

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Theresa Traber

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (Cal. Bar No. 287811)

david@tomorrowlaw.com

Jeffrey D. Klein (Cal. Bar. No. 297296)

jeff@tomorrowlaw.com

Alexander D. Wallin (Cal. Bar No. 336010)

alex@tomorrowlaw.com

8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

Telephone: (310) 438-5555

Facsimile: (310) 300-1705

Attorneys for Plaintiff, SAYDA MENDIVIL and

on behalf of himself and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SAYDA MENDIVIL, 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.

HG FOODS LLC., a California limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 22STCV33990

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**

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW Plaintiff SAYDA MENDIVIL ("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 HG FOODS LLC, a
California limited liability company ("HG FOODS"), 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

1 the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure
2 to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor
3 Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and
4 freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period
5 (collectively, “Aggrieved Employees”).

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

8 3. Venue is proper in LOS ANGELES County, California pursuant to Code of Civil
9 Procedure sections 392, *et seq.* because, among other things, LOS ANGELES is where the causes
10 of action complained of herein arose; the county in which the employment relationship began; the
11 county in which performance of the employment contract, or part of it, between Plaintiff, or some
12 of them, and Defendants was due to be performed; the county in which the employment contract, or
13 part of it, between Plaintiff, or some of them, and Defendants was actually performed; and the
14 county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein
15 have a direct effect on Plaintiff and similarly aggrieved employees in LOS ANGELES, and because
16 Defendants employ numerous similarly aggrieved employees in LOS ANGELES County.

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

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

28 6. During the period beginning one (1) year preceding the provision of notice to the

1 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
2 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
3 226.3, 226.7, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1,
4 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

9 8. On or around August 11, 2022, Plaintiff provided written notice pursuant to Labor
10 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
11 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
12 as well as by certified mail, with return receipt requested to Defendants, and each of them.

13 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
14 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
15 calendar days of the August 11, 2022, postmarked date of the herein-described notice sent by
16 Plaintiff to the LWDA and Defendants.

17 **PAGA REPRESENTATIVE ALLEGATIONS**

18 10. At all relevant times mentioned herein, Defendants had and have a policy or practice
19 of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of
20 California in violation of California state wage and hour laws as a result of, without limitation,
21 Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per
22 week, and/or seven (7) straight workdays in a workweek without paying them proper overtime
23 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually
24 worked; engaging, suffering, or permitting employees to work off the clock, including, without
25 limitation, by requiring employees: to remain on-call, to suffer under Defendants’ control to
26 complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including
27 answering calls from dispatch and others), to clock out for meal periods and continue working, to
28 don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the

1 clock, to make phone calls or drive off the clock; failing to include all forms of remuneration,
2 including non-discretionary bonuses, incentive pay, meal allowances, and other forms of
3 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
4 additional compensation was earned for the purpose of calculating the overtime rate of pay;
5 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
6 less hours than actually worked, for paying straight pay instead of overtime pay, and engaging,
7 suffering, or permitting employees to go through temperature checks off the clock to the detriment
8 of Plaintiff and other Aggrieved Employees.

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

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

27 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
28 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and

1 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
2 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
3 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
4 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
5 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
6 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

7 14. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 maintain policies or practices of failing to permit Plaintiff and other aggrieved employees from
9 taking cooldown rest periods as required under California Code of Regulations, Title 8, Section
10 3395 and premium pay in lieu thereof under Labor Code section 226.7. As a result, Plaintiff would
11 be liable for civil penalties under Labor Code sections 558 and 2699.

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

19 16. At all relevant times mentioned herein, Defendants had and have a policy or practice
20 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
21 Plaintiff and other Aggrieved Employees with 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, making it difficult for Plaintiff and other Aggrieved Employees to
24 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiffs and other
25 Aggrieved Employees.

26 17. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
28 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime

1 wages, minimum wages, premium wages, as required by Labor Code sections 201, 202, and 203.

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

10 19. At all relevant times mentioned herein, Defendants have had a policy or practice of
11 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
12 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
13 Employees with 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, address, and telephone number of the workers' compensation insurance carrier; information
16 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
17 under Labor Code section 2810.5.

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

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

1 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
3 and experience they obtained at Defendants for purposes of competing with Defendants, including,
4 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
5 a prospective employer, and from disclosing who else works at Defendants and under what
6 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
7 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
8 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
9 Code sections 232, 232.5, and 1197.5, subdivision (k).

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

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

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

1 **PARTIES**

2 **A. Plaintiff**

3 26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
4 is informed and believes, and based thereon allege that Defendants employed Plaintiff as a non-
5 exempt employee, with duties that included, but were not limited to, managerial duties, cashier
6 duties, and performing daily operational services at one of Defendants' restaurants. Plaintiff is
7 informed and believes, and based thereon allege that Plaintiff worked for Defendants from
8 approximately October of 2020 through approximately January of 2022.

