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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 SAN BERNARDINO**

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

Plaintiff,

v.

INLAND BEHAVIORAL AND HEALTH
SERVICES, INC., a California corporation;
TEMETRY ANN LINDSEY, an individual;
and DOES 1 through 100, inclusive,

Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 04 2022

BY PAULETTE RODRIGUEZ
PAULETTE RODRIGUEZ, DEPUTY

CASE NO.: CIV SB 2200439

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 GLORIA ACUNA ("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:

CIV SB 2200439

JURISDICTION AND VENUE

1
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 INLAND
4 BEHAVIORAL AND HEALTH SERVICES, INC., a California corporation, and any of its
5 respective subsidiaries or affiliated companies within the State of California ("IBHS"), and
6 TEMETRY ANN LINDSEY, an individual ("LINDSEY" and IBHS, with DOES 1 through 100, as
7 further defined below, "Defendants"), as a proxy of the Labor and Workforce Development Agency
8 of the State of California ("LWDA"), on behalf of Plaintiff and all other current and former non-
9 exempt employees of Defendants working within the Civil Penalty Period, as further defined herein,
10 and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor
11 Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et*
12 *seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on
13 behalf of all employees of Defendants working within the Civil Penalty Period (collectively,
14 "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 San Bernardino County, California pursuant to Code of Civil
18 Procedure sections 392, *et seq.* because, among other things, San Bernardino 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 San Bernardino County, and because Defendants employ numerous
25 Aggrieved Employees in San Bernardino 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

CIV SB 2200439

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 5. 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 6. 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 7. 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 8. On or around October 27, 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 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 October 27, 2021 postmarked date of the herein-described notice sent by
25 Plaintiff to the LWDA and Defendants.

26 **PAGA REPRESENTATIVE ALLEGATIONS**

27 10. At all relevant times mentioned herein, Defendants had and have a policy or practice
28 of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of

CIV SB 2200439

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

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

CIV SB 2200439

1 premiums and editing and/or manipulation of time entries to show less hours than actually worked,
2 to the detriment of Plaintiff and other Aggrieved Employees.

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

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

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

CIV SB 2200439

1 15. 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 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 Plaintiff and other Aggrieved Employees to
6 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other
7 Aggrieved Employees.

8 16. At all relevant times mentioned herein, Defendants had and have a policy or practice
9 of failing to timely pay Plaintiff 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 17. At all relevant times herein, Defendants had and have a policy or practice of failing
14 to pay Plaintiff 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 18. 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, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal
20 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
21 separately laundering mandatory uniforms, for the purchase of tools and safety equipment (including
22 masks and gloves), and for the purchase and maintenance of cellular phones and cellular phone
23 plans, in direct consequence of the discharge of their duties, or of their obedience to the directions
24 of Defendants, as required by Labor Code 2802.

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

CIV SB 2200439

1 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
2 name, address, and telephone number of the workers' compensation insurance carrier; information
3 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
4 under Labor Code section 2810.5.

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

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

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

25 23. Defendants had and have a policy or practice of preventing Plaintiff and/or other
26 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
27 to their managers or outside to private attorneys or government officials, among others, in violation
28 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section

CIV SB 2200439

1 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
2 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
3 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
4 of Labor Code section 232 and 232.5.

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

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

16 **PARTIES**

17 **A. Plaintiff**

18 26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
19 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
20 exempt employee, with duties that included, but were not limited to, counseling clients, enrolling
21 clients, and nutritional counseling. Plaintiff is informed and believes that Plaintiff worked for
22 Defendants from approximately February of 2013 through at least October of 2020.

23 **B. Defendants**

24 27. Plaintiff is informed and believes and based thereon alleges that defendant IBHS is,
25 and at all times relevant hereto was, a limited liability company organized and existing under and
26 by virtue of the laws of the State of California and doing business in the County of San Bernardino,
27 State of California.

