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MURILLO and ALONDRA TACHQUIN

as aggrieved employees, and on behalf of all other

aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHARLENE AMERICA MURILLO and
ALONDRA TACHQUIN, as aggrieved
employees, and on behalf of all other
aggrieved employees under the Labor Code
Private Attorneys' General Act of 2004,

Plaintiffs,

v.

IKON MOTORSPORTS, INC., a California
corporation; ADVANCE TUNING, LLC., a
California limited liability company;
SUITABLE STAFFING SOLUTIONS, INC.,
a California corporation and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: **23STCV08228**

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 Plaintiffs CHARLENE AMERICA MURILLO and ALONDRA TACHQUIN, as aggrieved
2 employees, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys'
3 General Act of 2004, alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
6 Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against IKON
7 MOTORSPORTS, INC, a California corporation, and any of its respective subsidiaries or affiliated
8 companies within the State of California ("IKON"), ADVANCE TUNING, LLC, a California
9 limited liability company, and any of its respective subsidiaries or affiliated companies within the
10 State of California ("ADVANCE TUNING"), and SUITABLE STAFFING SOLUTIONS, INC., a
11 California corporation, and any of its respective subsidiaries or affiliated companies within the State
12 of California ("SUITABLE STAFFING SOLUTIONS") (collectively, and with IKON and
13 ADVANCE TUNING and DOES 1 through 100, as further defined below, "Defendants"), as a
14 proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"), on
15 behalf of Plaintiffs and all other current and former non-exempt employees of Defendants working
16 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims
17 for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section
18 226, Labor Code section 227.3, Labor Code section 245, *et seq.*, restraints on competition,
19 whistleblowing and freedom of speech on behalf of all employees of Defendants working within the
20 Civil Penalty Period (collectively, "Aggrieved Employees").

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

23 3. Venue is proper in Los Angeles County, California pursuant to Code of Civil
24 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the
25 causes of action complained of herein arose; the county in which the employment relationship
26 began; the county in which performance of the employment contract, or part of it, between Plaintiffs
27 and Defendants was due to be performed; the county in which the employment contract, or part of
28 it, between Plaintiffs and Defendants was actually performed; and the county in which Defendants,

1 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiffs
2 and Aggrieved Employees in Los Angeles County, and because Defendants employ numerous
3 Aggrieved Employees in Los Angeles County.

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

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

15 6. During the period beginning one (1) year preceding the provision of notice to the
16 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
17 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
18 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
19 1197.1, 1197.5, 1198.5, 2699, 2810.3, and 2810.5, among others.

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

24 8. On or around September 19, 2022, Plaintiff, CHARLENE AMERICA MURRILO
25 provided written notice pursuant to Labor Code section 2699.3 online and by certified mail, with
26 return receipt requested, of Defendants’ violation of various, including the herein-described,
27 provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt
28 requested to Defendants, and each of them.

9. Plaintiff, CHARLENE AMERICA MURRILO also provided Defendants, and each of them, with notice under Labor Code section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other's wage and hour violations under Labor Code section 2810.3 on September 19, 2022 by certified mail with return receipt requested.

10. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the September 19, 2022 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

11. On or around January 17, 2023, Plaintiff, ALONDRA TACHIQUIN provided written notice pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of them.

12. Plaintiff, ALONDRA TACHIQUIN also provided Defendants, and each of them, with notice under Labor Code section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other's wage and hour violations under Labor Code section 2810.3 on January 17, 2023 by certified mail with return receipt requested.

13. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the January 17, 2023 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

PAGA REPRESENTATIVE ALLEGATIONS

14. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiffs and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiffs 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

1 worked; engaging, suffering, or permitting employees to work off the clock, including, without
2 limitation, by requiring employees: to remain on-call, to suffer under Defendants' control due to
3 long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after
4 clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to
5 attend company meetings off the clock, failing to include all forms of remuneration, including non-
6 discretionary bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms
7 of remuneration into the regular rate of pay for the pay periods where overtime was worked and the
8 additional compensation was earned for the purpose of calculating the overtime rate of pay;
9 detrimental rounding of employee time entries, editing and/or manipulation of time entries to the
10 detriment of Plaintiffs and other Aggrieved Employees.

