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Superior Court of California,
County of Alameda

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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 ALAMEDA

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

Plaintiff,

v.

H&M HENNES & MAURITZ L.P., a
Domestic limited partnership; ALYSE
DIGILDO, an individual; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: **21CV001252**

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 STEVEN GONZALEZ ("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 H&M HENNES & MAURITZ L.P., and any of its respective subsidiaries or affiliated companies within the State of California ("H&M") and ALYSE DIGILDO, an individual ("DIGILDO" and collectively with H&M 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, updating departments with current trends, maintaining a clean facility, updating window displays, dressing mannequins, ironing and steaming clothing. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately July of 2012 through the filing of this Complaint.

B. Defendants

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

4. Plaintiff is informed and believes and based thereon alleges that defendant DIGILDO is, and at all times relevant hereto was, an individual residing in California, as well as a store manager for H&M, and DOES 1 through 100, as further defined below. Plaintiff is further informed and believes and based thereon alleges that DIGILDO 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 H&M, DIGILDO, and any of their parent, subsidiary, or affiliated companies within the State of California, as well as 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 DIGILDO
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. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
13 thereon alleges that Defendants, and each of them, are joint employers.

14 JURISDICTION AND VENUE

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

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

26 13. 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

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

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

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

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

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

22 18. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
23 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
24 calendar days of the August 18, 2021 postmarked date of the herein-described notice sent by
25 Plaintiff to the LWDA and Defendants.

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1 **PAGA REPRESENTATIVE ALLEGATIONS**

2 19. 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 actually
8 worked; engaging, suffering, or permitting employees to work off the clock, including, without
9 limitation, by requiring employees: to remain on-call, to suffer under Defendants' control to
10 complete pre-shift tasks before clocking in and post-shift tasks after clocking out and wait in line
11 for minutes to clock in and out, to clock out for meal periods and continue working, to don and doff
12 uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make
13 phone calls or drive off the clock, and go through security screenings and temperature checks off
14 the clock; editing and/or manipulation of time entries to show less hours than actually worked;
15 detrimental rounding of employee time entries; and for paying straight pay instead of overtime pay
16 or otherwise pay the incorrect rate of pay; and failing to include all forms of remuneration, including
17 non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into
18 the regular rate of pay for the pay periods where overtime was worked and the additional
19 compensation was earned for the purpose of calculating the overtime rate of pay, to the detriment
20 of Plaintiff and other Aggrieved Employees.

21 20. At all relevant times mentioned herein, Defendants had and have a practice or policy
22 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
23 worked or otherwise under Defendants' control as a result of, without limitation, failing to
24 accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting
25 employees to work off the clock, including, without limitation, by requiring employees: to remain
26 on-call, to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-
27 shift tasks after clocking out and wait in line for minutes to clock in and out, to clock out for meal
28 periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to

1 attend company meetings off the clock, to make phone calls or drive off the clock, and go through
2 security screenings and temperature checks off the clock; editing and/or manipulation of time entries
3 to show less hours than actually worked; detrimental rounding of employee time entries; failing to
4 pay reporting time pay; paid time off and vacation time owed; and failing to pay split shift premiums,
5 to the detriment of Plaintiff and other Aggrieved Employees.

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

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

23 23. At all relevant times mentioned herein, Defendants had and have a policy or practice
24 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
25 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross
26 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
27 hourly rates in effect during the pay period and the corresponding number of hours worked at each
28

1 hourly rate by the employee; the legal name of the employer; and other such information as required
2 by Labor Code section 226, subdivision (a).

3 24. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
5 Plaintiff and other Aggrieved Employees with 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, making it difficult for Plaintiff and other Aggrieved Employees to
8 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other
9 Aggrieved Employees.

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

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

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

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

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

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

20 31. At all relevant times mentioned herein, Defendants had and have a policy or practice
21 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
22 and experience they obtained at Defendants for purposes of competing with Defendants, including,
23 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
24 a prospective employer, and from disclosing who else works at Defendants and under what
25 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
26 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
27 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
28 Code sections 232, 232.5, and 1197.5, subdivision (k).

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

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

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

FIRST CAUSE OF ACTION

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

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

36. 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.”

37. 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.”

38. 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)

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

40. 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; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; the legal name of the employer; and other such information as required by Labor Code section 226, subdivision (a).

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

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

43. Plaintiff is informed and believes, and based thereon alleges, that Defendants had and have a policy or practice of failing to furnish non-exempt employees, including, without limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the corresponding number of hours worked at each hourly rate in effect during the pay period; the legal name of the employer; and other such information as required by Labor Code section 226, subdivision (a).

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

THIRD CAUSE OF ACTION

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

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

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

///

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

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

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

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

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

22 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

2 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

1 worked or otherwise under Defendants' control due to, without limitation, failing to accurately track
2 and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work
3 off the clock, including, without limitation, by requiring employees: to remain on-call, to suffer
4 under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after
5 clocking out and wait in line for minutes to clock in and out, to clock out for meal periods and
6 continue working, to don and doff uniforms and/or safety equipment off the clock, to attend
7 company meetings off the clock, to make phone calls or drive off the clock, and go through security
8 screenings and temperature checks off the clock; editing and/or manipulation of time entries to show
9 less hours than actually worked; detrimental rounding of employee time entries; failing to pay
10 reporting time pay; paid time off and vacation time owed; and failing to pay split shift premiums;
11 paid time off and vacation time owed; and failing to pay split shift premiums.

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

18 **SIXTH CAUSE OF ACTION**

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

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

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

28 / / /

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

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

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

REQUEST FOR JURY TRIAL

65. Plaintiff hereby requests a trial by jury.

PRAYER

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

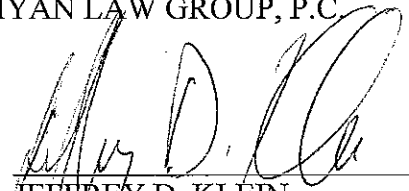
A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;

/ / /

- 1 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
2 210, 226.3, 558, 1174.5, 1197.1, and 2699;
3 C. Pre-judgment and post-judgment interest;
4 D. For costs of suit incurred herein; and
5 E. Such other and further relief as the Court deems just and proper.

6
7 Dated: October 27, 2021

BIBIYAN LAW GROUP, P.C.

8
9 BY: 

10 JEFFREY D. KLEIN

11 DAVID D. BIBIYAN

12 Attorneys for Plaintiff STEVEN GONZALEZ,
13 as an aggrieved employee, and on behalf of all
14 other aggrieved employees under the Labor
15 Code Private Attorneys' General Act of 2004,
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