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

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 10 2023

Paola Iniguez
BY: PAOLA INIGUEZ, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

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

Plaintiff,

v.

CITORI, INC., a California Corporation; DON
W. MAY, an individual; EVAN MAY, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: *CIUS132300691*

REPRESENTATIVE ACTION By Fax

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

DEMAND FOR JURY TRIAL

[Amount in Controversy Greater Than
\$25,000.00]

COMES NOW plaintiff LUIS JAIME VELIS (“Plaintiff”), as aggrieved employees, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys’ General Act of 2004, and alleges as follows:

JURISDICTION AND VENUE

1. This is a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against CITORI, INC., (“CITORI”) a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California, and DON W. MAY (“D. MAY”), an individual residing in California, and EVAN MAY (“E. MAY”) an individual residing in California, and any of its respective subsidiaries or affiliated companies within the State of California (“D. MAY,” “E. MAY” and together with “CITORI” and DOES 1 through 100, as further defined below, “Defendants”), as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

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

3. Venue is proper in San Bernardino County, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, San Bernardino County is where the causes of action complained of herein arose; the county in which the employment relationship began; the county in which performance of the employment contract, or part of it, between Plaintiffs,

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

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

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

18
19 6. During the period beginning one (1) year preceding the provision of notice to
20 the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
21 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
22 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
23 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

2 8. On or around November 29, 2022, Plaintiff provided written notice pursuant to Labor
3 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
4 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
5 as well as by certified mail, with return receipt requested to Defendants, and each of them.

6 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
7 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
8 calendar days of the November 29, 2022 postmarked date of the herein-described notice sent by
9 Plaintiff to the LWDA and Defendants.
10

11 **PAGA REPRESENTATIVE ALLEGATIONS**

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

5 11. At all relevant times mentioned herein, Defendants had and have a practice
6 or policy of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages
7 for all hours worked or otherwise under Defendants' control as a result of, without limitation,
8 failing to accurately track and/or pay for all minutes actually worked; by requiring employees: to
9 remain on-call; to suffer under Defendants' control to complete pre-shift tasks before clocking in
10 and post-shift tasks after clocking out (including answering calls from dispatch and others), to clock
11 out for meal periods and continue working, to don and doff uniforms and/or safety equipment off
12 the clock, to attend company meetings off the clock, to make phone calls or drive off the clock;
13 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
14 less hours than actually worked; failing to pay reporting time pay; paid time off and vacation time
15 owed; and failing to pay split shift premiums, to the detriment of Plaintiff and other Aggrieved
16 Employees.
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18 12. At all relevant times mentioned herein, Defendants had and have a policy or
19 practice of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute
20 uninterrupted, timely, and complete meal period for days on which the employee worked in excess
21 of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete
22 30-minute meal periods or compensation in lieu thereof including, without limitation, by
23 interrupting meal periods; not providing timely meal periods; failing to provide first and second
24 meal periods; providing short meal periods; requiring that employees carry cellular telephones or
25 walkie-talkies during meal periods; not permitting employees to leave the premises; otherwise
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1 requiring on-duty/on-call meal periods; and/or auto-deducting meal periods that could not be auto-
2 deducted by law or during which employees worked, as required by California wage and hour laws

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

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

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

3 16. At all relevant times mentioned herein, Defendants had and have a policy or
4 practice of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all
5 wages owed as a result of Defendants' practice or policy of failing to pay, among other wages,
6 overtime wages, minimum wages, premium wages, paid time off and vacation time owed as required
7 by Labor Code sections 201, 202, and 203.

8 17. At all relevant times herein, Defendants had and have a policy or practice of
9 failing to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
10 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
11 and applicable Wage Orders.

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

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

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

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

15 22. At all relevant times mentioned herein, Defendants had and have a policy or
16 practice of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills,
17 knowledge and experience they obtained at Defendants for purposes of competing with Defendants,
18 including, without limitation, preventing Employees from disclosing their wages in negotiating a
19 new job with a prospective employer, and from disclosing who else works at Defendants and under
20 what circumstances that they might be receptive to an offer from a rival employer. Plaintiff is
21 informed and believes that this policy and/or practice violates Business and Professions Code
22 sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code,
23 including Labor Code sections 232, 232.5, and 1197.5, subdivision (k).
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23. Defendants had and have a policy or practice of preventing Plaintiff and/or other Aggrieved Employees from disclosing violations of state and federal law, either within Defendants to their managers or outside to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information about unsafe or discriminatory working conditions, or about wage and hour violations in violation of Labor Code section 232 and 232.5.

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

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

PARTIES

A. Plaintiff

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

1 cars and trucks. Plaintiff is informed and believes that Plaintiff worked for Defendants from
2 approximately July of 2021 through approximately April of 2022.

3 **B. Defendants**

4 27. Plaintiff is informed and believes and based thereon alleges that defendant
5 CITORI is, and at all times relevant hereto was, a corporation organized and existing under and by
6 virtue of the laws of the State of California and doing business in the County of San Bernardino,
7 State of California.

