

1 **BIBIYAN LAW GROUP, P.C.**

2 David D. Bibiyan (SBN 287811)

3 *david@tomorrowlaw.com*

4 Jean Hopkins Power (SBN 326509)

5 *jean@tomorrowlaw.com*

6 Jeffrey D. Klein (SBN 297296)

7 *jeff@tomorrowlaw.com*

8 8484 Wilshire Boulevard, Suite 500

9 Beverly Hills, California 90211

10 Tel: (310) 438-5555; Fax: (310) 300-1705

11 Attorneys for Plaintiff, THOMY RABEL,
12 as an aggrieved employee, and on behalf of all other
13 aggrieved employees

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF SAN MATEO**

16 THOMY RABEL, as an aggrieved employee,
17 and on behalf of all other aggrieved employees
18 under the Labor Code Private Attorneys'
19 General Act of 2004,

20 Plaintiff,

21 v.

22 BOOSTER FUELS, INC., a Delaware
23 corporation; FRANCIS MYCROFT, an
24 Individual; JASON GODLEY, an Individual;
25 and DOES 1 through 100, inclusive,

26 Defendants.

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 9/14/2022
By /s/ Salote Alipate
Deputy Clerk

CASE NO.: 22-CIV-03765

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 THOMY RABEL (“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 BOOSTER FUELS, INC., (“BOOSTER FUELS”) a Delaware corporation, and any of its respective subsidiaries or affiliated companies within the State of California, FRANCIS MYCROFT (“MYCROFT”) an Individual; JASON GODLEY (“GODLEY”) an Individual 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 Mateo County, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, San Mateo 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

1 part of it, between Plaintiff and Defendants was actually performed; and the county in which
2 Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect
3 on Plaintiffs and Aggrieved Employees in San Mateo County, and because Defendants employ
4 numerous Aggrieved Employees in San Mateo County.

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

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

16 6. During the period beginning one (1) year preceding the provision of notice to the
17 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
18 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
19 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
20 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

1 8. On or around June 22, 2022, Plaintiff provided written notice pursuant to Labor Code
2 section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation
3 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as
4 by certified mail, with return receipt requested to Defendants, and each of them.

5 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
6 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
7 calendar days of the June 22, 2022 postmarked date of the herein-described notice sent by Plaintiff
8 to the LWDA and Defendants.

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10 **PAGA REPRESENTATIVE ALLEGATIONS**

11 10. At all relevant times mentioned herein, Defendants had and have a policy or practice
12 of failing to furnish and use safety devices and safeguards. And adopt and use practices, means,
13 methods, operations and processes which are reasonably adequate to render such employment and
14 place of employment safe and healthful, pursuant to, including but not limited to, Labor Code
15 section 6401. At all relevant times mentioned herein, Defendants had and have a policy or practice
16 of requiring or permitting employees to go or be in any employment or place of employment which
17 is not safe and healthful, pursuant to Labor Code section 6402. At all relevant times mentioned
18 herein, Defendants had and have a policy or practice of failing or neglecting to: provide and use
19 safety devices and safeguards reasonably adequate to render the employment and place of
20 employment safe; adopt and use methods and processes reasonably adequate to render the
21 employment and place of employment safe; and do every other thing reasonably necessary to protect
22 the life, safety, and health of employees, pursuant to Labor Code section 6403. Plaintiff is informed
23 and believes, and based thereon alleges that these failures include, without limitation, failing to
24 disinfect time clocks and other surfaces after use by Plaintiff and/or other Aggrieved Employees;
25 failing to provide adequate protection equipment to Plaintiff and/or other Aggrieved Employees;
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1 and failing to provide adequate distance in working conditions between Plaintiff and/or other
2 Aggrieved Employees.

