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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

By Fax

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

Plaintiff,

v.

INFINITI GROUP LLC, a California Limited
Liability Company; HOPE BY THE SEA,
INC. a California Corporation; HOWER
LODGE, INC., a California Corporation;
PILLARS RECOVERY, LLC, a California
Limited liability Company; SERENE
BEHAVIORAL HEALTH, LLC, a California
Limited Liability Company and DOES 1
through 100, inclusive,

Defendants.

CASE NO. **CIV SB 2311188**

REPRESENTATIVE ACTION

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

DEMAND FOR JURY TRIAL

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

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

3 **JURISDICTION AND VENUE**

4 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
5 Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against INFINITI GROUP
6 LLC, a California Limited Liability Company and any of its respective subsidiaries or affiliated
7 companies within the State of California ("Infiniti"), HOPE BY THE SEA, INC. a California
8 Corporation and any of its respective subsidiaries or affiliated companies within the State of
9 California ("Hope by the Sea"), HOWER LODGE, INC., a California Corporation and any of its
10 respective subsidiaries or affiliated companies within the State of California ("Hower"), PILLARS
11 RECOVERY, LLC, a California Limited liability Company, and any of its respective subsidiaries
12 or affiliated companies within the State of California ("Pillars Recovery"); SERENE
13 BEHAVIORAL HEALTH, LLC, a California Limited Liability Company and any of its respective
14 subsidiaries or affiliated companies within the State of California ("Serene Behavioral")
15 (collectively, and with DOES 1 through 100, as further defined below, "Defendants"), as a proxy of
16 the Labor and Workforce Development Agency of the State of California ("LWDA"), on behalf of
17 Plaintiff and all other current and former non-exempt employees of Defendants working within the
18 Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to
19 comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor
20 Code section 227.3, Labor Code section 245, *et seq.*, Labor Code section 2802, restraints on
21 competition, whistleblowing and freedom of speech on behalf of all employees of Defendants
22 working within the Civil Penalty Period (collectively, "Aggrieved Employees").

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

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

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

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

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

17 6. During the period beginning one (1) year preceding the provision of notice to the
18 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
19 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
20 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
21 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

26 8. On or around December 29, 2022, Plaintiff provided written notice pursuant to Labor
27 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
28 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,

1 as well as by certified mail, with return receipt requested to Defendants, and each of them.

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

6 **PAGA REPRESENTATIVE ALLEGATIONS**

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

25 11. At all relevant times mentioned herein, Defendants had and have a practice or policy
26 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
27 worked or otherwise under Defendants' control as a result of, without limitation, failing to
28 accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-

1 call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift
2 tasks after clocking out (including answering calls from dispatch and others), to clock out for meal
3 periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to
4 attend company meetings off the clock, to make phone calls or drive off the clock; detrimental
5 rounding of employee time entries, editing and/or manipulation of time entries to show less hours
6 than actually worked; failing to pay reporting time pay; paid time off and vacation time owed; and
7 failing to pay split shift premiums, to the detriment of Plaintiff and other Aggrieved Employees.

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

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

26 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
28 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross

1 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
2 hourly rates in effect during the pay period and the corresponding number of hours worked at each
3 hourly rate by the employee; the legal name of the employer and/or the name and address of the
4 legal entity securing the employer's services if the employer is a farm labor contractor; and other
5 such information as required by Labor Code section 226, subdivision (a).

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

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

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

22 18. At all relevant times mentioned herein, Defendants have had a policy or practice of
23 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
24 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal
25 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
26 separately laundering mandatory uniforms, for the purchase of tools and safety equipment, for the
27 purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the
28

1 discharge of their duties, or of their obedience to the directions of Defendants, as required by Labor
2 Code 2802.

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

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

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

22 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
23 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
24 and experience they obtained at Defendants for purposes of competing with Defendants, including,
25 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
26 a prospective employer, and from disclosing who else works at Defendants and under what
27 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
28 and believes that this policy and/or practice violates Business and Professions Code sections 17200,

1 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
2 Code sections 232, 232.5, and 1197.5, subdivision (k).

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

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

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

22 **PARTIES**

23 **A. Plaintiff**

24 26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
25 is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-
26 exempt employee, with duties that included, but were not limited to, but were not limited to,
27 managing accounts payable and accounts receivable. Plaintiff is informed and believes that Plaintiff
28 worked for Defendants from approximately April of 2022 through at least October of 2022.

