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Attorneys for Plaintiff, HECTOR HERMOSILLO, an individual and on behalf of all others similarly situated,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

v.

AIR-CITY, INC., a New York corporation; AMERICAN FREIGHT INT'L LAX CORP., a California corporation; LANGFAN RUAN, an individual; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: ~~22STCV06252~~

REPRESENTATIVE ACTION

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

DEMAND FOR JURY TRIAL

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

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

1 **JURISDICTION AND VENUE**

2 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
3 Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against AIR-CITY, INC.
4 (“Air-City”) and AMERICAN FREIGHT INT’L LAX CORP. (“American Freight”), and any of
5 their respective subsidiaries or affiliated companies within the State of California as well as
6 LANGFAN RUAN (“Ruan”) an individual (“Air-City”, “American Freight”, “Ruan”, and DOES 1
7 through 100, as further defined below, are collectively hereinafter referred to as “Defendants”), as
8 a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on
9 behalf of Plaintiff and all other current and former non-exempt employees of Defendants working
10 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims
11 for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section
12 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints
13 on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants
14 working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

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

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

26 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
27 Defendants during the applicable statutory period and suffered one or more of the Labor Code
28 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 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former employees of Defendants during the Civil Penalty Period.

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

6. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

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

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

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1 **PAGA REPRESENTATIVE ALLEGATIONS**

2 10. At all relevant times mentioned herein, Defendants had and have a policy or practice
3 of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of
4 California in violation of California state wage and hour laws as a result of, without limitation,
5 Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per
6 week, and/or seven (7) straight workdays in a workweek without paying them proper overtime
7 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes and
8 hours actually worked at the proper overtime rate of pay; automatically deducting employees' hours
9 worked for meal periods not actually taken or less than 30-minutes in length; engaging, suffering,
10 or permitting employees to work off the clock, including, without limitation, by requiring
11 employees: to come early to work and leave work late without being compensated for all that time,
12 to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for
13 meal periods and continue working, to carry and attend to their cell phones for work during any
14 attempted meal periods, to don and doff uniforms and/or safety equipment off the clock, to attend
15 company meetings off the clock, to make or respond to phone calls and/or text messages off the
16 clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive
17 pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay
18 periods where overtime was worked and the additional compensation was earned for the purpose of
19 calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or
20 manipulation of time entries to show less hours than actually worked, and for paying straight pay
21 instead of overtime pay, to suffer under Defendants' control due to long lines for clocking in, to the
22 detriment of Plaintiff and other Aggrieved Employees.

23 11. At all relevant times mentioned herein, Defendants had and have a practice or policy
24 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
25 worked or otherwise under Defendants' control as a result of, without limitation, failing to
26 accurately track and/or pay for all minutes and hours actually worked; automatically deducting
27 employees' hours worked for meal periods not actually taken or less than 30-minutes in length;
28 engaging, suffering, or permitting employees to work off the clock, including, without limitation,

1 by requiring employees: to come early to work and leave work late without being compensated for
2 all that time, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to
3 clock out for meal periods and continue working, to carry and attend to their cell phones for work
4 during any attempted meal periods, to don and doff uniforms and/or safety equipment off the clock,
5 to attend company meetings off the clock, to make or respond to phone calls and/or text messages
6 off the clock; detrimental rounding of employee time entries, editing and/or manipulation of time
7 entries to show less hours than actually worked; failing to pay reporting time pay; paid time off and
8 vacation time owed; and failing to pay split shift to the detriment of Plaintiff and other Aggrieved
9 Employees.

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

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

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

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

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

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

25 18. At all relevant times mentioned herein, Defendants have had a policy or practice of
26 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
27 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for the purchase of
28 tools and safety equipment including, without limitation, steel-toe boots and gloves; for the purchase

1 of personal protective equipment (*i.e.*, disinfectants and face asks), for all of their costs incurred for
2 driving personal vehicles (*i.e.*, mileage and gas), separately laundering mandatory uniforms, for the
3 purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the
4 discharge of their duties, or of their obedience to the directions of Defendants, as required by Labor
5 Code 2802.

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

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

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

25 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
26 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
27 and experience they obtained at Defendants for purposes of competing with Defendants, including,
28 without limitation, preventing Aggrieved Employees from disclosing their wages in negotiating a

1 new job with a prospective employer, and from disclosing who else works at Defendants and under
2 what circumstances that they might be receptive to an offer from a rival employer. Plaintiff is
3 informed and believes that this policy and/or practice violates Business and Professions Code
4 sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code,
5 including Labor Code sections 232, 232.5, and 1197.5, subdivision (k).

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

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

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

25 **PARTIES**

26 **A. Plaintiff**

27 26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
28 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-

1 exempt employee, with duties that included, but were not limited to, assisting with wrapping pallets,
2 completing orders for shipments and loading and unloading trucks with shipments. Plaintiff is
3 informed and believes that Plaintiff worked for Defendants from approximately February of 2020
4 through at least February of 2021.

5 **B. Defendants**

6 27. Plaintiff is informed and believes and based thereon alleges that defendant Air-City
7 is, and at all times relevant hereto was, a corporation organized, authorized and licensed to do
8 business in the State of New York. Plaintiff is further informed and believes, and based thereon
9 alleges, that defendant Air-City is authorized to, and does in fact, operate and do business in the
10 County of Los Angeles, State of California. At all relevant times herein, defendant Air-City
11 employed Plaintiff and Aggrieved Employees, or some of them, within the County of Los Angeles
12 in the State of California.

