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8 as an aggrieved employee, and on behalf of all other
aggrieved employees

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SAN BERNARDINO**

12 ARCELIA SANTANA, as an aggrieved
employee, and on behalf of all other aggrieved
13 employees under the Labor Code Private
Attorneys' General Act of 2004,

14 Plaintiff,

15 v.

16 STAR FOOD SNACKS INTERNATIONAL,
17 INC., a California corporation; and DOES 1
through 100, inclusive,

18 Defendants.

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

DEC 22 2021

BY *Deputy Bailon*
DEPUTY BAILON, DEPUTY

CASE NO.: **CIV SB 2134632**

REPRESENTATIVE ACTION By Fax

**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 ARCELIA SANTANA ("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:

JURISDICTION AND VENUE

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 STAR FOOD SNACKS INTERNATIONAL, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("STAR FOOD" 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").

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

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

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1 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
2 Defendants during the applicable statutory period and suffered one or more of the Labor Code
3 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term
4 “civil penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor
5 Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.*
6 (“PAGA”) plus reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current
7 and former employees of Defendants during the Civil Penalty Period.

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

12 6. During the period beginning one (1) year preceding the provision of notice to the
13 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
14 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
15 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194,
16 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

21 8. On or around October 13, 2021, Plaintiff provided written notice pursuant to Labor
22 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
23 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
24 as well as by certified mail, with return receipt requested to Defendants, and each of them.

25 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
26 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
27 calendar days of the October 13, 2021 postmarked date of the herein-described notice sent by
28 Plaintiff to the LWDA and Defendants.

PAGA REPRESENTATIVE ALLEGATIONS

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

11. At all relevant times mentioned herein, Defendants had and have a practice or policy of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours worked or otherwise under Defendants' control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including answering calls from dispatch and others), to clock out for meal periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries, editing and/or manipulation of time entries to

1 show less hours than actually worked; failing to pay reporting time pay; paid time off and vacation
2 time owed; and failing to pay split shift premiums, to the detriment of Plaintiff and other
3 Aggrieved Employees.

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

15 13. At all relevant times mentioned herein, Defendants had and have a policy or
16 practice of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely,
17 and 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 14. At all relevant times mentioned herein, Defendants had and have a policy or
24 practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing
25 to furnish Plaintiff and other Aggrieved Employees with itemized wage statements that accurately
26 reflect gross wages earned; total hours worked by the employee; net wages earned; all deductions;
27 all applicable hourly rates in effect during the pay period and the corresponding number of hours
28 worked at each hourly rate by the employee; the legal name of the employer and/or the name and

1 address of the legal entity securing the employer's services if the employer is a farm labor
2 contractor; and other such information as required by Labor Code section 226, subdivision (a).

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

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

15 17. 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
18 227.3 and applicable Wage Orders.

19 18. 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
24 (including work boots to handle oil), for the purchase and maintenance of cellular phones and
25 cellular phone plans, in direct consequence of the discharge of their duties, or of their obedience to
26 the directions of Defendants, as required by Labor Code 2802.

27 19. At all relevant times mentioned herein, Defendants have had a policy or practice of
28 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft

1 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
2 Employees with the rates of pay and overtime rates of pay applicable to their employment;
3 allowances claimed as part of the minimum wage; the regular payday designated by Defendants;
4 the name, address, and telephone number of the workers' compensation insurance carrier;
5 information regarding paid sick leave; and other pertinent information required to be disclosed by
6 Defendants under Labor Code section 2810.5.

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

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

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

27 23. Defendants had and have a policy or practice of preventing Plaintiff and/or other
28 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants

1 to their managers or outside to private attorneys or government officials, among others, in
2 violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code
3 section 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described
4 policies and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing
5 information about unsafe or discriminatory working conditions, or about wage and hour violations
6 in violation of Labor Code section 232 and 232.5.

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

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

18 **PARTIES**

19 **A. Plaintiff**

20 26. Plaintiff is a resident of the State of California. At all relevant times herein,
21 Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as
22 a non-exempt employee, with duties that included, but were not limited to, cooking, drying,
23 loading, and packing food. Plaintiff is informed and believes that Plaintiff worked for Defendants
24 from approximately August of 1995 through approximately October of 2020.

25 **B. Defendants**

26 27. Plaintiff is informed and believes and based thereon alleges that defendant STAR
27 FOOD is, and at all times relevant hereto was, a corporation organized and existing under and by
28 virtue of the laws of the State of California and doing business in the County of San Bernardino,

1 State of California.

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

17 **JOINT LIABILITY ALLEGATIONS**

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

23 30. All of the acts and conduct described herein of each and every corporate defendant
24 was duly authorized, ordered, and directed by the respective and collective defendant corporate
25 employers, and the officers and management-level employees of said corporate employers. In
26 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
27 their said employees, agents, and representatives, and each of them; and upon completion of the
28 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant

1 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
2 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
3 aforementioned corporate employees, agents and representatives.

