

1 **BIBIYAN LAW GROUP, P.C.**
David D. Bibiyan (Cal. Bar No. 287811)
2 *david@tomorrowlaw.com*
Jeffrey D. Klein (Cal. Bar No. 297296)
3 *jeff@tomorrowlaw.com*
Sarah H. Cohen (Cal. Bar No. 330700)
4 *sarah@tomorrowlaw.com*
Matthew J. Carraher (Cal. Bar No. 346860)
5 *matthew@tomorrowlaw.com*
8484 Wilshire Boulevard, Suite 500
6 Beverly Hills, California 90211
Telephone: (310) 438-5555
7 Facsimile: (310) 300-1705

8 Attorneys for Plaintiff, ADRIAN MARTINEZ FLORES
as an aggrieved employee, and on behalf of all other
9 aggrieved employees

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF ALAMEDA**

12 ADRIAN MARTINEZ FLORES, as an
aggrieved employee, and on behalf of all
13 other aggrieved employees under the Labor
Code Private Attorneys' General Act of
14 2004,

15
16 Plaintiff,

17 v.

18 APT MAINTENANCE, INC., a California
19 corporation; and DOES 1 through 100,
inclusive,

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21 Defendants.
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ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

02/24/2023 at 03:38:20 PM

By: Angela Linhares,
Deputy Clerk

CASE NO.: **23CV028359**

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]

COMES NOW plaintiff ADRIAN MARTINEZ FLORES (“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 APT MAINTENANCE, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“APT MAINTENANCE” and together with 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 Alameda County, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, Alameda 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, or some of them, and Defendants was due to be performed; the county in which the employment contract, or part of it, between Plaintiff and Defendants was actually performed; and the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiffs and Aggrieved Employees in Alameda County, and because Defendants employ numerous Aggrieved Employees in Alameda County.

4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by

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

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

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

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

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

24 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
25 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
26 calendar days of the December 22, 2022 postmarked date of the herein-described notice sent by
27 Plaintiff to the LWDA and Defendants.

28 **PAGA REPRESENTATIVE ALLEGATIONS**

1 10. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of
3 California in violation of California state wage and hour laws as a result of, without limitation,
4 Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per
5 week, and/or seven (7) straight workdays in a workweek without paying them proper overtime
6 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually
7 worked; engaging, suffering, or permitting employees to work off the clock, including, without
8 limitation, by requiring employees: to come early to work and leave late work without being able to
9 clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to
10 complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for
11 meal periods and continue working, to clock out for rest periods, to make phone calls or drive off
12 the clock; failing to include all forms of remuneration, including non-discretionary bonuses,
13 incentive pay, meal allowances, mask allowances, gift cards and other forms of remuneration into
14 the regular rate of pay for the pay periods where overtime was worked and the additional
15 compensation was earned for the purpose of calculating the overtime rate of pay; detrimental
16 rounding of employee time entries, editing and/or manipulation of time entries to show less hours
17 than actually worked, and for paying straight pay instead of overtime pay to the detriment of
18 Employee and other aggrieved employees.

19 11. At all relevant times mentioned herein, Defendants had and have a practice or policy
20 of failing to compensate Plaintiff and other other aggrieved employees with minimum wages for all
21 hours worked or otherwise under Employer's control as a result of, without limitation, failing to
22 accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting
23 employees to work off the clock, including, without limitation, by requiring employees: to come
24 early to work and leave late work without being able to clock in for all that time, to suffer under
25 Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in
26 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
27 out for rest periods, to attend company meetings off the clock, to make phone calls or drive off the
28 clock; detrimental rounding of employee time entries; editing and/or manipulation of time entries to

1 show less hours than actually worked; and failing to pay split shift premiums to the detriment of
2 Plaintiff and other Aggrieved Employees.

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

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

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

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

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

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

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

25 19. At all relevant times mentioned herein, Defendants have had a policy or practice of
26 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
27 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
28 Employees with the rates of pay and overtime rates of pay applicable to their employment;

1 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
2 name, address, and telephone number of the workers' compensation insurance carrier; information
3 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
4 under Labor Code section 2810.5.

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

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

16 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
17 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
18 and experience they obtained at Defendants for purposes of competing with Defendants, including,
19 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
20 a prospective employer, and from disclosing who else works at Defendants and under what
21 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
22 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
23 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
24 Code sections 232, 232.5, and 1197.5, subdivision (k).

