employees, agents, and representatives, and each of them; and upon completion of the
22 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
23 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
24 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
25 aforementioned corporate employees, agents and representatives.

26 31. Plaintiff is informed and believes, and based thereon alleges, that despite the
27 formation of the purported corporate existence of GONSALVES, and DOES 1 through 50, inclusive
28 (the "Alter Ego Defendants"), they, and each of them, are one and the same with DOES 51 through

1 100 ("Individual Defendants"), and each of them, due to, but not limited to, the following reasons:

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

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

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

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

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

23 **FIRST CAUSE OF ACTION**

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

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

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34. At all relevant times herein, Labor Code section 204, requires and required that:

“[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

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

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

SECOND CAUSE OF ACTION

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

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

38. Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; the name and address of each employer with whom they have been placed to work;

1 all applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal
3 entity securing the employer's services if the employer is a farm labor contractor; and other such
4 information as required by Labor Code section 226, subdivision (a).

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

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

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

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

25 **THIRD CAUSE OF ACTION**

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

27 43. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
28 and incorporates each by reference as though fully set forth hereat.

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

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

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

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

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

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

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1 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

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

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

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

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

1194.2, and any applicable penalties imposed pursuant to Section 203.

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

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

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

SIXTH CAUSE OF ACTION

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

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

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

60. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor

1 Code except those for which a civil penalty is specifically provided, the established civil penalty for
2 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
3 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
4 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
5 employee per pay period for each subsequent violation.

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

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

20 **REQUEST FOR JURY TRIAL**

21 63. Plaintiff hereby requests a trial by jury.

22 **PRAYER**

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

25 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
26 1174.5, 1197.1, and 2699;

27 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
28 210, 226.3, 558, 1174.5, 1197.1, and 2699;

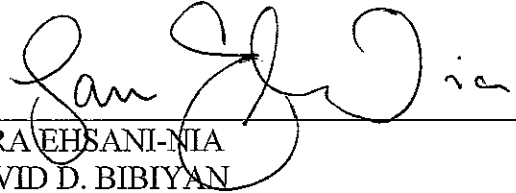
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- C. Pre-judgment and post-judgment interest;
- D. For costs of suit incurred herein; and
- E. Such other and further relief as the Court deems just and proper.

Dated: October 29, 2021

BIBIYAN LAW GROUP, P.C.

BY: _____


SARA EHSANI-NIA
DAVID D. BIBIYAN

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