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Attorneys for Plaintiffs, BETOEL GOMEZ,
and UBALDO ARIAS MENDEZ, as aggrieved employees,
and on behalf of all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

BETOEL GOMEZ, and UBALDO
ARIAS MENDEZ, as aggrieved
employees, and on behalf of all other
aggrieved employees under the Labor
Code Private Attorneys' General Act
of 2004,

Plaintiff,

v.

PALLET RECOVERY SERVICE, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.:

REPRESENTATIVE ACTION

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

DEMAND FOR JURY TRIAL

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

COME NOW plaintiffs BETOEL GOMEZ ("MR. GOMEZ"), and UBALDO ARIAS
MENDEZ ("MR. ARIAS" and collectively, "Plaintiffs"), as aggrieved employees, and on behalf of
all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004, and
allege as follows:

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

4 5. Specifically, Plaintiffs seek 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, 221,
11 223, 226, 226.2, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174,
12 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, 2810.3, and 2810.5, among others.

13 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
14 such as Plaintiff, on behalf of Plaintiffs 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 September 10, 2021, Plaintiffs provided written notice pursuant to
18 Labor Code section 2699.3 online and by certified mail, with return receipt requested, of
19 Defendants' violation of various, including the herein-described, provisions of the Labor Code, to
20 the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
21 them.

22 9. 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 September 10, 2021 postmarked date of the herein-described notice sent by
25 Plaintiffs to the LWDA and Defendants.

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

1 action are tolled from April 6, 2020 until October 1, 2020.

2 **PAGA REPRESENTATIVE ALLEGATIONS**

3 11. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to pay overtime wages to Plaintiffs and other Aggrieved Employees in the State of
5 California in violation of California state wage and hour laws as a result of, without limitation,
6 Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per
7 week, and/or seven (7) straight workdays in a workweek without paying them proper overtime
8 wages, as a result of, without limitation, failing to accurately track and/or pay for all hours actually
9 worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off
10 the clock, including, without limitation, by requiring employees to attend company meetings
11 without compensation and to leave work late without allowing employees to clock in for all of that
12 time; failing to include all forms of remuneration, including for piece-rate compensation, non-
13 discretionary bonuses, incentive pay, meal allowances, incentive pay in calculating overtime wages,
14 and other forms of remuneration into the regular rate of pay for the pay periods where overtime was
15 worked and the additional compensation was earned for the purpose of calculating the overtime rate
16 of pay, detrimental rounding of employee time entries, editing and/or manipulation of time entries
17 to show less hours than actually worked, auto-deducting time for meal periods, and for paying
18 straight pay instead of overtime pay, to the detriment of Plaintiff and other Aggrieved Employees.

19 12. At all relevant times mentioned herein, Defendants had and have a practice or policy
20 of failing to compensate Plaintiffs and other Aggrieved Employees with minimum wages for all
21 hours worked or otherwise under Defendants' control as a result of, without limitation, failing to
22 accurately track and/or pay for all hours actually worked at their regular rate of pay that is above the
23 minimum wage; engaging, suffering, or permitting employees to work off the clock, including,
24 without limitation, by requiring employees to attend company meetings without compensation and
25 to leave work late without allowing employees to clock in for all of that time; detrimental rounding
26 of employee time entries; failing to track and pay for all non-productive time and failing to
27 accurately track and pay for rest and recovery periods that is separate and apart from any piece-rate
28 compensation, to the detriment of Plaintiff and other Aggrieved Employees.

1 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of failing to provide Plaintiffs 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; and otherwise requiring on-duty/on-call
9 meal periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during
10 which employees worked, as required by California wage and hour laws

11 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
12 of failing to provide Plaintiffs 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 15. 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 Plaintiffs and other Aggrieved Employees with itemized wage statements that accurately reflect
22 gross wages earned; total hours worked by the employee; net wages earned; all deductions; all
23 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
24 at each hourly rate by the employee; and for piece-rate employees, failing to include an accurate
25 accounting of the total hours of compensable rest and recovery periods, the rate of compensation,
26 and the gross wages paid for those periods during the pay period, as well as the total hours of
27 nonproductive time, the rate of compensation, and the gross wages paid for that time; and other such
28 information as required by Labor Code section 226, subdivision (a).