25 23. Defendants had and have a policy or practice of preventing Plaintiff and/or other
26 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
27 to their managers or outside to private attorneys or government officials, among others, in violation
28 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section

1 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
2 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
3 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
4 of Labor Code section 232 and 232.5.

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

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

16 **PARTIES**

17 **A. Plaintiff**

18 26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
19 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
20 exempt employee, with duties that included, but were not limited to, wall repairs, cleaning moldy
21 walls, and repairing plumbing. Plaintiff is informed and believes that Plaintiff worked for
22 Defendants from approximately July of 2018 through approximately December 23, 2021.

23 **B. Defendants**

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

28 28. The true names and capacities, whether individual, corporate, associate, or otherwise,

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

13 **JOINT LIABILITY ALLEGATIONS**

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

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

28 31. 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 Labor Code § 210 – Against All Defendants)**

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

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

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

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

26 **SECOND CAUSE OF ACTION**

27 **(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)**

28 36. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs

1 and incorporates each by reference as though fully set forth hereat.

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

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

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

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

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

1 period for each subsequent violation.

2 **THIRD CAUSE OF ACTION**

3 **(Violation of Labor Code § 558 – Against All Defendants)**

4 42. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
5 and incorporates each by reference as though fully set forth hereat.

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

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

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

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

17 44. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
18 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
19 causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and minimum
20 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
21 their employment and after their employment separation; receive accurate, itemized wage
22 statements; be provided with the opportunity to inspect employment records; be provided with
23 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of
24 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
25 of pay.

26 45. As a direct and proximate result of the herein-described Labor Code violations,
27 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
28 civil penalties for Defendants’ herein-described Labor Code violations in the amount fifty dollars

1 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
2 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

3 **FOURTH CAUSE OF ACTION**

4 **(Violation of Labor Code § 1174.5 – Against All Defendants)**

5 46. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
6 and incorporates each by reference as though fully set forth hereat.

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

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

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

26 50. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
27 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
28 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any

1 member of the commission or employees of the division to inspect records pursuant to subdivision
2 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

3 51. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
4 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
5 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
6 inspection of records as required by Labor Code subdivision (b).

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

11 **FIFTH CAUSE OF ACTION**

12 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

13 53. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
14 and incorporates each by reference as though fully set forth hereat.

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

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

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

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

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

7 55. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
8 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
9 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ wages for all hours
10 worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
11 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
12 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
13 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock.

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

20 **SIXTH CAUSE OF ACTION**

21 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

22 57. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
23 and incorporates each by reference as though fully set forth hereat.

24 58. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
25 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
26 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
27 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
28 action brought by an aggrieved employee on behalf of himself or herself and other current or former

1 employees pursuant to the procedures specified in Labor Code section 2699.3.

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

8 60. Plaintiff is informed and believes and based thereon alleges that Defendants, and
9 each of them, violated the Labor Code sections described herein, including, without limitation, for
10 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
11 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
12 employment and after employment separation; provide employees the opportunity to inspect
13 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
14 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual
15 and use of paid sick leave; paying employees all owed paid time off and vacation time owed by
16 separation at the proper rate of pay; and placing restraints on competition, whistleblowing and
17 freedom of speech, entitling Plaintiff and other Aggrieved Employees to civil penalties for each of
18 these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

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

22 **REQUEST FOR JURY TRIAL**

23 62. Plaintiff hereby requests a trial by jury.

24 **PRAYER**

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

- 27 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
28 1174.5, 1197.1, and 2699;

- 1 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
2 210, 226.3, 558, 1174.5, 1197.1, and 2699;
3 C. Pre-judgment and post-judgment interest;
4 D. For costs of suit incurred herein; and
5 E. Such other and further relief as the Court deems just and proper.
6

7 Dated: February 24, 2023

BIBIYAN LAW GROUP, P.C.

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9 B

10 Y: /s/ Matthew J. Carraher

11 DAVID D. BIBIYAN

JEFFREY D. KLEIN

SARAH H. COHEN

MATTHEW J. CARRAHER

13 Attorneys for Plaintiff ADRIAN MARTINEZ
14 FLORES as an aggrieved employee, and on behalf of
15 all other aggrieved employees under the Labor Code
16 Private Attorneys' General Act of 2004,
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