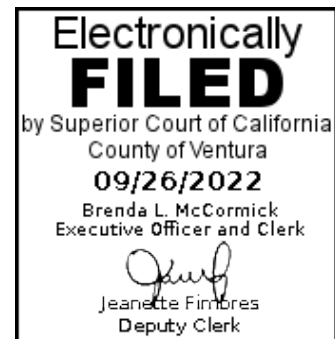




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as an aggrieved employee, and on behalf of all other
aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

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

Plaintiff,

v.

GELSON'S MARKETS, a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 56-2022-00570409-CU-OE-VTA

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]

1 Plaintiff Larry Benveniste, as an aggrieved employee, and on behalf of all other aggrieved
2 employees under the Labor Code Private Attorneys' General Act of 2004, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
5 Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against Gelson's Markets, a
6 California corporation, and any of its respective subsidiaries or affiliated companies within the State
7 of California ("Gelson" and together with DOES 1 through 100, as further defined below,
8 "Defendants"), as a proxy of the Labor and Workforce Development Agency of the State of
9 California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt employees
10 of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains
11 to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203,
12 Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code
13 section 2802, Labor Code section 6401, *et seq.*, Labor Code section 6409.1, Labor Code section
14 6432, restraints on competition, whistleblowing and freedom of speech on behalf of all employees
15 of Defendants working within the Civil Penalty Period (collectively, "Aggrieved Employees").

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

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

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

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

12 6. During the period beginning one (1) year preceding the provision of notice to the
13 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
14 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
15 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
16 1197.1, 1197.5, 1198.5, 2699, 2802, 2810.5, 6401. *Et seq.*, 6409.1, and 6432, among others.

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

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

25 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
26 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
27 calendar days of the July 21, 2022 postmarked date of the herein-described notice sent by Plaintiff
28 to the LWDA and Defendants.

PAGA REPRESENTATIVE ALLEGATIONS

10. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to go through security screenings off the clock, to go through COVID-19 screenings and/or temperature checks off the clock, to remain on-call, to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, for failing to pay split shift premiums, and for paying straight pay instead of overtime pay, to the detriment of Plaintiff and other Aggrieved Employees. The allegations in this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

11. At all relevant times mentioned herein, Defendants had and have a practice or policy of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours worked or otherwise under Defendants' control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to go through security screenings off the clock, to go through COVID-19 screenings and/or temperature checks off the

1 clock, to remain on-call; to suffer under Defendants' control to complete pre-shift tasks before
2 clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
3 working, to don and doff uniforms and/or safety equipment off the clock, to attend company
4 meetings off the clock, to make phone calls or drive off the clock; detrimental rounding of employee
5 time entries, editing and/or manipulation of time entries to show less hours than actually worked;
6 failing to pay reporting time pay; paid time off and vacation time owed; failing to pay split shift
7 premiums; and failing to pay reporting time pay to the detriment of Plaintiff and other Aggrieved
8 Employees. The allegations in this paragraph are likely to have evidentiary support after a
9 reasonable opportunity for further investigation or discovery.

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

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

1 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws. The
2 allegations in this paragraph are likely to have evidentiary support after a reasonable opportunity
3 for further investigation or discovery.

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

11 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
12 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
13 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
14 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
15 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
16 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other
17 Aggrieved Employees. The allegations in this paragraph are likely to have evidentiary support after
18 a reasonable opportunity for further investigation or discovery.

19 16. At all relevant times mentioned herein, Defendants had and have a policy or practice
20 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
21 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
22 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
23 Code sections 201, 202, and 203. The allegations in this paragraph are likely to have evidentiary
24 support after a reasonable opportunity for further investigation or discovery.

25 17. At all relevant times herein, Defendants had and have a policy or practice of failing
26 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
27 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
28

1 and applicable Wage Orders. The allegations in this paragraph are likely to have evidentiary support
2 after a reasonable opportunity for further investigation or discovery.

3 18. At all relevant times mentioned herein, Defendants have had a policy or practice of
4 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
5 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal
6 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
7 separately laundering mandatory uniforms, for the purchase of tools and safety equipment (including
8 work boots to handle oil), for the purchase and maintenance of cellular phones and cellular phone
9 plans, in direct consequence of the discharge of their duties, or of their obedience to the directions
10 of Defendants, as required by Labor Code 2802. The allegations in this paragraph are likely to have
11 evidentiary support after a reasonable opportunity for further investigation or discovery.

12 19. At all relevant times mentioned herein, Defendants have had a policy or practice of
13 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
14 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
15 Employees with the rates of pay and overtime rates of pay applicable to their employment;
16 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
17 name, address, and telephone number of the workers' compensation insurance carrier; information
18 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
19 under Labor Code section 2810.5. The allegations in this paragraph are likely to have evidentiary
20 support after a reasonable opportunity for further investigation or discovery.

21 20. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
22 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
23 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
24 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
25 all other Aggrieved Employees. The allegations in this paragraph are likely to have evidentiary
26 support after a reasonable opportunity for further investigation or discovery.

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

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

17 23. Defendants had and have a policy or practice of preventing Plaintiff and/or other
18 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
19 to their managers or outside to private attorneys or government officials, among others, in violation
20 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
21 1102.5. In addition, Plaintiff is informed and believes that Defendants’ herein-described policies
22 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
23 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
24 of Labor Code section 232 and 232.5. The allegations in this paragraph are likely to have evidentiary
25 support after a reasonable opportunity for further investigation or discovery.