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

6 **FIRST CAUSE OF ACTION**

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

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

10 33. At all relevant times herein, Labor Code section 204, requires and required that:
11 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
12 between the 16th and 26th day of the month during which the labor was performed, and labor
13 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
14 between the 1st and 10th day of the following month.”

15 34. At all relevant times herein, Labor Code section 210, subdivision (a) states and
16 stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in
17 this article, every person who fails to pay the wages of each employee as provided in Sections
18 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1)
19 For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and
20 “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars
21 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

1 Labor Code section 204.

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4 **SECOND CAUSE OF ACTION**

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

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

8 37. Defendants had and have a policy or practice of failing to comply with Labor Code
9 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
10 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
11 wages earned; the name and address of each employer with whom they have been placed to work;
12 all applicable hourly rates in effect during the pay period and the corresponding number of hours
13 worked at each hourly rate; the legal name of the employer and/or the name and address of the
14 legal entity securing the employer's services if the employer is a farm labor contractor; and other
15 such information as required by Labor Code section 226, subdivision (a).

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

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

23 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
24 and have a policy or practice of failing to furnish non-exempt employees, including, without
25 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned;
26 total hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
27 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
28 name of the employer and/or the name and address of the legal entity securing the employer's

1 services if the employer is a farm labor contractor; and other such information as required by Labor
2 Code section 226, subdivision (a).

3 / / /

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

9 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

24 44. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
25 each of them, violated, or caused to be violated, the Labor Code sections described herein,
26 including causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and
27 minimum wages; receive meal and rest periods or compensation in lieu thereof; be paid timely
28 wages during their employment and after their employment separation; receive accurate, itemized

1 wage statements; be provided with the opportunity to inspect employment records; be provided
2 with notice as required under Labor Code section 2810.5; be provided with the proper accrual and
3 use of

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5 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
6 of pay.

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

13 FOURTH CAUSE OF ACTION

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

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

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

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

27 49. At all times mentioned herein, Labor Code section 1174, subdivision (d) has
28 required every person employing labor in California to “[k]eep, at a central location in the state or

1 at the plants or establishments at which employees are employed, payroll records showing the
2 hours worked daily by and the wages paid to, and the number of piece-rate units earned by and
3 applicable piece rate paid to, employees employed at the respective plants or establishments.
4 These records shall be kept in accordance with rules established for this purpose by the
5 commission, but in any case, shall be kept on file for not less than three years. An employer shall
6 not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a
7 piece-rate basis, piece-rate units earned.”

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

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

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

22 **FIFTH CAUSE OF ACTION**

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

24 53. 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 54. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
27 person acting either individually or as an officer, agent, or employee of another person, who pays
28 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or

1 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
2 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
3 Section 203 as follows:

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

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

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

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

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

1 pursuant to Labor Code section 1197.1, Plaintiff 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 57. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
9 and incorporates each by reference as though fully set forth hereat.

10 58. 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
15 former employees pursuant to the procedures specified in Labor Code section 2699.3.

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

22 60. Plaintiff is informed and believes and based thereon alleges 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
26 during employment and after employment separation; provide employees the opportunity to
27 inspect employment records; reimburse Aggrieved Employees for costs incurred in furtherance of
28 their work duties; provide notice as required under Labor Code section 2810.5; provide the proper

1 accrual and use of paid sick leave; paying employees all owed paid time off and vacation time
2 owed by separation at the proper rate of pay; and placing restraints on competition,
3 whistleblowing and freedom of speech, entitling Plaintiff and other Aggrieved Employees to civil
4 penalties for each of these Labor Code violations in the amounts set forth in Labor Code section
5 2699, subdivision (f).

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

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11 **REQUEST FOR JURY TRIAL**

12 62. Plaintiff hereby requests a trial by jury.

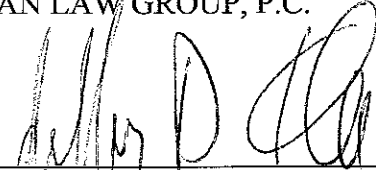
13 **PRAYER**

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

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

23 Dated: December 20, 2021

BIBIYAN LAW GROUP, P.C.

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25 BY: 

26 JEFFREY D. KLEIN
27 DAVID D. BIBIYAN
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Attorneys for Plaintiff ARCELIA SANTANA,
as an aggrieved employee, and on behalf of all
other aggrieved employees under the Labor
Code Private Attorneys' General Act of 2004,

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