

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Joshua Shirian (SBN 341909)

josh@tomorrowlaw.com

Brian Zaghi (SBN 343599)

brian@tomorrowlaw.com

8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, CAROLINA CORTEZ MARTINEZ,

as an aggrieved employee, and on behalf of all other

aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

v.

MERCEDES DIAZ HOMES, INC. a
California corporation: MDH -SPECIALIZED
CARE HOMES 1, a California corporation:
MDH – SPECIALIZED CARE HOMES 2, a
California corporation: MDH –
SPECIALIZED CARE HOMES 3, a
California corporation: MDH-DAY
PROGRAM, INC., a California corporation:
EL SOL HOME CARE, INC., a California
corporation: MDH NETWORK, INC., a
California corporation: MDH-ILS
PROGRAM, INC., a California corporation:
MDH-SLS PROGRAM, INC., a California
corporation: RMD HOMES, INC., a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 23STCV13596

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 CAROLINA CORTEZ MARTINEZ, as an aggrieved employee, and on behalf of
2 all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004,
3 alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This is a representative action, pursuant to the Labor Code Private Attorneys
6 General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against
7 MERCEDES DIAZ HOMES, INC., and any of its respective subsidiaries or affiliated companies
8 within the State of California ("MERCEDES"); MDH -SPECIALIZED CARE HOMES 1., and
9 any of its respective subsidiaries or affiliated companies within the State of California ("MDH 1");
10 MDH -SPECIALIZED CARE HOMES 2., and any of its respective subsidiaries or affiliated
11 companies within the State of California ("MDH 2"); MDH -SPECIALIZED CARE HOMES 3.,
12 and any of its respective subsidiaries or affiliated companies within the State of California ("MDH
13 3"); MDH-DAY PROGRAM, INC., and any of its respective subsidiaries or affiliated companies
14 within the State of California ("MDH-DAY INC"); EL SOL HOME CARE, INC., and any of its
15 respective subsidiaries or affiliated companies within the State of California ("EL SOL INC");
16 MDH NETWORK, INC., and any of its respective subsidiaries or affiliated companies within the
17 State of California ("MDH NETWORK"); MDH-ILS PROGRAM, INC., and any of its respective
18 subsidiaries or affiliated companies within the State of California ("MDH -ILS INC"); MDH-SLS
19 PROGRAM, INC., and any of its respective subsidiaries or affiliated companies within the State
20 of California ("MDH-SLS INC"); RMD HOMES, INC., and any of its respective subsidiaries or
21 affiliated companies within the State of California ("RMD HOMES" and, with DOES 1 through
22 100, collectively referred to as, "Defendants"), as a proxy of the Labor and Workforce
23 Development Agency of the State of California ("LWDA"), on behalf of Plaintiff and all other
24 current and former non-exempt employees of Defendants working within the Civil Penalty Period,
25 as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor
26 Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3,
27 Labor Code section 245, *et seq.*, Labor Code section 2802, restraints on competition,
28 whistleblowing and freedom of speech on behalf of all employees of Defendants working within

1 the Civil Penalty Period (collectively, “Aggrieved Employees”).

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

4 3. Venue is proper in Los Angeles County, California pursuant to Code of Civil
5 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the
6 causes of action complained of herein arose; the county in which the employment relationship
7 began; the county in which performance of the employment contract, or part of it, between
8 Plaintiff and Defendants was due to be performed; the county in which the employment contract,
9 or part of it, between Plaintiff and Defendants was actually performed; and the county in which
10 Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct
11 effect on Plaintiff and Aggrieved Employees in Los Angeles County, and because Defendants
12 employ numerous Aggrieved Employees in Los Angeles County.

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

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

24 6. During the period beginning one (1) year preceding the provision of notice to the
25 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
26 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
27 226.3, 226.7, 227.3, 232, 232.5, 245, et seq., 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194,
28 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

5 8. On or around February 23, 2023, Plaintiff provided written notice pursuant to
6 Labor Code section 2699.3 online and by certified mail, with return receipt requested, of
7 Defendants' violation of various, including the herein-described, provisions of the Labor Code, to
8 the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
9 them.

10 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
11 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
12 calendar days of the February 23, 2023 postmarked date of the herein-described notice sent by
13 Plaintiff to the LWDA and Defendants.