3 11. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to give sufficient, adequate and proper notice to Plaintiff and other Aggrieved Employees
5 of the Covid-19 exposure within one business day of receiving notice of potential Covid-19
6 workplace exposure from a qualifying individual as required by Labor Code section 6409.6.
7 Plaintiff is informed and believes that numerous employees contracted Covid-19 during the relevant
8 time periods, but that Defendants failed to provide notice to employees. Plaintiff is additionally
9 informed and believes that Defendants do not or did not keep adequate records of written
10 notifications required in subdivision (a) for a period of at least three years.
11

12 12. At all relevant times mentioned herein, Defendants had and have a policy or practice
13 of failing within one business day after Defendants or a representative of Defendants received notice
14 of potential exposure to COVID-19 to provide written notice to Plaintiff and other Aggrieved
15 Employees, or their exclusive representatives, who were on the premises at the same worksite as a
16 qualifying individual who was within the infectious period that they may have been exposed to
17 COVID-19. Furthermore, Plaintiff is informed and believes, and based thereon alleges, that
18 Defendants had and has a practice or policy of failing within one business day after Defendants or
19 a representative of Defendants received a notice of potential exposure to COVID-19 to provide
20 Plaintiff and other Aggrieved Employees who were on the premises at the same worksite as the
21 qualifying individual within the infectious period and the exclusive representative, if any, with
22 information regarding COVID-19-related benefits to which the employee may be entitled under
23 applicable federal, state, or local laws, including, but not limited to, workers' compensation, and
24 options for exposed employees, including COVID-19-related leave, company sick leave, state-
25 mandated leave, supplemental sick leave, or negotiated leave provisions, as well as anti-retaliation
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1 and antidiscrimination protections of the employee. Plaintiff is informed and believes, and based
2 thereon alleges, that Defendants violated, without limitation, Labor Code sections 6409.6 and 6432.

3 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing within one business day after Defendants or a representative of Defendants received a
5 notice of potential exposure to COVID-19 to notify Plaintiff and other Aggrieved Employees who
6 were on the premises at the same worksite as the qualifying individual within the infectious period,
7 and the employers of subcontracted employees who were on the premises at the same worksite as
8 the qualifying individual within the infectious period and the exclusive representative, if any, of the
9 cleaning and disinfection plan that the employer is implementing per the guidelines of the federal
10 Centers for Disease Control and Prevention and the COVID-19 prevention program per the Cal-
11 OSHA COVID-19 Emergency Temporary Standards. Plaintiff is informed and believes, and based
12 thereon alleges, that Defendants violated, without limitation, Labor Code sections 6409.6 and 6432.

14 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
15 of failing to notify the local public health agency in the jurisdiction of the worksite of the names,
16 number, occupation, and worksite of employees who had a laboratory-confirmed case of COVID-
17 19, as defined by the State Department of Public Health; a positive COVID-19 diagnosis from a
18 licensed health care provider; a COVID-19-related order to isolate provided by a public health
19 official; or died due to COVID-19, in the determination of a county public health department or per
20 inclusion in the COVID-19 statistics of a county. Plaintiff is informed and believes, and based
21 thereon alleges, that Defendants violated, without limitation, Labor Code sections 6409.6 and 6432

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

16 16. At all relevant times mentioned herein, Defendants had and have a practice or policy
17 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
18 worked or otherwise under Defendants' control as a result of, without limitation, failing to
19 accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-
20 call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift
21 tasks after clocking out (including answering calls from dispatch and others), to clock out for meal
22 periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to
23 attend company meetings off the clock, to make phone calls or drive off the clock; detrimental
24 rounding of employee time entries, editing and/or manipulation of time entries to show less hours
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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 17. 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

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

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

5 20. At all relevant times mentioned herein, Defendants had and have a policy or practice
6 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
7 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
8 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
9 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
10 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiffs and other
11 Aggrieved Employees.
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13 21. At all relevant times mentioned herein, Defendants had and have a policy or practice
14 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
15 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
16 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
17 Code sections 201, 202, and 203.
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19 22. At all relevant times herein, Defendants had and have a policy or practice of failing
20 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
21 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
22 and applicable Wage Orders.

23 23. At all relevant times mentioned herein, Defendants have had a policy or practice of
24 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
25 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal
26 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
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1 separately laundering mandatory uniforms, for the purchase of tools and safety equipment, for the
2 purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the
3 discharge of their duties, or of their obedience to the directions of Defendants, as required by Labor
4 Code 2802.