1 **B. Defendants**

2 27. Plaintiff is informed and believes and based thereon alleges that defendant Infiniti is,
3 and at all times relevant hereto was, a limited liability company organized and existing under and
4 by virtue of the laws of the State of California and doing business in the County of San Bernardino,
5 State of California.

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

10 29. Plaintiff is informed and believes and based thereon alleges that defendant Hower is,
11 and at all times relevant hereto was, a corporation organized and existing under and by virtue of the
12 laws of the State of California and doing business in the County of San Bernardino, State of
13 California.

14 30. Plaintiff is informed and believes and based thereon alleges that defendant Pillars
15 Recovery is, and at all times relevant hereto was, a limited liability company organized and existing
16 under and by virtue of the laws of the State of California and doing business in the County of San
17 Bernardino, State of California.

18 31. Plaintiff is informed and believes and based thereon alleges that defendant Serene
19 Behavioral is, and at all times relevant hereto was, a limited liability company organized and existing
20 under and by virtue of the laws of the State of California and doing business in the County of San
21 Bernardino, State of California.

22 32. The true names and capacities, whether individual, corporate, associate, or otherwise,
23 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
24 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
25 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
26 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
27 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
28 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is

1 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
2 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
3 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
4 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
5 include Infiniti, Hope by the Sea, Hower, Pillars Recovery, Serene Behavioral and any of their
6 parent, subsidiary, or affiliated companies within the State of California, as well as DOES 1 through
7 100 identified herein.

8 **JOINT LIABILITY ALLEGATIONS**

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

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

23 35. Plaintiff is informed and believes, and based thereon alleges, that despite the
24 formation of the purported corporate existence of Infiniti, Hope by the Sea, Hower, Pillars Recovery,
25 Serene Behavioral, and DOES 1 through 50, inclusive (the “Alter Ego Defendants”), they, and each
26 of them, are one and the same with DOES 51 through 100 (“Individual Defendants”), and each of
27 them, due to, but not limited to, the following reasons:

28 a. The Alter Ego Defendants are completely dominated and controlled by the

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 Plaintiff 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;

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

28 36. As a result of the aforementioned facts, Plaintiff is informed and believes, and based

1 thereon alleges that Defendants, and each of them, are joint employers.

2 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

28 41. Defendants had and have a policy or practice of failing to comply with Labor Code

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

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

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

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

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

28 Violation of Labor Code § 558

46. 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.”

47. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections described herein, including causing Plaintiff 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.

48. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 558, Plaintiff 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 dollars (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

Violation of Labor Code § 1174.5

49. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required every person employing labor in California to “[a]llow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are

1 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
2 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
3 or papers of the person.”

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

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

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

21 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
22 willfully failed to keep adequate or accurate time records including wage statements and similar
23 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
24 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
25 under Labor Code section 1174.

26 54. As a direct and proximate result of the herein-described Labor Code violations,
27 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
28 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five

1 hundred dollars (\$500) per violation per Aggrieved Employee.

2 Violation of Labor Code § 1197.1

3 55. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
4 person acting either individually or as an officer, agent, or employee of another person, who pays
5 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
6 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
7 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
8 Section 203 as 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 56. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
24 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
25 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ minimum wages for all
26 hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
27 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
28 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at

1 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,
2 entitling Plaintiff and other aggrieved Employees to actual and liquidated damages.

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

9 Civil Penalties Under Labor Code § 2699

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

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

22 60. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
23 each of them, violated the Labor Code sections described herein, including, without limitation, for
24 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
25 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
26 name of the employer, including "doing business as" names used, the name, address, and telephone
27 number of the workers' compensation insurance carrier, information regarding paid sick leave, and
28 other pertinent information required to be disclosed by Defendants under Labor Code section

1 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick
2 leave required to be provided pursuant to California and local laws.

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

6 **REQUEST FOR JURY TRIAL**

7 62. Plaintiff hereby requests a trial by jury.

8 **PRAYER**

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

- 11 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
12 1174.5, 1197.1, and 2699;
13 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
14 210, 226.3, 558, 1174.5, 1197.1, and 2699;
15 C. Pre-judgment and post-judgment interest;
16 D. For costs of suit incurred herein; and
17 E. Such other and further relief as the Court deems just and proper.

18 Dated: May 15, 2023

BIBIYAN LAW GROUP, P.C.

19
20 BY: /s/ Amanda L. Fazio

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25 Attorneys for Plaintiff JUNE MORENO , as
26 an aggrieved employee, and on behalf of all
27 other aggrieved employees under the Labor
28 Code Private Attorneys' General Act of 2004,