11 15. At all relevant times mentioned herein, Defendants had and have a practice or policy
12 of failing to compensate Plaintiffs and other Aggrieved Employees with minimum wages for all
13 hours worked or otherwise under Defendants' control as a result of, without limitation, failing to
14 accurately track and/or pay for all minutes actually worked; by requiring employees: to come early
15 to work and leave late work without being able to clock in for all that time, to suffer under
16 Defendants' control due to long lines for clocking in, to complete pre-shift tasks before clocking in
17 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
18 out for rest periods, to attend company meetings off the clock, detrimental rounding of employee
19 time entries; editing and/or manipulation of time entries to show less hours than actually worked;
20 failing to pay split shift premiums; and failing to pay reporting time pay to the detriment of Plaintiffs
21 and other Aggrieved Employees.

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

1 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
2 periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which
3 employees worked, as required by California wage and hour laws.

4 17. At all relevant times mentioned herein, Defendants had and have a policy or practice
5 of failing to provide Plaintiffs and other Aggrieved Employees paid, uninterrupted, timely, and
6 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof
7 and failed to provide compensation for such unprovided rest periods as required by California wage
8 and hour laws.

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

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

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

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

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

13 23. At all relevant times mentioned herein, Defendants failed to provide Plaintiffs and
14 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
15 California law (including, without limitation Labor Code section 245, *et seq.*), and also did not
16 permit its use upon request as contemplated under California laws, to the detriment of Plaintiffs and
17 all other Aggrieved Employees.

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

24 25. At all relevant times mentioned herein, Defendants had and have a policy or practice
25 of preventing Plaintiffs and/or Aggrieved Employees from using or disclosing the skills, knowledge
26 and experience they obtained at Defendants for purposes of competing with Defendants, including,
27 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
28 a prospective employer, and from disclosing who else works at Defendants and under what

1 circumstances that they might be receptive to an offer from a rival employer. Plaintiffs are informed
2 and believe that this policy and/or practice violates Business and Professions Code sections 17200,
3 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
4 Code sections 232, 232.5, and 1197.5, subdivision (k).

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

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

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

24 **PARTIES**

25 **A. Plaintiffs**

26 29. Plaintiff ALONDRA TACHIQUIN is a resident of the State of California. At all
27 relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants
28 employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to,

1 processing returned car parts from clients. Plaintiff is informed and believes, and based thereon
2 alleges, that Plaintiff ALONDRA TACHIQUIN worked for Defendants from approximately
3 February of 2022 through approximately May of 2022.

4 30. Plaintiff CHARLENE AMERICA MURILLO is a resident of the State of California.
5 At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that
6 Defendants employed Plaintiff CHARLENE AMERICA MURILLO as a non-exempt employee,
7 with duties that included, but were not limited to, providing customer service, processing returns,
8 and keeping inventory. Plaintiff is informed and believes and based thereon alleges that Plaintiff
9 CHARLENE AMERICA MURILLO worked for Defendants from approximately April of 2022
10 through approximately June of 2022.

11 **B. Defendants**

12 31. Plaintiffs are informed and believe and based thereon allege that defendant IKON is,
13 and at all times relevant hereto was, a corporation organized and existing under and by virtue of the
14 laws of the State of California and doing business in the County of Los Angeles, State of California.
15 Plaintiffs are informed and believes, and based thereon alleges, that IKON is a “client employer”
16 within the meaning of Labor Code section 2810.3 that procures outplacement staffing and payroll
17 services from various staffing agencies, including but not limited to, SUITABLE STAFFING
18 SOLUTIONS. At all relevant times herein, IKON employed Plaintiffs and similarly situated
19 employees within the State of California.

20 32. Plaintiffs are informed and believe and based thereon allege that defendant
21 ADVANCED TUNING is, and at all times relevant hereto was, a limited liability company
22 organized and existing under and by virtue of the laws of the State of California and doing business
23 in the County of Los Angeles, State of California. Plaintiffs are informed and believes, and based
24 thereon alleges, that ADVANCED TUNING is a “client employer” within the meaning of Labor
25 Code section 2810.3 that procures outplacement staffing and payroll services from various staffing
26 agencies, including but not limited to, SUITABLE STAFFING SOLUTIONS. At all relevant times
27 herein, ADVANCED TUNING employed Plaintiffs and similarly situated employees within the
28 State of California.

