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BYRON OSPITIA, DEVAN ESCOBAR, ALEJANDRO
MENDOZA, and THOMAS VALENZUELA, on behalf
of themselves and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LUIS MANUEL VILLALPANDO,
BYRON OSPITIA, DEVAN ESCOBAR,
ALEJANDRO MENDOZA, and THOMAS
VALENZUELA, as aggrieved employees,
and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys' General Act of 2004,

Plaintiffs,

v.

LOS ANGELES TRUCK SERVICE, LLC, a
California limited liability company doing
business as Velocity Truck Center. Velocity
Vehicle Group, and Los Angeles Freightliner;
TRANSWEST TRUCK CENTER, LLC, a
California limited liability company;
VELOCITY VEHICLE GROUP
CAROLINAS I, LLC, a California limited
liability company; VELOCITY VEHICLE
GROUP CAROLINAS II, LLC, a California
limited liability company; VELOCITY
VEHICLE GROUP CAROLINAS III, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive

Defendants.

CASE NO.: 22STCV26724

REPRESENTATIVE ACTION

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

DEMAND FOR JURY TRIAL

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

COME NOW plaintiffs LUIS MANUEL VILLALPANDO, BYRON OSPITIA, DEVAN ESCOBAR, ALEJANDRO MENDOZA, and THOMAS VALENZUELA (collectively, “Plaintiffs”), as aggrieved employees, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys’ General Act of 2004, and allege as follows:

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 LOS ANGELES TRUCK SERVICE, LLC doing business as Velocity Truck Center, Velocity Vehicle Group, and Los Angeles Freightliner, and any of its respective subsidiaries or affiliated companies within the State of California (“LA TRUCK SERVICE”); TRANSWEST TRUCK CENTER, LLC, and any of its respective subsidiaries or affiliated companies within the State of California (“TRANSWEST”); VELOCITY VEHICLE GROUP CAROLINAS I, LLC, and any of its respective subsidiaries or affiliated companies within the State of California (“VELOCITY I”); VELOCITY VEHICLE GROUP CAROLINAS II, LLC, and any of its respective subsidiaries or affiliated companies within the State of California (“VELOCITY II”); VELOCITY VEHICLE GROUP CAROLINAS III, LLC, and any of its respective subsidiaries or affiliated companies within the State of California (“VELOCITY III”); and, with DOES 1 through 100, as further defined below, (collectively, “Defendants”), as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiffs 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.

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

10 4. Plaintiffs are “aggrieved employees” under PAGA, as Plaintiffs were employed by
11 Defendants during the applicable statutory period and suffered one or more of the Labor Code
12 violations set forth herein. Accordingly, Plaintiffs seek to recover civil penalties, as the term “civil
13 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
14 Private Attorneys General Act of 2004, codified at Labor Code section 2698, et seq. (“PAGA”) plus
15 reasonable attorneys’ fees and costs, for Plaintiffs and all other aggrieved current and former
16 employees of Defendants during the Civil Penalty Period.

17 5. Specifically, Plaintiffs seek to recover PAGA civil penalties through a representative
18 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
19 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
20 PAGA allegations described herein is not required.

21 6. During the period beginning one (1) year preceding the provision of notice to the
22 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
23 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
24 226.3, 226.7, 227.3, 232, 232.5, 246, et seq., 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
25 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

26 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
27 such as Plaintiff, on behalf of Plaintiffs and all other aggrieved current and former employees within
28 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures

1 specified in Labor Code section 2699.3.

2 8. On or around May 9, 2022, Plaintiffs provided written notice pursuant to Labor Code
3 section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation
4 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as
5 by certified mail, with return receipt requested to Defendants, and each of them.

6 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
7 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
8 calendar days of the May 9, 2022 postmarked date of the herein-described notice sent by Plaintiffs
9 to the LWDA and Defendants.

10 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

22 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
23 of failing to provide Plaintiffs and other Aggrieved Employees paid, uninterrupted, timely, and
24 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
25 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
26 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
27 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
28

1 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
2 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

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

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

18 16. At all relevant times mentioned herein, Defendants had and have a policy or practice
19 of failing to timely pay Plaintiffs and other Aggrieved Employees, among other wages, all wages
20 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
21 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
22 Code sections 201, 202, and 203.