14 **PAGA REPRESENTATIVE ALLEGATIONS**

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

1 pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to
2 show less hours than actually worked, and for paying straight pay instead of overtime pay, to the
3 detriment of Plaintiff and other Aggrieved Employees.

4 11. At all relevant times mentioned herein, Defendants had and have a practice or
5 policy of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for
6 all hours worked or otherwise under Defendants' control as a result of, without limitation, failing
7 to accurately track and/or pay for all minutes actually worked; by requiring employees: to remain
8 on-call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and
9 post-shift tasks after clocking out, to clock out for meal periods and continue working, to don and
10 doff uniforms off the clock, to attend company meetings off the clock, to make phone calls or
11 drive off the clock; detrimental rounding of employee time entries, editing and/or manipulation of
12 time entries to show less hours than actually worked; failing to pay reporting time pay; paid time
13 off and vacation time owed; and failing to pay split shift premiums, to the detriment of Plaintiff
14 and other Aggrieved Employees.

15 12. At all relevant times mentioned herein, Defendants had and have a policy or
16 practice of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute
17 uninterrupted, timely, and complete meal period for days on which the employee worked in excess
18 of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete
19 30-minute meal periods or compensation in lieu thereof including, without limitation, by
20 interrupting meal periods; not providing timely meal periods; failing to provide first and second
21 meal periods; providing short meal periods; requiring that employees carry cellular telephones or
22 walkie-talkies during meal periods; not permitting employees to leave the premises; otherwise
23 requiring on-duty/on-call meal periods; or auto-deducting meal periods that could not be auto-
24 deducted by law or during which employees worked, as required by California wage and hour
25 laws.

26 13. At all relevant times mentioned herein, Defendants had and have a policy or
27 practice of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely,
28 and complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions

1 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
2 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
3 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
4 providing them in a timely fashion; and not permitting employees to leave the premises; or
5 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

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

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

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

26 17. At all relevant times herein, Defendants had and have a policy or practice of failing
27 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
28

1 separation of employment as wages at their final rate of pay in violation of Labor Code section
2 227.3 and applicable Wage Orders.

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

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

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

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

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

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

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

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

1 **PARTIES**

2 **A. Plaintiff**

3 26. Plaintiff is a resident of the State of California. At all relevant times herein,
4 Plaintiff is informed and believes, and based thereon alleges, that Defendants employed Plaintiff
5 as a non-exempt employee, with duties that included, but were not limited to, caring, feeding, and
6 bathing patients. Plaintiff is informed and believes that Plaintiff worked for Defendants from
7 approximately September of 2018 through at least June of 2022.

8 **B. Defendants**

9 27. Plaintiff is informed and believes and based thereon allege that defendant
10 MERCEDES is, and at all times relevant hereto was, a corporation organized and existing under
11 and by virtue of the laws of the State of California and doing business in the County of Los
12 Angeles, State of California.

13 28. Plaintiff is informed and believes and based thereon allege that defendant MDH 1
14 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
15 the laws of the State of California and doing business in the County of Los Angeles, State of
16 California.

17 29. Plaintiff is informed and believes and based thereon allege that defendant MDH 2
18 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
19 the laws of the State of California and doing business in the County of Los Angeles, State of
20 California.

21 30. Plaintiff is informed and believes and based thereon allege that defendant MDH 3
22 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
23 the laws of the State of California and doing business in the County of Los Angeles, State of
24 California.

25 31. Plaintiff is informed and believes and based thereon allege that defendant MDH-
26 DAY INC is, and at all times relevant hereto was, a corporation organized and existing under and
27 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
28 State of California.

1 32. Plaintiff is informed and believes and based thereon allege that defendant EL SOL
2 INC is, and at all times relevant hereto was, a corporation organized and existing under and by
3 virtue of the laws of the State of California and doing business in the County of Los Angeles, State
4 of California.

5 33. Plaintiff is informed and believes and based thereon allege that defendant MDH
6 NETWORK is, and at all times relevant hereto was, a corporation organized and existing under
7 and by virtue of the laws of the State of California and doing business in the County of Los
8 Angeles, State of California.

9 34. Plaintiff is informed and believes and based thereon allege that defendant MDH-
10 ILS INC is, and at all times relevant hereto was, a corporation organized and existing under and by
11 virtue of the laws of the State of California and doing business in the County of Los Angeles, State
12 of California.