13 28. Plaintiff is informed and believes and based thereon alleges that defendant American
14 Freight is, and at all times relevant hereto was, a corporation organized, authorized and licensed to
15 do business in the State of California. Plaintiff is further informed and believes, and based thereon
16 alleges, that defendant American Freight is authorized to, and does in fact, operate and do business
17 in the County of Los Angeles, State of California. At all relevant times herein, defendant American
18 Freight employed Plaintiff and Aggrieved Employees, or some of them, within the County of Los
19 Angeles in the State of California.

20 29. Plaintiff is informed and believes and based thereon alleges that defendant Ruan is,
21 and at all times relevant hereto was, an individual residing in California, as well as the principal,
22 owner, officer, director and/or managing agent for Air-City, American Freight, and DOES 1 through
23 100, as further defined below. Plaintiff is further informed and believes and based thereon alleges
24 that Ruan violated, or caused to be violated, the above-referenced and below-referenced Labor Code
25 provisions in violation of Labor Code section 558.1.

26 30. 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 Air-City, American Freight, Ruan, and any of their parent, subsidiary, or affiliated
10 companies within the State of California, as well as DOES 1 through 100 identified herein.

11 **JOINT LIABILITY ALLEGATIONS**

12 1. Plaintiff is informed and believes and based thereon alleges that all the 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 2. 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 3. Plaintiff is further informed and believes and based thereon alleges that defendant
27 Ruan violated, or caused to be violated, the above-referenced and below-referenced Labor Code
28 provisions in violation of Labor Code section 558.1.

1 4. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
2 unity of interest and ownership between and among Defendants, and each of them, that their
3 individuality and separateness have ceased to exist.

4 5. Plaintiff is informed and believes, and based thereon alleges that despite the
5 formation of the purported corporate, DBA, and/or limited liability existence of Air-City, American
6 Freight and DOES 1 through 50, inclusive (the “Alter Ego Defendants”), they, and each of them,
7 are one and the same with Ruan and DOES 51 through 100 (“Individual Defendants”), and each of
8 them, due to, but not limited to, the following reasons:

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

14 (2) The Individual Defendants derive actual and significant monetary benefits by and
15 through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego
16 Defendants as the funding source for the Individual Defendants’ own personal
17 expenditures;

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

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

of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned herein were, the alter egos of the Individual Defendants;

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

(6) Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual Defendants (and vice versa), and the fiction of their separate corporate, limited liability, and/or DBA existence must be disregarded.

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

FIRST CAUSE OF ACTION

(Violation of PAGA – Against All Defendants)

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

Civil Penalties Under Labor Code § 210

32. 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.”

33. 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

1 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
2 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

11 Civil Penalties Under Labor Code § 226.3

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

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

23 37. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
24 this section are in addition to any other penalty provided by law.”

25 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
26 and have a policy or practice of failing to furnish non-exempt employees, including, without
27 limitation, Plaintiff, itemized wage statements that accurately reflect: reflect gross wages earned;
28 total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and

1 the corresponding number of hours worked at each hourly rate; and other such information as
2 required by Labor Code section 226, subdivision (a).

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

8 Violation of Labor Code § 558

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

13 ///

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

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

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

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

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

Violation of Labor Code § 1174.5

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

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

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

46. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any

1 member of the commission or employees of the division to inspect records pursuant to subdivision
2 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

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

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

12 Violation of Labor Code § 1197.1

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

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

23 B. For each subsequent violation for the same specific offense, two hundred fifty
24 dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid
25 regardless of whether the initial violation is intentionally committed. This amount shall be in
26 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section
27 1194.2, and any applicable penalties imposed pursuant to Section 203.

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1 C. Wages, liquidated damages, and any applicable penalties imposed pursuant to
2 Section 203, recovered pursuant to this section shall be paid to the affected employee.”

3 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
4 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
5 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ to pay minimum wages
6 for all hours worked, entitling Plaintiff and other Aggrieved Employees to actual and liquidated
7 damages.

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

14 Civil Penalties Under Labor Code § 2699

15 52. 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 53. 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.

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1 54. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
2 each of them, violated the Labor Code sections described herein, including, without limitation, for
3 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
4 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
5 name of the employer, including any “doing business as” names used, the name, address and
6 telephone number of the workers’ compensation insurance carrier, information regarding paid sick
7 leave, and other pertinent information required to be disclosed by Defendants under Labor Code
8 section 2810.5, pay minimum and overtime wages as well as provide meal and rest breaks or
9 indemnify and reimburse Plaintiff and Aggrieved Employees as alleged herein, failing to provide
10 Plaintiff and other Aggrieved Employees with the amount of paid sick leave required to be provided
11 pursuant to California and local laws.

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

REQUEST FOR JURY TRIAL

16 A. Plaintiff hereby requests a trial by jury.

PRAAYER

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

20 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 558.1,
21 1174.5, 1197.1, and 2699;

22 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
23 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699;

24 C. Pre-judgment and post-judgment interest;

25 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.

2 Dated: February 18, 2022

J. GILL LAW GROUP, P.C.

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BY: /s/ Jasmin K. Gill

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JASMIN K. GILL

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

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