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

27 18. At all relevant times mentioned herein, Defendants have had a policy or practice of
28 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without

1 limitation, Plaintiffs and other Aggrieved Employees, with their costs incurred for driving personal
2 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
3 separately laundering mandatory uniforms, for the purchase of tools and safety equipment (including
4 work boots to handle oil), for the purchase and maintenance of cellular phones and cellular phone
5 plans, in direct consequence of the discharge of their duties, or of their obedience to the directions
6 of Defendants, as required by Labor Code 2802.

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

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

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

26 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of preventing Plaintiffs and/or Aggrieved Employees from using or disclosing the skills, knowledge
28 and experience they obtained at Defendants for purposes of competing with Defendants, including,

1 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
2 a prospective employer, and from disclosing who else works at Defendants and under what
3 circumstances that they might be receptive to an offer from a rival employer. Plaintiffs are informed
4 and believe that this policy and/or practice violates Business and Professions Code sections 17200,
5 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
6 Code sections 232, 232.5, and 1197.5, subdivision (k).

7 23. Defendants had and have a policy or practice of preventing Plaintiffs and/or other
8 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
9 to their managers or outside to private attorneys or government officials, among others, in violation
10 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
11 1102.5. In addition, Plaintiffs are informed and believe that Defendants' herein-described policies
12 and/or practices prevent Plaintiffs and/or other Aggrieved Employees from disclosing information
13 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
14 of Labor Code section 232 and 232.5.

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

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

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1 **PARTIES**

2 **A. Plaintiffs**

3 26. Plaintiff LUIS MANUEL VILLALPANDO (“Mr. Villalpando”) is a resident of the
4 State of California. At all relevant times herein, Mr. Villalpando is informed and believes, and
5 based thereon alleges that Defendants employed Mr. Villalpando as a non-exempt employee, with
6 duties that included, but were not limited to, driving and repairing trucks, from approximately
7 August of 2018 through approximately June of 2021.

8 27. Plaintiff BYRON OSPITIA (“Mr. Ospitia”) is a resident of the State of California.
9 At all relevant times herein, Mr. Ospitia is informed and believes, and based thereon alleges that
10 Defendants employed Mr. Ospitia as a non-exempt employee, with duties that included, but were
11 not limited to, driving and repairing trucks, from approximately February of 2016 through
12 approximately June of 2021.

13 28. Plaintiff DEVAN ESCOBAR (“Mr. Escobar”) is a resident of the State of California.
14 At all relevant times herein, Mr. Escobar is informed and believes, and based thereon alleges that
15 Defendants employed Mr. Escobar as a non-exempt employee, with duties that included, but were
16 not limited to, driving and repairing trucks, from approximately September of 2019 through
17 approximately June of 2021.

18 29. Plaintiff ALEJANDRO MENDOZA (“Mr. Mendoza”) is a resident of the State of
19 California. At all relevant times herein, Mr. Mendoza is informed and believes, and based thereon
20 alleges that Defendants employed Mr. Mendoza as a non-exempt employee, with duties that
21 included, but were not limited to, driving and repairing trucks, from approximately January of 2012
22 through approximately June of 2021.

23 30. Plaintiff THOMAS VALENZUELA (“Mr. Valenzuela”) is a resident of the State of
24 California. At all relevant times herein, Mr. Valenzuela is informed and believes, and based thereon
25 alleges that Defendants employed Mr. Valenzuela as a non-exempt employee, with duties that
26 included, but were not limited to, repairing trucks, from approximately June of 2020 through
27 approximately July of 2021.

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1 **B. Defendants**

2 31. Plaintiffs are informed and believe and based thereon allege that defendant LA
3 TRUCK SERVICE is, and at all times relevant hereto was, a limited liability company organized
4 and existing under and by virtue of the laws of the State of California and doing business in the
5 County of Los Angeles, State of California.

