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Attorneys for Plaintiff, SILVIA ALFARO, as an aggrieved
employee, and on behalf of all other aggrieved employees

Assigned For All Purposes

Judge William Claster

CX-104

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

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

Plaintiff,

v.

BANTER BY PIERCING PAGODA, an Ohio
corporation; PIERCING PAGODA, an Ohio
corporation; ZALE DELAWARE, INC., a
Delaware corporation; AMANDA HORN, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 30-2022-01247176-CU-OE-CXC

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 SYLVIA ALFARO ("Plaintiff"), as aggrieved employees, and on
behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of
2004, and alleges as follows:

1 **JURISDICTION AND VENUE**

2 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
3 Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against BANTER BY
4 PIERCING PAGODA, an Ohio corporation, and any of its respective subsidiaries or affiliated
5 companies within the State of California (“BANTER”), PIERCING PAGODA, an Ohio
6 corporation, and any of its respective subsidiaries or affiliated companies within the State of
7 California (“PAGODA”), ZALE DELAWARE, INC., a Delaware corporation and any of its
8 respective subsidiaries or affiliated companies within the State of California (“ZALES”), and
9 AMANDA HORN (“HORN” and, collectively with BANTER, PAGODA, ZALES, and DOES 1
10 through 100, as further defined below, “Defendants”), as a proxy of the Labor and Workforce
11 Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other
12 current and former non-exempt employees of Defendants working within the Civil Penalty Period,
13 as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor
14 Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3,
15 Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing
16 and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty
17 Period (collectively, “Aggrieved Employees”).

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

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

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

8 5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
9 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
10 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
11 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, 1197,
16 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 within
19 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
20 specified in Labor Code section 2699.3.

21 8. On or around December 21, 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 December 21, 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 show less hours

1 than actually worked; failing to pay reporting time pay; paid time off and vacation time owed; and
2 failing to pay split shift premiums, 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).

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 Plaintiffs 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 work boots to handle oil), 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;

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

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, p customer service, payroll,
21 training, and managing the storefront. Plaintiff is informed and believes that Plaintiff worked for
22 Defendants from approximately November of 2018 through approximately August of 2021.

23 **B. Defendants**

24 27. Plaintiff is informed and believes and based thereon alleges that Defendant BANTER
25 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
26 the laws of the State of Ohio and doing business in the County of Orange, State of California.

27 28. Plaintiff is informed and believes and based thereon allege that Defendant PAGODA
28 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of

1 the laws of the State of Ohio and doing business in the County of Orange, State of California.

2 29. Plaintiff is informed and believes and based thereon allege that Defendant ZALES
3 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
4 the laws of the State of Delaware and doing business in the County of Orange, State of California.

5 30. Plaintiff is informed and believes and based thereon alleges that Defendant HORN
6 is, and at all times relevant hereto was, an individual residing in California, as well as Regional
7 Manager for BANTER, PAGODA, ZALES, and DOES 1 through 100, as further defined below.

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

21 **JOINT LIABILITY ALLEGATIONS**

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

27 33. All of the acts and conduct described herein of each and every corporate defendant
28 was duly authorized, ordered, and directed by the respective and collective defendant corporate

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

8 34. Plaintiff is informed and believes, and based thereon allege, that there exists such a
9 unity of interest and ownership between Defendants, and each of them, that their individuality and
10 separateness have ceased to exist.

11 35. Plaintiff is informed and believes, and based thereon allege that despite the formation
12 of the purported corporate existence of BANTER, PAGODA, ZALES, and DOES 1 through 50,
13 inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same with HORN
14 and DOES 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to,
15 the following reasons:

- 16 a. The Alter Ego Defendants are completely dominated and controlled by the
17 Individual Defendants who personally committed the wrongful and illegal acts
18 and violated the laws as set forth in this Complaint, and who has hidden and
19 currently hide behind the Alter Ego Defendants to perpetrate frauds,
20 circumvent statutes, or accomplish some other wrongful or inequitable
21 purpose;
- 22 b. The Individual Defendants derive actual and significant monetary benefits by
23 and through the Alter Ego Defendants’ unlawful conduct, and by using the
24 Alter Ego Defendants as the funding source for the Individual Defendants’
25 own personal expenditures;
- 26 c. Plaintiff is informed and believes and thereon alleges that the Individual
27 Defendants and the Alter Ego Defendants, while really one and the same, were
28 segregated to appear as though separate and distinct for purposes of

perpetrating a fraud, circumventing a statute, or accomplishing some other wrongful or inequitable purpose;

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

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

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

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

FIRST CAUSE OF ACTION

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

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

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

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

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

10 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
11 and have a policy or practice of failing to furnish non-exempt employees, including, without
12 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
13 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
14 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
15 name of the employer and/or the name and address of the legal entity securing the employer's services
16 if the employer is a farm labor contractor; and other such information as required by Labor Code
17 section 226, subdivision (a).

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

23 Violation of Labor Code § 558

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

28 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each

1 pay period for which the employee was underpaid in addition to an amount sufficient
2 to recover underpaid wages;

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

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

7 47. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
8 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
9 causing Plaintiffs and other Aggrieved Employees not to: be paid with the rates of pay and overtime
10 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
11 regular payday designated by Employer, the name of the employer, including any “doing business
12 as” names used, the name, address and telephone number of the workers’ compensation insurance
13 carrier, information regarding paid sick leave, and other pertinent information.

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

19 Violation of Labor Code § 1174.5

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

27 50. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
28 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 keep adequate or accurate time records including wage statements and similar
18 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
19 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
20 under Labor Code section 1174.

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

25 Violation of Labor Code § 1197.1

26 55. 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 Section
8 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

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

18 56. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
19 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
20 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ to pay
21 minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual
22 and liquidated damages.

23 57. As a direct and proximate result of the herein-described Labor Code violations,
24 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
25 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
26 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
27 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
28 subsequent violation.

Civil Penalties Under Labor Code § 2699

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

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

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

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

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1 **DEMAND FOR JURY TRIAL**

2 62. Plaintiff hereby requests a trial by jury.

3 **PRAYER**

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

- 6 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
7 1174.5, 1197.1, and 2699;
- 8 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
9 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 10 C. Pre-judgment and post-judgment interest;
- 11 D. For costs of suit incurred herein; and
- 12 E. Such other and further relief as the Court deems just and proper.

13 Dated: February 25, 2022

BIBIYAN LAW GROUP, P.C.

15 BY: *Jeffrey D. Klein*
16 JEFFREY D. KLEIN

17 DAVID D. BIBIYAN

18 Attorneys for Plaintiff SYLVIA ALFARO, as
19 an aggrieved employee, and on behalf of all
20 other aggrieved employees under the Labor
21 Code Private Attorneys' General Act of 2004
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