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

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

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20 26. At all relevant times mentioned herein, Defendants have had a policy or practice of
21 failing to pay Plaintiff 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."

1 27. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of failing to furnish and use safety devices and safeguards. And adopt and use practices, means,
3 methods, operations and processes which are reasonably adequate to render such employment and
4 place of employment safe and healthful, pursuant to, including but not limited to, Labor Code
5 section 6401. At all relevant times mentioned herein, Defendants had and have a policy or practice
6 of requiring or permitting employees to go or be in any employment or place of employment which
7 is not safe and healthful, pursuant to Labor Code section 6402. At all relevant times mentioned
8 herein, Defendants had and have a policy or practice of failing or neglecting to: provide and use
9 safety devices and safeguards reasonably adequate to render the employment and place of
10 employment safe; adopt and use methods and processes reasonably adequate to render the
11 employment and place of employment safe; and do every other thing reasonably necessary to protect
12 the life, safety, and health of employees, pursuant to Labor Code section 6403. Plaintiff is informed
13 and believes, and based thereon alleges that these failures include, without limitation, failing to
14 disinfect time clocks and other surfaces after use by Plaintiff and/or other Aggrieved Employees;
15 failing to provide adequate protection equipment to Plaintiff and/or other Aggrieved Employees;
16 and failing to provide adequate distance in working conditions between Plaintiff and/or other
17 Aggrieved Employees.
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19 28. At all relevant times mentioned herein, Defendants had and have a policy or practice
20 of failing to give sufficient, adequate and proper notice to Plaintiff and other Aggrieved Employees
21 of the Covid-19 exposure within one business day of receiving notice of potential Covid-19
22 workplace exposure from a qualifying individual as required by Labor Code section 6409.6.
23 Plaintiff is informed and believes that numerous employees contracted Covid-19 during the relevant
24 time periods, but that Defendants failed to provide notice to employees. Plaintiff is additionally
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1 informed and believes that Defendants do not or did not keep adequate records of written
2 notifications required in subdivision (a) for a period of at least three years.

3 29. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing within one business day after Defendants or a representative of Defendants received notice
5 of potential exposure to COVID-19 to provide written notice to Plaintiff and other Aggrieved
6 Employees, or their exclusive representatives, who were on the premises at the same worksite as a
7 qualifying individual who was within the infectious period that they may have been exposed to
8 COVID-19. Furthermore, Plaintiff is informed and believes, and based thereon alleges, that
9 Defendants had and has a practice or policy of failing within one business day after Defendants or
10 a representative of Defendants received a notice of potential exposure to COVID-19 to provide
11 Plaintiff and other Aggrieved Employees who were on the premises at the same worksite as the
12 qualifying individual within the infectious period and the exclusive representative, if any, with
13 information regarding COVID-19-related benefits to which the employee may be entitled under
14 applicable federal, state, or local laws, including, but not limited to, workers' compensation, and
15 options for exposed employees, including COVID-19-related leave, company sick leave, state-
16 mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation
17 and antidiscrimination protections of the employee. Plaintiff is informed and believes, and based
18 thereon alleges, that Defendants violated, without limitation, Labor Code sections 6409.6 and 6432.
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21 30. At all relevant times mentioned herein, Defendants had and have a policy or practice
22 of failing within one business day after Defendants or a representative of Defendants received a
23 notice of potential exposure to COVID-19 to notify Plaintiff and other Aggrieved Employees who
24 were on the premises at the same worksite as the qualifying individual within the infectious period,
25 and the employers of subcontracted employees who were on the premises at the same worksite as
26 the qualifying individual within the infectious period and the exclusive representative, if any, of the
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1 cleaning and disinfection plan that the employer is implementing per the guidelines of the federal
2 Centers for Disease Control and Prevention and the COVID-19 prevention program per the Cal-
3 OSHA COVID-19 Emergency Temporary Standards. Plaintiff is informed and believes, and based
4 thereon alleges, that Defendants violated, without limitation, Labor Code sections 6409.6 and 6432.