6 32. Plaintiffs are informed and believe and based thereon allege that defendant
7 TRANSWEST is, and at all times relevant hereto was, a limited liability company organized and
8 existing under and by virtue of the laws of the State of California and doing business in the County
9 of Los Angeles, State of California.

10 33. Plaintiffs are informed and believe and based thereon allege that defendant
11 VELOCITY I is, and at all times relevant hereto was, a limited liability company organized and
12 existing under and by virtue of the laws of the State of California and doing business in the County
13 of Los Angeles, State of California.

14 34. Plaintiffs are informed and believe and based thereon allege that defendant
15 VELOCITY II is, and at all times relevant hereto was, a limited liability company organized and
16 existing under and by virtue of the laws of the State of California and doing business in the County
17 of Los Angeles, State of California.

18 35. Plaintiffs are informed and believe and based thereon allege that defendant
19 VELOCITY III is, and at all times relevant hereto was, a limited liability company organized and
20 existing under and by virtue of the laws of the State of California and doing business in the County
21 of Los Angeles, State of California.

22 36. The true names and capacities, whether individual, corporate, associate, or otherwise,
23 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiffs,
24 who therefore sue defendants by such fictitious names under Code of Civil Procedure section 474.
25 Plaintiffs are informed and believe and based thereon alleges that each of the defendants designated
26 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
27 Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities
28 of the defendants designated hereinafter as DOES when such identities become known. Plaintiffs

1 are informed and believe, and based thereon alleges, that each defendant acted in all respects
2 pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business
3 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable
4 to the other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it
5 shall include LA TRUCK SERVICE, TRANSWEST, VELOCITY I, VELOCITY II, VELOCITY
6 III, and any of their parent, subsidiary, or affiliated companies within the State of California, as well
7 as DOES 1 through 100 identified herein.

8 **JOINT LIABILITY ALLEGATIONS**

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

14 38. All of the acts and conduct described herein of each and every corporate defendant
15 was duly authorized, ordered, and directed by the respective and collective defendant corporate
16 employers, and the officers and management-level employees of said corporate employers. In
17 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
18 their said employees, agents, and representatives, and each of them; and upon completion of the
19 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
20 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
21 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
22 aforementioned corporate employees, agents and representatives.

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

25 **FIRST CAUSE OF ACTION**

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

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

41. At all relevant times herein, Labor Code section 204, requires and required that:

“[I]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

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

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

SECOND CAUSE OF ACTION

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

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

45. Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; the name and address of each employer with whom they have been placed to work;

1 all applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal
3 entity securing the employer's services if the employer is a farm labor contractor; and other such
4 information as required by Labor Code section 226, subdivision (a).

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

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

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

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

25 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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1 **FOURTH CAUSE OF ACTION**

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

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

5 55. 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 56. 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 57. 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 58. 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).

59. Plaintiffs are informed and believe, and based thereon allege, that Defendants have willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain accurate and complete records required by Labor Code subdivision (d), and/or failed to allow inspection of records as required by Labor Code subdivision (b).

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

FIFTH CAUSE OF ACTION

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

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

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

- (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section

1 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

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

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

18 **SIXTH CAUSE OF ACTION**

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

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

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

28 / / /

67. 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.

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

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

REQUEST FOR JURY TRIAL

70. Plaintiffs hereby requests a trial by jury.

PRAYER

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

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

/ / /

- 1 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
2 210, 226.3, 558, 1174.5, 1197.1, and 2699;
3 C. Pre-judgment and post-judgment interest;
4 D. For costs of suit incurred herein; and
5 E. Such other and further relief as the Court deems just and proper.
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8 Dated: August 15, 2022

BIBIYAN LAW GROUP, P.C.

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10 BY: Robert Payaslyan
11 ROBERT PAYASLYAN
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12 Attorneys for Plaintiffs, LUIS MANUEL
VILLALPANDO, BYRON OSPITIA, DEVAN
13 ESCOBAR, ALEJANDRO MENDOZA, and
THOMAS VALENZUELA, on behalf of themselves
14 and all other aggrieved employees under the Labor Code
Private Attorneys' General Act of 2004.
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