9 **B. Defendants**

10 27. Plaintiff is informed and believes and based thereon allege that Defendant HG
11 FOODS is, and at all times relevant hereto was, a limited liability company organized and existing
12 under and by virtue of the laws of the State of California and doing business in the County of Los
13 Angeles, State of California.

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

27 **JOINT LIABILITY ALLEGATIONS**

28 29. Plaintiff is informed and believes and based thereon alleges that all the times

1 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
2 representative, joint venture or co-conspirator of each of the other defendants, either actually or
3 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
4 employment, joint venture, and conspiracy.

5 30. All of the acts and conduct described herein of each and every corporate defendant
6 was duly authorized, ordered, and directed by the respective and collective defendant corporate
7 employers, and the officers and management-level employees of said corporate employers. In
8 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
9 their said employees, agents, and representatives, and each of them; and upon completion of the
10 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
11 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
12 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
13 aforementioned corporate employees, agents and representatives.

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

16 **FIRST CAUSE OF ACTION**

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

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

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

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

26 34. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
27 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
28 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,

1 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
2 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
3 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
4 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

13 Civil Penalties Under Labor Code § 226.3

14 36. 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 other such information as required
20 by Labor Code section 226, subdivision (a).

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

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

28 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants had

1 and have a policy or practice of failing to furnish non-exempt employees, including, without
2 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
3 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
4 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
5 name of the employer and; and other such information as required by Labor Code section 226,
6 subdivision (a).

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

12 Violation of Labor Code § 558

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

- 17 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
18 pay period for which the employee was underpaid in addition to an amount sufficient
19 to recover underpaid wages;
- 20 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
21 employee for each pay period for which the employee was underpaid in addition to
22 an amount sufficient to recover underpaid wages;
- 23 (3) Wages recovered pursuant to this section shall be paid to the affected employee.

24 42. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
25 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
26 causing Plaintiffs and other Aggrieved Employees not to: be paid with the rates of pay and overtime
27 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
28 regular payday designated by Employer, the name of the employer, including any "doing business

1 as” names used, the name, address and telephone number of the workers’ compensation insurance
2 carrier, information regarding paid sick leave, and other pertinent information.

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

8 Violation of Labor Code § 1174.5

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

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

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

28 47. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully

1 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
2 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
3 member of the commission or employees of the division to inspect records pursuant to subdivision
4 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

5 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
6 willfully failed keep adequate or accurate time records including wage statements and similar
7 payroll documents under Labor Code section 226, 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.

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

14 Violation of Labor Code § 1197.1

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

21 (1) For any initial violation that is intentionally committed, one hundred dollars
22 (\$100) for each underpaid employee for each pay period for which the
23 employee is underpaid. This amount shall be in addition to an amount
24 sufficient to recover underpaid wages, liquidated damages pursuant to Section
25 1194.2, and any applicable penalties imposed pursuant to Section 203.

26 (2) For each subsequent violation for the same specific offense, two hundred fifty
27 dollars (\$250) for each underpaid employee for each pay period for which the
28 employee is underpaid regardless of whether the initial violation is

1 intentionally committed. This amount shall be in addition to an amount
2 sufficient to recover underpaid wages, liquidated damages pursuant to Section
3 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

7 51. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
8 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
9 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ to pay
10 minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual
11 and liquidated damages.

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

18 Violation of Labor Code section 6400 et seq.

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

1 methods and processes reasonably adequate to render the employment and place of employment
2 safe; and do every other thing reasonably necessary to protect the life, safety, and health of
3 employees, pursuant to Labor Code section 6403.

4 54. Plaintiff is informed and believes, and based thereon alleges that these failures
5 include, without limitation, failing to disinfect time clocks and other surfaces after use by Plaintiff
6 and/or other aggrieved employees; failing to provide adequate protection equipment to Plaintiff
7 and/or other aggrieved employees; and failing to provide adequate distance in working conditions
8 between Plaintiff and/or other aggrieved employees.

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

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

1 to, workers' compensation, and options for exposed employees, including COVID-19-related leave,
2 company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions,
3 as well as antiretaliation and antidiscrimination protections of the employee. Plaintiff is informed
4 and believes, and based thereon alleges, that Defendants violated, without limitation, Labor Code
5 sections 6409.6 and 6432.

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

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

26 59. As a direct and proximate result of the herein-described Labor Code violations,
27 pursuant to Labor Code sections 6400 *et seq*, Plaintiff and other Aggrieved Employees are entitled
28 to recover civil penalties for Defendants' herein-described Labor Code violations in the amount one

1 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
2 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
3 subsequent violation.

4 Civil Penalties Under Labor Code § 2699

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

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

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

27 63. Moreover, Plaintiff and other Aggrieved Employees within the State of California
28 whom they seek to represent are entitled to an award of reasonable attorneys’ fees and costs in

1 connection with their herein-described claims for civil penalties.

2 **PRAYER**

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

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

13
14 Dated: October 20, 2022

BIBIYAN LAW GROUP, P.C.

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16
17 BY: /s/ Alexander D. Wallin

ALEXANDER D. WALLIN

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