8
9 28. Plaintiff is informed and believes and based thereon alleges that defendant D.
10 MAY is, and at all times relevant hereto was, an individual residing in California, as well as the
11 Chief Executive Officer of CITORI.

12 29. Plaintiff is informed and believes and based thereon alleges that defendant E.
13 MAY is, and at all times relevant hereto was, an individual residing in California, as well as the
14 Chief Financial Officer of CITORI.

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

3 **JOINT LIABILITY ALLEGATIONS**

4 31. Plaintiff is informed and believes, and based thereon alleges, that at all times
5 mentioned herein, each of the defendants was the agent, principal, employee, employer,
6 representative, joint venture or co-conspirator of each of the other defendants, either actually or
7 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
8 employment, joint venture, and conspiracy.
9

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

20 33. Plaintiff is informed and believes, and based thereon alleges, that despite the
21 formation of the purported corporate existence of CITORI, D. MAY, E. MAY, and DOES 1 through
22 50, inclusive (the "Alter Ego Defendants"), they, and each of them, are one and the same with DOES
23 51 through 100 ("Individual Defendants"), and each of them, due to, but not limited to, the following
24 reasons:

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

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

8 c. Plaintiff is informed and believes, and thereon alleges, that the Individual
9 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear
10 as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
11 accomplishing some other wrongful or inequitable purpose;

12 d. Plaintiff is informed and believes, and thereon alleges, that the business affairs
13 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned
14 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same
15 are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein
16 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of
17 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
18 herein were, the alter egos of the Individual Defendants;

19 e. The recognition of the separate existence of the Individual Defendants from
20 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to
21 insulate themselves from liability to Plaintiffs for violations to the Civil Code, Government Code,
22 and other statutory violations. The corporate existence of these defendants should thus be
23 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
24 and injustice to Plaintiff herein;

1 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
2 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be
3 disregarded.

4 34. As a result of the aforementioned facts, Plaintiff is informed and believes,
5 and based thereon alleges that Defendants, and each of them, are joint employers.
6

7 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

9 Civil Penalties Under Labor Code § 226.3

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

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

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

Violation of Labor Code § 558

44. 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;

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

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

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

16 Violation of Labor Code § 1174.5

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

24 48. At all times mentioned herein, Labor Code section 1174, subdivision (c) has
25 required every person employing labor in California to “[k]eep a record showing the names and
26 addresses of all employees employed and the ages of all minors.”
27

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

11 50. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who
12 willfully fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or
13 accurate and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow
14 any member of the commission or employees of the division to inspect records pursuant to
15 subdivision (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred
16 dollars (\$500).
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18 51. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 have willfully failed to keep adequate or accurate time records including wage statements and similar
20 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
21 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
22 under Labor Code section 1174.

23 52. As a direct and proximate result of the herein-described Labor Code violations, pursuant to
24 Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to recover civil
25 penalties for Defendants’ herein-described Labor Code violations in the amount of five hundred
26 dollars (\$500) per violation per Aggrieved Employee.
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2 Violation of Labor Code § 1197.1

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

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

24 54. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 caused Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
26 without limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ minimum wages
27

1 for all hours worked or otherwise under Defendants' control due to, without limitation, routinely
2 failing to accurately track and/or pay for all hours actually worked; detrimental rounding or
3 manipulation of time entries; paying straight pay instead of overtime or otherwise failing to pay
4 overtime hours at the proper overtime rate of pay; engaging, suffering, or permitting employees to
5 work off the clock, entitling Plaintiff and other aggrieved Employees to actual and liquidated
6 damages.

7
8 55. As a direct and proximate result of the herein-described Labor Code
9 violations, pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are
10 entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the
11 amount one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial
12 violation, and two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for
13 each subsequent violation.

14 Civil Penalties Under Labor Code § 2699

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

21
22 57. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the
23 Labor Code except those for which a civil penalty is specifically provided, the established civil
24 penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the
25 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
26 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
27

1 aggrieved employee per pay period for each subsequent violation.

2 58. Plaintiff is informed and believes and based thereon alleges that Defendants, and
3 each of them, violated the Labor Code sections described herein, including, without limitation, for
4 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
5 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
6 name of the employer, including “doing business as” names used, the name, address, and telephone
7 number of the workers’ compensation insurance carrier, information regarding paid sick leave, and
8 other pertinent information required to be disclosed by Defendants under Labor Code section
9 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick
10 leave required to be provided pursuant to California and local laws.
11

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

15 **REQUEST FOR JURY TRIAL**

16 60. Plaintiff hereby requests a trial by jury.

17 **PRAYER**

18 **WHEREFORE**, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for
19 judgment against Defendants as follows:
20

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

Dated: February 7, 2023

BIBIYAN LAW GROUP, P.C.

BY: Jean H. Power
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ANITA LODI
Attorneys for Plaintiff LUIS JAIME VELIS ,
as an aggrieved employee, and on behalf of all
other aggrieved employees under the Labor
Code Private Attorneys' General Act of 2004,