13 35. Plaintiff is informed and believes and based thereon allege that defendant MDH-
14 SLS INC is, and at all times relevant hereto was, a corporation organized and existing under and
15 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
16 State of California.

17 36. Plaintiff is informed and believes and based thereon allege that defendant RMD
18 HOMES is, and at all times relevant hereto was, a corporation organized and existing under and by
19 virtue of the laws of the State of California and doing business in the County of Los Angeles, State
20 of California.

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

1 acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a
2 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
3 defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter,
4 reference is made to "Defendants," it shall include and any of their parent, subsidiary, or affiliated
5 companies within the State of California, as well as DOES 1 through 100 identified herein.

6 **JOINT LIABILITY ALLEGATIONS**

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

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

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

23 **FIRST CAUSE OF ACTION**

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

25 41. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in
26 the preceding paragraphs as though fully set forth hereat.

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

28 42. At all relevant times herein, Labor Code section 204, requires and required that:

1 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid
2 for between the 16th and 26th day of the month during which the labor was performed, and labor
3 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
4 between the 1st and 10th day of the following month.”

5 43. At all relevant times herein, Labor Code section 210, subdivision (a) states and
6 stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in
7 this article, every person who fails to pay the wages of each employee as provided in Sections
8 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1)
9 For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and
10 “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars
11 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

20 Civil Penalties Under Labor Code § 226.3

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

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

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

48. 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).

49. 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

50. 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;

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

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

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

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

19 Violation of Labor Code § 1174.5

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

27 54. At all times mentioned herein, Labor Code section 1174, subdivision (c) has
28 required every person employing labor in California to “[k]eep a record showing the names and

1 addresses of all employees employed and the ages of all minors.”

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

11 56. 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
14 allow 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).

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

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

26 Violation of Labor Code § 1197.1

27 59. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
28 person acting either individually or as an officer, agent, or employee of another person, who pays

1 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
2 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
3 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
4 Section 203 as follows:

5 (1) For any initial violation that is intentionally committed, one hundred dollars
6 (\$100) for each underpaid employee for each pay period for which the
7 employee is underpaid. This amount shall be in addition to an amount
8 sufficient to recover underpaid wages, liquidated damages pursuant to
9 Section 1194.2, and any applicable penalties imposed pursuant to Section
10 203.

11 (2) For each subsequent violation for the same specific offense, two hundred
12 fifty dollars (\$250) for each underpaid employee for each pay period for
13 which the employee is underpaid regardless of whether the initial violation is
14 intentionally committed. This amount shall be in addition to an amount
15 sufficient to recover underpaid wages, liquidated damages pursuant to
16 Section 1194.2, and any applicable penalties imposed pursuant to Section
17 203.

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

21 60. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 caused Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of
23 Defendants, without limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’
24 minimum wages for all hours worked or otherwise under Defendants’ control due to, without
25 limitation, routinely failing to accurately track and/or pay for all hours actually worked;
26 detrimental rounding or manipulation of time entries; paying straight pay instead of overtime or
27 otherwise failing to pay overtime hours at the proper overtime rate of pay; engaging, suffering, or
28 permitting employees to work off the clock, entitling Plaintiff and other aggrieved Employees to

1 actual and liquidated damages.

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

8 Civil Penalties Under Labor Code § 2699

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

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

21 64. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
22 each of them, violated the Labor Code sections described herein, including, without limitation, for
23 the failure to: pay 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,
25 the name of the employer, including "doing business as" names used, the name, address, and
26 telephone number of the workers' compensation insurance carrier, information regarding paid sick
27 leave, and other pertinent information required to be disclosed by Defendants under Labor Code
28 section 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of

1 paid sick leave required to be provided pursuant to California and local laws.

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

5 **REQUEST FOR JURY TRIAL**

6 66. Plaintiff hereby requests a trial by jury.

7 **PRAYER**

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

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

17 Dated: June 12, 2023

BIBIYAN LAW GROUP, P.C.

18
19 */s/ Brian Zaghi*

20 BY: _____

DAVID D. BIBIYAN
JOSHUA SHIRIAN
BRIAN ZAGHI

21 Attorneys for Plaintiff CAROLINA CORTEZ
22 MARTINEZ, as an aggrieved employee, and
23 on behalf of all other aggrieved employees
24 under the Labor Code Private Attorneys'
25 General Act of 2004,
26
27
28