33. Plaintiffs are informed and believe and based thereon allege that defendant SUITABLE STAFFING SOLUTIONS is, and at all times relevant hereto was, a California corporation organized and existing under and by virtue of the laws of the State of California and doing business in the County of Los Angeles, State of California.

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

JOINT LIABILITY ALLEGATIONS

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

36. All of the acts and conduct described herein of each and every corporate defendant was duly authorized, ordered, and directed by the respective and collective defendant corporate employers, and the officers and management-level employees of said corporate employers. In addition thereto, said corporate employers participated in the aforementioned acts and conduct of

1 their said employees, agents, and representatives, and each of them; and upon completion of the
2 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
3 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
4 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
5 aforementioned corporate employees, agents and representatives.

6 37. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
7 thereon alleges that Defendants, and each of them, are joint employers.

8 **FIRST CAUSE OF ACTION**

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

10 38. Plaintiffs re-allege and incorporates by reference all of the allegations set forth in the
11 preceding paragraphs as though fully set forth hereat.

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

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

18 40. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
19 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
20 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
21 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
22 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
23 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
24 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

25 41. At all relevant times herein, Defendants have had a consistent policy or practice of
26 failing to pay Plaintiffs and/or Aggrieved Employees during their employment on a timely basis as
27 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiffs and other
28 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor

1 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
2 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
3 for each subsequent violation in connection with each payment that was made in violation of Labor
4 Code section 204.

5 Civil Penalties Under Labor Code § 226.3

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

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

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

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

46. Pursuant to Labor Code section 226.3, Plaintiffs 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 period for each subsequent violation.

Violation of Labor Code § 558

47. 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 employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
- (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

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

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

1 dollars (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

2 Violation of Labor Code § 1174.5

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

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

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

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

27 54. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
28 willfully failed to keep adequate or accurate time records including wage statements and similar

1 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
2 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
3 under Labor Code section 1174.

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

8 Violation of Labor Code § 1197.1

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

15 (1) For any initial violation that is intentionally committed, one hundred dollars
16 (\$100) for each underpaid employee for each pay period for which the
17 employee is underpaid. This amount shall be in addition to an amount
18 sufficient to recover underpaid wages, liquidated damages pursuant to Section
19 1194.2, and any applicable penalties imposed pursuant to Section 203.

20 (2) For each subsequent violation for the same specific offense, two hundred fifty
21 dollars (\$250) for each underpaid employee for each pay period for which the
22 employee is underpaid regardless of whether the initial violation is
23 intentionally committed. 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 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
27 Section 203, recovered pursuant to this section shall be paid to the affected
28 employee."

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

10 58. As a direct and proximate result of the herein-described Labor Code violations,
11 pursuant to Labor Code section 1197.1, Plaintiffs 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 Civil Penalties Under Labor Code § 2699

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

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

1 61. Plaintiffs are informed and believe, and based thereon allege that Defendants, and
2 each of them, violated the Labor Code sections described herein, including, without limitation, for
3 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
4 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
5 name of the employer, including “doing business as” names used, the name, address, and telephone
6 number of the workers’ compensation insurance carrier, information regarding paid sick leave, and
7 other pertinent information required to be disclosed by Defendants under Labor Code section
8 2810.5, failing to provide Plaintiffs and other Aggrieved Employees with the amount of paid sick
9 leave required to be provided pursuant to California and local laws.

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

13 **REQUEST FOR JURY TRIAL**

14 63. Plaintiffs hereby requests a trial by jury.

15 **PRAYER**

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

- 18 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
19 1174.5, 1197.1, and 2699;
- 20 B. An award of reasonable attorneys’ fees and costs pursuant to Labor Code sections
21 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 22 C. Pre-judgment and post-judgment interest;
- 23 D. For costs of suit incurred herein; and
- 24 E. Such other and further relief as the Court deems just and proper.

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28 [signature on following page]

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Dated: April 13, 2023

BIBIYAN LAW GROUP, P.C.

BY: /s/ Matthew J. Carraher
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JEFFREY D. KLEIN
MATTHEW J. CARRAHER
Attorneys for Plaintiffs CHARLENE AMERICA
MURILLO and ALONDRA TACHIQUIN as
aggrieved employees, and on behalf of all other
aggrieved employees under the Labor Code Private
Attorneys' General Act of 2004,