5 31. At all relevant times mentioned herein, Defendants had and have a policy or practice
6 of failing to notify the local public health agency in the jurisdiction of the worksite of the names,
7 number, occupation, and worksite of employees who had a laboratory-confirmed case of COVID-
8 19, as defined by the State Department of Public Health; a positive COVID-19 diagnosis from a
9 licensed health care provider; a COVID-19-related order to isolate provided by a public health
10 official; or died due to COVID-19, in the determination of a county public health department or per
11 inclusion in the COVID-19 statistics of a county. Plaintiff is informed and believes, and based
12 thereon alleges, that Defendants violated, without limitation, Labor Code sections 6409.6 and 6432

13 32. Plaintiff is informed and believes, and based thereon alleges that Defendants violated
14 sections 1527, 3366, 3457 and 8397.4 by failing to provide adequate and readily accessible
15 sanitation facilities; a regular schedule for servicing, cleaning, and supplying each facility to ensure
16 it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable
17 cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets to be used
18 by each sex of employee.
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20 33. At all relevant times mentioned herein, Defendants had and have a policy or practice
21 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
22 and experience they obtained at Defendants for purposes of competing with Defendants, including,
23 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
24 a prospective employer, and from disclosing who else works at Defendants and under what
25 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
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1 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
2 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
3 Code sections 232, 232.5, and 1197.5, subdivision (k).

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

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

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

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1 **PARTIES**

2 **A. Plaintiff**

3 37. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
4 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
5 exempt employee, with duties that included, but were not limited to, serving patrons, providing
6 companies with gas, driving a truck, and delivering gas. Plaintiff is informed and believes that
7 Plaintiff worked for Defendants from approximately January 29, 2021 through the present.
8

9 **B. Defendants**

10 38. Plaintiff is informed and believes and based thereon alleges that defendant
11 BOOSTER FUELS is, and at all times relevant hereto was, a corporation organized and existing
12 under and by virtue of the laws of the State of California and doing business in the County of San
13 Mateo, State of California.

14 39. Plaintiff is informed and believes and based thereon alleges that defendant
15 MYCROFT is, and at all times relevant hereto was, an individual residing in California, as well as
16 the Chief Executive Officer of BOOSTER FUELS.

17 40. Plaintiff is informed and believes and based thereon alleges that defendant GODLEY
18 is, and
19 at all times relevant hereto was, an individual residing in California, as well as the Chief Financial
20 Officer and Secretary of BOOSTER FUELS.

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

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

15 43. All of the acts and conduct described herein of each and every corporate defendant
16 was duly authorized, ordered, and directed by the respective and collective defendant corporate
17 employers, and the officers and management-level employees of said corporate employers. In
18 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
19 their said employees, agents, and representatives, and each of them; and upon completion of the
20 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
21 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
22 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
23 aforementioned corporate employees, agents and representatives.
24

25 44. Plaintiff is informed and believes, and based thereon alleges, that despite the
26 formation of the purported corporate existence of BOOSTER FUELS, MYCROFT, GODLEY, and
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DOES 1 through 50, inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same with DOES 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following reasons:

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

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

c. Plaintiff is informed and believes, and thereon alleges, that the Individual Defendants and the Alter Ego Defendants, while really one and the same, were 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 from

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

6
7 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
8 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be
9 disregarded.

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

12 **FIRST CAUSE OF ACTION**

13 **(Civil Penalties Under the Private Attorneys' General Act (2004) – Against All Defendants)**

14 46. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
15 preceding paragraphs as though fully set forth hereat.

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

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

22
23 48. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
24 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
25 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
26 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
27

1 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
2 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
3 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

4 49. At all relevant times herein, Defendants have had a consistent policy or practice of
5 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
6 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
7 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
8 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
9 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
10 for each subsequent violation in connection with each payment that was made in violation of Labor
11 Code section 204.
12

13 Civil Penalties Under Labor Code § 226.3

14 50. Defendants had and have a policy or practice of failing to comply with Labor Code
15 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
16 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
17 wages earned; the name and address of each employer with whom they have been placed to work;
18 all applicable hourly rates in effect during the pay period and the corresponding number of hours
19 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal
20 entity securing the employer’s services if the employer is a farm labor contractor; and other such
21 information as required by Labor Code section 226, subdivision (a).
22

23 51. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
24 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
25 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
26 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
27

1 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

2 52. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
3 this section are in addition to any other penalty provided by law.”