26 24. Defendants had and have a policy or practice of preventing Plaintiff and/or other
27 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
28 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,

1 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
2 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
3 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
4 economic liberty. The allegations in this paragraph are likely to have evidentiary support after a
5 reasonable opportunity for further investigation or discovery.

6 25. At all relevant times mentioned herein, Defendants have had a policy or practice of
7 failing to furnish and use safety devices and safeguards, and adopt and use practices, means,
8 methods, operations and processes which are reasonably adequate to render such employment and
9 place of employment safe and healthful, in violation of Labor Code section 6401. At all relevant
10 times mentioned herein, Defendants have had a policy or practice of requiring or permitting
11 employees to go or be in any employment or place of employment which is not safe and healthful
12 in violation of Labor Code section 6402. At all relevant times mentioned herein, Defendants have
13 had a policy or practice of failing or neglecting to: provide and use safety devices and safeguards
14 reasonably adequate to render the employment and place of employment safe; adopt and use
15 methods and processes reasonably adequate to render the employment and place of employment
16 safe; and do every other thing reasonably necessary to protect the life, safety, and health of
17 employees in violation of Labor Code section 6403. Defendants' failures include, without
18 limitation: failing to disinfect surfaces after use by Plaintiff and other Aggrieved Employees; failing
19 to provide adequate protection equipment to Plaintiff and other Aggrieved Employees; and failing
20 to provide adequate distance in working conditions between Plaintiff and other Aggrieved
21 Employees. The allegations in this paragraph are likely to have evidentiary support after a
22 reasonable opportunity for further investigation or discovery.

23 26. At all relevant times mentioned herein, Defendants have had a policy or practice of
24 failing to give sufficient, adequate and proper notice to employees of the Covid-19 exposure within
25 one business day of receiving notice of a Covid-19 workplace exposure from a qualifying individual
26 and further Defendants do not or did not keep adequate records of written notifications required in
27 subdivision (a) for a period of at least three years in violation of Labor Code section 6409.6. The
28

1 allegations in this paragraph are likely to have evidentiary support after a reasonable opportunity
2 for further investigation or discovery.

3 27. At all relevant times mentioned herein, Defendants have had a policy or practice of
4 failing, within one business day after Defendants or a representative of Defendants received a notice
5 of potential exposure to COVID-19, to notify Plaintiff and other Aggrieved Employees who were
6 on the premises at the same worksite as the qualifying individual within the infectious period, and
7 the employers of subcontracted employees who were on the premises at the same worksite as the
8 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 COVID-
10 19 prevention program per the Cal-OSHA COVID-19 Emergency Temporary Standards, among
11 other things in violation of Labor Code sections 6409.6 and 6432. The allegations in this paragraph
12 are likely to have evidentiary support after a reasonable opportunity for further investigation or
13 discovery.

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

18 **PARTIES**

19 **A. Plaintiff**

20 29. Plaintiff Larry Benveniste is a resident of the State of California. At all relevant
21 times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed
22 Plaintiff as a non-exempt employee, with duties that included, but were not limited to, customer
23 service and collecting shopping carts. Plaintiff is informed and believes that Plaintiff worked for
24 Defendants from approximately December of 2002 through approximately August of 2021.

25 **B. Defendants**

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

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

14 **JOINT LIABILITY ALLEGATIONS**

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

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

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

FIRST CAUSE OF ACTION

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

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

Civil Penalties Under Labor Code § 210

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

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

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

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Civil Penalties Under Labor Code § 226.3

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

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

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

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

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

1 period for each subsequent violation.

2 Violation of Labor Code § 558

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

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

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

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

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

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

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Violation of Labor Code § 1174.5

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

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

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

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

51. Plaintiff is informed and believes, and based thereon alleges, that Defendants have willfully failed to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment

1 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
2 under Labor Code section 1174.

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

7 Violation of Labor Code § 1197.1

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

14 (1) For any initial violation that is intentionally committed, one hundred dollars
15 (\$100) for each underpaid employee for each pay period for which the
16 employee is underpaid. This amount shall be in addition to an amount
17 sufficient to recover underpaid wages, liquidated damages pursuant to Section
18 1194.2, and any applicable penalties imposed pursuant to Section 203.

19 (2) For each subsequent violation for the same specific offense, two hundred fifty
20 dollars (\$250) for each underpaid employee for each pay period for which the
21 employee is underpaid regardless of whether the initial violation is
22 intentionally committed. This amount shall be in addition to an amount
23 sufficient to recover underpaid wages, liquidated damages pursuant to Section
24 1194.2, and any applicable penalties imposed pursuant to Section 203.

25 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
26 Section 203, recovered pursuant to this section shall be paid to the affected
27 employee."

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55. 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.

56. 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.

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

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

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- C. Pre-judgment and post-judgment interest;
- D. For costs of suit incurred herein; and
- E. Such other and further relief as the Court deems just and proper.

Dated: September 26, 2022 BIBIYAN LAW GROUP, P.C.

BY: 

DAVID D. BIBIYAN
JEFFREY C. BILS
JOSHUA SHIRIAN
Attorneys for Plaintiff LARRY
BENVENISTE, as an aggrieved employee,
and on behalf of all other aggrieved employees
under the Labor Code Private Attorneys'
General Act of 2004,