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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CELIA QUINTERO, as an aggrieved
employee and on behalf of all other aggrieved
employees under the Labor Code Private
Attorney's General Act of 2004,

Plaintiff,

v.

MW BHCC LLC a California limited liability
company d.b.a. GRIFFIN CLUB LOS
ANGELES; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: **22STCV32539**

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 432,7, 558, 1174.5,
1197.1, 2699, and 2802**

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW Plaintiff CELIA QUINTERO (“Plaintiff”), on behalf of Plaintiff and all others similarly situated, 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 MW BHCC LLC A CALIFORNIA LIMITED LIABILITY COMPANY D.B.A. GRIFFIN CLUB LOS ANGELES (“GRIFFIN”), a California limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California, 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 246, *et seq.*, Labor Code section 432.7, Labor Code section 2802, Labor Code 6400 *et seq.*, 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 Los Angeles County, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, Los Angeles 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 Plaintiff, or some of them, and Defendants was due to be performed; the county in which the employment contract, or part of it, between Plaintiff, or some of them, and Defendants was actually performed; and the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and similarly aggrieved employees in Los Angeles, and because Defendants employ numerous similarly aggrieved employees in Los Angeles County.

4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code

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

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

10 6. During the period beginning one (1) year preceding the provision of notice to the
11 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
12 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
13 226.3, 226.7, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1,
14 1197.5, 1198.5, 2699, 2802, 2810.5, and 6400, among others.

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

19 8. On or around July 29, 2022, Plaintiff provided written notice pursuant to Labor Code
20 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation
21 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as
22 by certified mail, with return receipt requested to Defendants, and each of them.

23 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
24 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
25 calendar days of the July 29, 2022, postmarked date of the herein-described notice sent by Plaintiff
26 to the LWDA and Defendants.

27 **PAGA REPRESENTATIVE ALLEGATIONS**

28 10. At all relevant times mentioned herein, Defendants had and have a policy or practice

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

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

1 engaging, suffering, or permitting employees to go through temperature checks off the clock to the
2 detriment of Plaintiff and other Aggrieved Employees.

3 12. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted,
5 timely, and complete meal period for days on which the employee worked in excess of five (5) and
6 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
7 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
8 not providing timely meal periods; failing to provide first and second meal periods.

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

17 14. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 maintain policies or practices of failing to permit Plaintiff and other aggrieved employees from
19 taking cooldown rest periods as required under California Code of Regulations, Title 8, Section
20 3395 and premium pay in lieu thereof under Labor Code section 226.7. As a result, Plaintiff would
21 be liable for civil penalties under Labor Code sections 558 and 2699.

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

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

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

12 18. At all relevant times mentioned herein, Defendants have had a policy or practice of
13 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
14 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal
15 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
16 separately laundering mandatory uniforms, for the purchase of tools and safety equipment (including
17 work boots to handle oil), for the purchase and maintenance of cellular phones and cellular phone
18 plans, in direct consequence of the discharge of their duties, or of their obedience to the directions
19 of Defendants, as required by Labor Code 2802.

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

28 20. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and

1 other Aggrieved Employees with the amount of paid sick leave, including but not limited to, COVID
2 paid sick leave , required to be provided pursuant to California law (including, without limitation
3 Labor Code section 246, *et seq.*), and also did not permit its use upon request as contemplated under
4 California laws, to the detriment of Plaintiff and all other Aggrieved Employees.

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

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

20 23. Defendants had and have a policy or practice of preventing Plaintiff and/or other
21 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
22 to their managers or outside to private attorneys or government officials, among others, in violation
23 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
24 1102.5. In addition, Plaintiff is informed and believes that Defendants’ herein-described policies
25 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
26 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
27 of Labor Code section 232 and 232.5.

28 24. Defendants had and have a policy or practice of preventing Plaintiff and/or other

1 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
2 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
3 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
4 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
5 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
6 economic liberty.

7 25. Defendants had and have a policy of failing to provide safe working conditions,
8 particularly in relation to unsafe working conditions related to a failure to protect employees from
9 COVID-19 as addressed below. Defendants' conduct violates, without limitation, Labor Code
10 sections 6400 *et seq.*

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

15 **PARTIES**

16 **A. Plaintiff**

17 27. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
18 is informed and believes, and based thereon allege that Defendants employed Plaintiff as a non-
19 exempt employee, with duties that included, but were not limited to, serving as a tennis instructor
20 to Defendants' clients. Plaintiff is informed and believes, and based thereon allege that Plaintiff
21 worked for Defendants from approximately October of 2020 through approximately July of 2021

22 **B. Defendants**

23 28. Plaintiff is informed and believes and based thereon allege that Defendant GRIFFIN
24 is, and at all times relevant hereto was, a limited liability company organized and existing under and
25 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
26 State of California.