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

13 54. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
14 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision
15 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
16 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
17 period for each subsequent violation.
18

19 Violation of Labor Code § 558

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

- 24 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
25 pay period for which the employee was underpaid in addition to an amount sufficient
26 to recover underpaid wages;
27

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

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

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

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

18 Violation of Labor Code § 1174.5

19 58. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
20 every person employing labor in California to “[a]llow any member of the commission or the
21 employees of the Division of Labor Standards Enforcement free access to the place of business or
22 employment of the person to secure any information or make any investigation that they are
23 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
24 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
25 or papers of the person.”
26
27

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

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

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

19 62. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
20 willfully failed to keep adequate or accurate time records including wage statements and similar
21 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
22 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
23 under Labor Code section 1174.

25 63. As a direct and proximate result of the herein-described Labor Code violations,
26 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
27

1 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five
2 hundred dollars (\$500) per violation per Aggrieved Employee.

3 Violation of Labor Code § 1197.1

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

- 11 (1) For any initial violation that is intentionally committed, one hundred dollars
12 (\$100) for each underpaid employee for each pay period for which the
13 employee is underpaid. This amount shall be in addition to an amount
14 sufficient to recover underpaid wages, liquidated damages pursuant to Section
15 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 16 (2) For each subsequent violation for the same specific offense, two hundred fifty
17 dollars (\$250) for each underpaid employee for each pay period for which the
18 employee is underpaid regardless of whether the initial violation is
19 intentionally committed. This amount shall be in addition to an amount
20 sufficient to recover underpaid wages, liquidated damages pursuant to Section
21 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 22 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
23 Section 203, recovered pursuant to this section shall be paid to the affected
24 employee."

25
26 65. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
27

Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without limitation, routinely failing to pay Plaintiff or other Aggrieved Employees' minimum wages for all hours worked or otherwise under Defendants' control due to, without limitation, routinely failing to accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, entitling Plaintiff and other aggrieved Employees to actual and liquidated damages.

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

Civil Penalties Under Labor Code § 2699

67. 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.

68. 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

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

3 69. Plaintiff is informed and believes and based thereon alleges that Defendants, and
4 each of them, violated the Labor Code sections described herein, including, without limitation, for
5 the failure to: furnish and use safety devices and safeguards; give sufficient, adequate and proper
6 notice to employees of Covid-19 exposures, to provide written notice to Plaintiff and Aggrieved
7 Employees, who were on the premises at the same worksite as a qualifying individual who was
8 within the infectious period that they may have been exposed to COVID-19 pursuant to California
9 and local laws.

10
11 70. Plaintiff is informed and believes and based thereon alleges that Defendants, and
12 each of them, violated the Labor Code sections described herein, including, without limitation, for
13 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
14 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
15 name of the employer, including “doing business as” names used, the name, address, and telephone
16 number of the workers’ compensation insurance carrier, information regarding paid sick leave, and
17 other pertinent information required to be disclosed by Defendants under Labor Code section
18 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick
19 leave required to be provided pursuant to California and local laws.

20
21 71. Moreover, Plaintiff and other Aggrieved Employees within the State of California
22 whom he seeks to represent are entitled to an award of reasonable attorneys’ fees and costs in
23 connection with their herein-described claims for civil penalties.

24 **REQUEST FOR JURY TRIAL**

25 72. Plaintiff hereby requests a trial by jury.

26 //

1 **PRAYER**

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

- 4 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
5 1174.5, 1197.1, and 2699;
6
7 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
8 210, 226.3, 558, 1174.5, 1197.1, and 2699;
9
10 C. Pre-judgment and post-judgment interest;
11
12 D. For costs of suit incurred herein; and
13
14 E. Such other and further relief as the Court deems just and proper.

12 Dated: September 14, 2022

BIBIYAN LAW GROUP, P.C.

15 BY: /s/ Jean H. Power

JEAN H. POWER

DAVID D. BIBIYAN

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