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CIV SB 2200439

1 28. Plaintiff is informed and believes and based thereon alleges that defendant
2 LINDSEY is, and at all times relevant hereto was, an individual residing in California, as well as
3 Chief Executive Officer and President for IBHS, and DOES 1 through 100, as further defined below.
4 Plaintiff is further informed and believes and based thereon alleges that LINDSEY violated, or
5 caused to be violated, the above-referenced and below-referenced Labor Code provisions in
6 violation of Labor Code section 558.1.

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

20 JOINT LIABILITY ALLEGATIONS

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

26 31. All of the acts and conduct described herein of each and every corporate defendant
27 was duly authorized, ordered, and directed by the respective and collective defendant corporate
28 employers, and the officers and management-level employees of said corporate employers. In

CIV SB 2200439

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

7 32. Plaintiff is informed and believes, and based thereon alleges, that despite the
8 formation of the purported corporate existence of IBHS, and DOES 1 through 50, inclusive (the
9 "Alter Ego Defendants"), they, and each of them, are one and the same with LINDSEY and DOES
10 51 through 100 ("Individual Defendants"), and each of them, due to, but not limited to, the following
11 reasons:

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

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

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

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

CIV SB 2200439

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

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

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

12 33. 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 **FIRST CAUSE OF ACTION**

15 **(Civil Penalties under the Private Attorneys General Act (2004) – Against All Defendants)**

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

18 **Civil Penalties Under Labor Code § 210**

19 35. At all relevant times herein, Labor Code section 204, requires and required that:
20 "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
21 between the 16th and 26th day of the month during which the labor was performed, and labor
22 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
23 between the 1st and 10th day of the following month."

24 36. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
25 that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this
26 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
27 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
28 initial violation, one hundred dollars (\$100) for each failure to pay each employee" and "(2) For

CIV SB 2200439

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 37. 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 38. 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 Plaintiffs 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 39. 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 40. 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 41. Plaintiffs are informed and believe, and based thereon allege, that Defendants had
26 and have a policy or practice of failing to furnish non-exempt employees, including, without
27 limitation, Plaintiffs, 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

CIV SB 2200439

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 42. 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 43. 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 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
14 pay period for which the employee was underpaid in addition to an amount sufficient to recover
15 underpaid wages;

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

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

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

27 45. As a direct and proximate result of the herein-described Labor Code violations,
28 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover

CIV SB 2200439

1 civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars
2 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
3 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

4 Violation of Labor Code § 1174.5

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

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

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

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

CIV SB 2200439

1 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
2 willfully failed keep adequate or accurate time records including wage statements and similar
3 payroll documents under Labor Code section 226, 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.

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

10 Violation of Labor Code § 1197.1

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

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

22 (2) For each subsequent violation for the same specific offense, two hundred fifty
23 dollars (\$250) for each underpaid employee for each pay period for which the
24 employee is underpaid regardless of whether the initial violation is
25 intentionally committed. This amount shall be in addition to an amount
26 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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CIV SB 2200439

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

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

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

17 Civil Penalties Under Labor Code § 2699

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

24 56. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
25 Code except those for which a civil penalty is specifically provided, the established civil penalty for
26 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
27 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved

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CIV SB 2200439

1 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
2 employee per pay period for each subsequent violation.

3 57. Plaintiff is informed and believes and based thereon alleges that Defendants, and
4 each of them, violated the Labor Code sections described herein, including, without limitation, for
5 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
6 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
7 name of the employer, including any "doing business as" names used, the name, address and
8 telephone number of the workers' compensation insurance carrier, information regarding paid sick
9 leave, and other pertinent information required to be disclosed by Employer under Labor Code
10 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of paid
11 sick leave required to be provided pursuant to California and local laws.

12 58. 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.

15 **REQUEST FOR JURY TRIAL**

16 59. Plaintiff hereby requests a trial by jury.

17 **PRAYER**

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,
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, 1174.5, 1197.1, and 2699;
24 C. Pre-judgment and post-judgment interest;

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CIV SB 2200439

1 D. For costs of suit incurred herein; and

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

3 Dated: January 3, 2021

BIBIYAN LAW GROUP, P.C.

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BY:



MALALAI ANBARI

DAVID D. BIBIYAN

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