27 29. The true names and capacities, whether individual, corporate, associate, or otherwise,
28 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,

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

12 **JOINT LIABILITY ALLEGATIONS**

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

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

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

1 **FIRST CAUSE OF ACTION**

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

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

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

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

11 35. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
12 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
13 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
14 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
15 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
16 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
17 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

26 **Civil Penalties Under Labor Code § 226.3**

27 37. Defendants had and have a policy or practice of failing to comply with Labor Code
28 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees

1 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
2 wages earned; the name and address of each employer with whom they have been placed to work;
3 all applicable hourly rates in effect during the pay period and the corresponding number of hours
4 worked at each hourly rate; the legal name of the employer; and other such information as required
5 by Labor Code section 226, subdivision (a).

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

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

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

20 41. Pursuant to Labor Code section 226.3, Plaintiff 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 Violation of Labor Code § 432.7

26 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
27 and has a practice or policy of conducting unlawful background checks on prospective and current
28 employees prior to making a conditional offer.

43. Plaintiff is informed and believes, and based thereon alleges, that Defendants violated applicable laws by, without limitation: requiring job applicants and employees to disclose their conviction history before Defendants made a conditional offer of employment; inquiring into or considering the conviction history of applicants before Defendants made any conditional offers of employment; considering, distributing, or disseminating information about arrests not followed by conviction, referrals to or participation in a pretrial or posttrial diversion program, convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction for which the convicted person has received a full pardon or has been issued a certificate of rehabilitation, while conducting conviction history background checks in connection with any applications for employment; intending to deny an applicant a position of employment solely or in part because of the applicant's conviction history; and asking applicants for employment to disclose, through any written form or verbally, information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of the juvenile court, to the detriment of Plaintiff and other aggrieved employees.

44. As such, Plaintiff is informed and believes, and based thereon alleges, that Defendants violated, without limitation, Labor Code section 432.7 and Government Code section 12952, entitling Plaintiff and other aggrieved employees to damages. Defendants would also be liable for civil penalties pursuant to Labor Code sections 432.7, 432.8, and 2699.

Violation of Labor Code § 558

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

- (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
- (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid

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

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

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

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

16 Violation of Labor Code § 1174.5

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

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

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

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

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

13 52. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
14 willfully failed keep adequate or accurate time records including wage statements and similar
15 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
16 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
17 under Labor Code section 1174.

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

22 Violation of Labor Code § 1197.1

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

- 1 (1) For any initial violation that is intentionally committed, one hundred dollars
2 (\$100) for each underpaid employee for each pay period for which the
3 employee is underpaid. This amount shall be in addition to an amount
4 sufficient to recover underpaid wages, liquidated damages pursuant to Section
5 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 6 (2) For each subsequent violation for the same specific offense, two hundred fifty
7 dollars (\$250) for each underpaid employee for each pay period for which the
8 employee is underpaid regardless of whether the initial violation is
9 intentionally committed. This amount shall be in addition to an amount
10 sufficient to recover underpaid wages, liquidated damages pursuant to Section
11 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 12 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
13 Section 203, recovered pursuant to this section shall be paid to the affected
14 employee.”

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

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

26 Violation of Labor Code § 2802

27 57. Plaintiff is informed and believes, and based thereon alleges that Defendants also
28 failed and refused, and continues to fail and refuse, to reimburse employees, including, without

1 limitation, Plaintiff 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, and for
4 the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of
5 the discharge of their duties, or of their obedience to the directions of Defendants, as required by
6 Labor Code section 2802, and other statutory and common law offenses.

7 58. As a result, Defendants are liable to reimburse Plaintiff and other aggrieved
8 employees for these costs incurred in furtherance of work duties. In addition, Defendants would be
9 liable for civil penalties pursuant to Labor Code sections 558 and 2699.

10 59. As a direct and proximate result of the herein-described Labor Code violations,
11 pursuant to Labor Code section 2802, Plaintiff and other Aggrieved Employees are entitled to
12 recover civil penalties for Defendants' herein-described Labor Code violations in the amount one
13 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
14 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
15 subsequent violation.