1 16. 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 Plaintiffs and other Aggrieved Employees with documents signed to obtain or hold employment
4 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
5 under Labor Code section 1174, making it difficult for Plaintiffs and other Aggrieved Employees to
6 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiffs and other
7 Aggrieved Employees.

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

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

17 19. At all relevant times mentioned herein, Defendants have had a policy or practice of
18 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
19 limitation, Plaintiffs and other Aggrieved Employees, with their costs incurred for driving personal
20 vehicles (*i.e.*, mileage and gas), for the purchase of tools and safety equipment (including work steel
21 toe boots, safety gloves, and safety glasses), and for the purchase and maintenance of cellular phones
22 and cellular phone plans, in direct consequence of the discharge of their duties, or of their obedience
23 to the directions of Defendants, as required by Labor Code 2802.

24 20. At all relevant times mentioned herein, Defendants have had a policy or practice of
25 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
26 Protection Act of 2011) by, among other things, failing to provide Plaintiffs and other Aggrieved
27 Employees with the rates of pay and overtime rates of pay applicable to their employment;
28 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the

1 name, address, and telephone number of the workers' compensation insurance carrier; information
2 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
3 under Labor Code section 2810.5.

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

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

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

24 24. Defendants had and have a policy or practice of preventing Plaintiffs and/or other
25 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
26 to their managers or outside to private attorneys or government officials, among others, in violation
27 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
28 1102.5. In addition, Plaintiffs are informed and believe that Defendants' herein-described policies

1 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
2 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
3 of Labor Code section 232 and 232.5.

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

11 26. Plaintiffs, in their representative capacity, seeks civil penalties under Labor Code
12 sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the
13 California Labor Code as described above, including on behalf of Plaintiffs and other Aggrieved
14 Employees pursuant to PAGA.

15 PARTIES

16 A. Plaintiffs

17 27. Plaintiff MR. GOMEZ is a resident of the State of California. At all relevant times
18 herein, Mr. Gomez is informed and believes, and based thereon alleges, that Defendants employed
19 him as a non-exempt employee, with duties that included, but were not limited to, repairing, sorting,
20 and stacking wooden pallets. Mr. Gomez is informed and believes, and based thereon alleges, that
21 he worked for Defendants from approximately May 2016 through approximately September of
22 2020. Mr. Gomez is informed and believes that Defendants paid (or purported to pay) him on a
23 piece-rate basis and on an hourly basis.

24 28. Plaintiff MR. ARIAS is a resident of the State of California. At all relevant times
25 herein, Mr. Mendez is informed and believes, and based thereon alleges, that Defendants employed
26 as a non-exempt employee, with duties that included, but were not limited to, repairing, sorting, and
27 stacking wooden pallets. Mr. Mendez is informed and believes, and based thereon alleges, that Mr.
28 Mendez worked for Defendants from approximately June of 2018 through approximately September

1 of 2020. Mr. Mendez is informed and believes that Defendants paid (or purported to pay) him on a
2 piece-rate basis and on an hourly basis

3 **B. Defendants**

4 29. Plaintiffs are informed and believe, and based thereon allege, that defendant Pallet
5 Recovery is, and at all times relevant hereto was, a corporation organized and existing under and by
6 virtue of the laws of the State of California and doing business in the County of San Joaquin, State
7 of California. Plaintiffs are informed and believe Pallet Recovery is primarily involved in the pallet
8 business.

9 30. The true names and capacities, whether individual, corporate, associate, or otherwise,
10 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiffs,
11 who therefore sue defendants by such fictitious names under Code of Civil Procedure section 474.
12 Plaintiffs are informed and believe and based thereon alleges that each of the defendants designated
13 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
14 Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities
15 of the defendants designated hereinafter as DOES when such identities become known. Plaintiffs
16 are informed and believe, and based thereon alleges, that each defendant acted in all respects
17 pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business
18 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable
19 to the other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it
20 shall include PALLET RECOVERY, and any of its parent, subsidiary, or affiliated companies
21 within the State of California, as well as DOES 1 through 100 identified herein.