16 Violation of Labor Code section 6400 et seq.

17 55. Plaintiff is informed and believes and based thereon alleges that Defendants had
18 and have a policy or practice of failing to furnish and use safety devices and safeguards. And
19 adopt and use practices, means, methods, operations, and processes which are reasonably adequate
20 to render such employment and place of employment safe and healthful, pursuant to, including but
21 not limited to, Labor Code section 6401. Plaintiff is informed and believes and based thereon
22 alleges that Defendants had and has a policy or practice of requiring or permitting employees to go
23 or be in any employment or place of employment which is not safe and healthful, pursuant to
24 Labor Code section 6402. Plaintiff is informed and believes, and based thereon alleges that
25 Defendants had and has a policy or practice of failing or neglecting to: provide and use safety
26 devices and safeguards reasonably adequate to render the employment and place of employment
27 safe; adopt and use methods and processes reasonably adequate to render the employment and
28 place of employment safe; and do every other thing reasonably necessary to protect the life, safety,

1 and health of employees, pursuant to Labor Code section 6403. Plaintiff is informed and believes,
2 and based thereon alleges that these failures include, without limitation, failing to disinfect time
3 clocks and other surfaces after use by Plaintiff and/or other aggrieved employees; failing to
4 provide adequate protection equipment to Plaintiff and/or other aggrieved employees; and failing
5 to provide adequate distance in working conditions between Plaintiff and/or other aggrieved
6 employees.

7 56. Plaintiff is informed and believes, and based thereon alleges that Defendants had
8 and has a policy or practice of failing to give sufficient, adequate and proper notice to employees
9 of the Covid-19 exposure within one business day of receiving notice of potential Covid-19
10 workplace exposure from a qualifying individual as required by Labor Code section 6409.6.
11 Plaintiff is informed and believes that numerous employees contracted COVID-19 during the
12 relevant time periods, but that Employer failed to provide notice to employees. Plaintiff is
13 additionally informed and believes that Defendants have not or did not keep adequate records of
14 written notifications required in subdivision (a) for a period of at least three years.

15 57. Specifically, Plaintiff is informed and believes, and based thereon alleges, that
16 Defendants had and have a practice or policy of failing within one business day after Defendants
17 or a representative of Defendants received a notice of potential exposure to COVID-19 to provide
18 written notice to Plaintiff and other aggrieved employees, or their exclusive representatives, who
19 were on the premises at the same worksite as a qualifying individual who was within the
20 infectious period that they may have been exposed to COVID-19. Furthermore, Plaintiff is
21 informed and believes, and based thereon alleges, that Defendants had and have a practice or
22 policy of failing within one business day after Defendants or a representative of Defendants
23 received a notice of potential exposure to COVID-19 to provide Plaintiff and other aggrieved
24 employees who were on the premises at the same worksite as the qualifying individual within the
25 infectious period and the exclusive representative, if any, with information regarding COVID-19-
26 related benefits to which the employee may be entitled under applicable federal, state, or local
27 laws, including, but not limited to, workers' compensation, and options for exposed employees,
28 including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick

1 leave, or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections
2 of the employee. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 violated, without limitation, Labor Code sections 6409.6 and 6432.

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

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

24 60. As a direct and proximate result of the herein-described Labor Code violations,
25 pursuant to Labor Code sections 6400 et seq, Plaintiff and other Aggrieved Employees are entitled
26 to recover civil penalties for Defendants' herein-described Labor Code violations in the amount
27 one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation,
28 and two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each

1 subsequent violation.

2 Civil Penalties Under Labor Code § 2699

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

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

15 62. Plaintiff is informed and believes and based thereon alleges that Defendants, and
16 each of them, violated the Labor Code sections described herein, including, without limitation, for
17 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
18 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
19 name of the employer, including any “doing business as” names used, the name, address and
20 telephone number of the workers’ compensation insurance carrier, information regarding paid sick
21 leave, and other pertinent information required to be disclosed by Employer under Labor Code
22 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of paid
23 sick leave, including but not limited to, COVID paid sick leave , required to be provided pursuant
24 to California and local laws.

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

28 **PRAYER**

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

- 3 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 432.7, 558,
4 1174.5, 1197.1, 2699, and 2802, and all other applicable sections listed *infra*;
- 5 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
6 210, 226.3, 558, 1174.5, 1197.1, 2699, 2802, and all other applicable sections listed
7 *infra*;
- 8 C. Pre-judgment and post-judgment interest;
- 9 D. For costs of suit incurred herein; and
- 10 E. Such other and further relief as the Court deems just and proper.

11
12 Dated: October 4, 2022

BIBIYAN LAW GROUP, P.C.

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15 BY: /s/ Alexander D. Wallin

ALEXANDER D. WALLIN

16 Attorneys for Plaintiff CELIA QUINTERO an
17 individual and on behalf of all others similarly situated
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