22 **JOINT LIABILITY ALLEGATIONS**

23 31. Plaintiffs are informed and believe, and based thereon alleges, that at all times
24 mentioned herein, each of the defendants was the agent, principal, employee, employer,
25 representative, joint venture or co-conspirator of each of the other defendants, either actually or
26 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
27 employment, joint venture, and conspiracy.

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

33. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based thereon alleges that Defendants, and each of them, are joint employers.

FIRST CAUSE OF ACTION

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

34. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs and incorporate each by reference as though fully set forth hereat.

35. 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.”

36. 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.”

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37. At all relevant times herein, Defendants have had a consistent policy or practice of failing to pay Plaintiffs and/or Aggrieved Employees during their employment on a timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiffs 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)

38. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

39. Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiffs 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/or the name and address of the legal entity securing the employer's services if the employer is a farm labor contractor; and other such information as required by Labor Code section 226, subdivision (a).

40. 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.”

41. 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.”

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42. Plaintiffs are informed and believe, and based thereon alleges, that Defendants had and have a policy or practice of failing to furnish non-exempt employees, including, without limitation, Plaintiffs, 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/or the name and address of the legal entity securing the employer's services if the employer is a farm labor contractor; and other such information as required by Labor Code section 226, subdivision (a).

43. Pursuant to Labor Code section 226.3, Plaintiffs 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)

44. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

45. 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) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
- (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;

/ / /

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

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

47. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 558, Plaintiffs 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.

FOURTH CAUSE OF ACTION

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

48. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

49. 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.”

50. 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

1 all employees employed and the ages of all minors.”

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

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

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

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

24 **FIFTH CAUSE OF ACTION**

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

26 55. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
27 and incorporates each by reference as though fully set forth hereat.

28 / / /

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

7 (1) For any initial violation that is intentionally committed, one hundred dollars
8 (\$100) for each underpaid employee for each pay period for which the
9 employee is underpaid. This amount shall be in addition to an amount
10 sufficient to recover underpaid wages, liquidated damages pursuant to Section
11 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

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

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

28 58. As a direct and proximate result of the herein-described Labor Code violations,

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

6 **SIXTH CAUSE OF ACTION**

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

8 59. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
9 and incorporates each by reference as though fully set forth hereat.

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

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

22 62. Plaintiffs are informed and believe and based thereon allege that Defendants, and
23 each of them, violated the Labor Code sections described herein, including, without limitation, for
24 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
25 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
26 employment and after employment separation; provide employees the opportunity to inspect
27 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
28 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual

1 and use of paid sick leave; paying employees all owed paid time off and vacation time owed by
2 separation at the proper rate of pay; and placing restraints on competition, whistleblowing and
3 freedom of speech, entitling Plaintiffs and other Aggrieved Employees to civil penalties for each of
4 these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

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

8 **REQUEST FOR JURY TRIAL**

9 64. Plaintiffs hereby requests a trial by jury.

10 **PRAYER**

11 **WHEREFORE**, on behalf of Plaintiffs and Aggrieved Employees, Plaintiffs pray for
12 judgment against Defendants as follows:

- 13 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
14 1174.5, 1197.1, and 2699;
15 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
16 210, 226.3, 558, 1174.5, 1197.1, and 2699;
17 C. Pre-judgment and post-judgment interest;
18 D. For costs of suit incurred herein; and
19 E. Such other and further relief as the Court deems just and proper.

20 Dated: November 17, 2021

BIBIYAN LAW GROUP, P.C.

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23 BY: 

DIEGO AVILES

DAVID D. BIBIYAN

24 Attorneys for Plaintiffs BETOEL GOMEZ
25 and UBALDO ARIAS MENDEZ, as
26 aggrieved employees, and on behalf of all
27 other aggrieved employees under the Labor
28 Code Private Attorneys' General Act of 2004,