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as aggrieved employees, and on behalf of all other

aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ISMAEL LOPEZ and JUAN AGUILAR, as
aggrieved employees, and on behalf of all
other aggrieved employees under the Labor
Code Private Attorneys' General Act of 2004,

Plaintiff,

v.

BACHEM AMERICAS, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: **23STCV16155**

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]

Plaintiffs ISMAEL LOPEZ and JUAN AGUILAR, as aggrieved employees, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004, 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 BACHEM AMERICAS, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“BACHEM”), (collectively, and 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 Plaintiffs 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 245, *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 Los Angeles County, California pursuant to Code of Civil Procedure sections 392, et seq. because, among other things, Los Angeles 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 and Defendants was due to be performed; the county in which the employment contract, or part of it, between Plaintiffs 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 Los Angeles County, and because Defendants employ numerous Aggrieved Employees in Los Angeles County.

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

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

12 6. During the period beginning one (1) year preceding the provision of notice to the
13 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
14 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 201, 202, 203, 204, 210, 226, 226.3,
15 226.7, 227.3, 232, 232.5, 432, 510, 512, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5,
16 2699, 2802, and 2810.5, among others.

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

21 8. On or around February 23, 2023, Plaintiff, ISMAEL LOPEZ provided written notice
22 pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested,
23 of Defendants’ violation of various, including the herein-described, provisions of the Labor Code,
24 to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
25 them.

26 9. On or around April 7, 2023, Plaintiffs provided an amended written notice pursuant
27 to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of
28 Defendants’ violation of various, including the herein-described, provisions of the Labor Code, to

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

3 10. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
4 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
5 calendar days of the April 7, 2023 postmarked date of the herein-described notice sent by Plaintiffs
6 to the LWDA and Defendants.

7 **PAGA REPRESENTATIVE ALLEGATIONS**

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

27 12. At all relevant times mentioned herein, Defendants had and have a practice or policy
28 of failing to compensate Plaintiffs and other Aggrieved Employees with minimum wages for all

1 hours worked or otherwise under Defendants' control as a result of, without limitation, failing to
2 accurately track and/or pay for all minutes actually worked; by requiring employees: to come early
3 to work and leave late work without being able to clock in for all that time, to suffer under
4 Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in
5 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
6 out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend
7 company meetings off the clock, to make phone calls, detrimental rounding of employee time
8 entries; editing and/or manipulation of time entries to show less hours than actually worked; and
9 failing to pay split shift premiums. In addition, Employee and other aggrieved employees were
10 required to report to work, and did report, but were not put to work and/or were furnished less than
11 half their usual or scheduled day's work without being paid for half the usual or scheduled work at
12 their regular rate of pay, to the detriment of Plaintiffs and other Aggrieved Employees.

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

23 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
24 of failing to provide Plaintiffs and other Aggrieved Employees paid, uninterrupted, timely, and
25 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
26 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
27 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
28 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not

1 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
2 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

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

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

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

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

27 19. At all relevant times mentioned herein, Defendants have had a policy or practice of
28 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without

1 limitation, Plaintiffs and other Aggrieved Employees, with their costs incurred for purchase and
2 maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge of
3 their duties, or of their obedience to the directions of Defendants, as required by Labor Code 2802.

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

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

18 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
19 of preventing Plaintiffs and/or Aggrieved Employees from using or disclosing the skills, knowledge
20 and experience they obtained at Defendants for purposes of competing with Defendants, including,
21 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
22 a prospective employer, and from disclosing who else works at Defendants and under what
23 circumstances that they might be receptive to an offer from a rival employer. Plaintiffs are informed
24 and believe that this policy and/or practice violates Business and Professions Code sections 17200,
25 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
26 Code sections 232, 232.5, and 1197.5, subdivision (k).

27 23. Defendants had and have a policy or practice of preventing Plaintiffs and/or other
28 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants

1 to their managers or outside to private attorneys or government officials, among others, in violation
2 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
3 1102.5. In addition, Plaintiffs are informed and believe that Defendants' herein-described policies
4 and/or practices prevent Plaintiffs and/or other Aggrieved Employees from disclosing information
5 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
6 of Labor Code section 232 and 232.5.

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

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

18 **PARTIES**

19 **A. Plaintiffs**

20 26. Plaintiff ISMAEL LOPEZ is a resident of the State of California. At all relevant times
21 herein, Plaintiffs are informed and believe and based thereon allege, that Defendants employed
22 Plaintiff as a non-exempt employee, with duties that included, but were not limited to, washing
23 glassware, cleaning chemistry equipment, vacuuming, sweeping, mopping, and taking out the trash.
24 Plaintiffs are informed and believe and based thereon allege that Plaintiff ISMAEL LOPEZ worked
25 for Defendants from approximately March of 2019 through approximately November of 2022.

26 27. Plaintiff JUAN AGUILAR is a resident of the State of California. At all relevant times
27 herein, Plaintiffs are informed and believe and based thereon allege, that Defendants employed
28 Plaintiff as a non-exempt employee, with janitorial duties that included, but were not limited to,

1 mopping, and cleaning rooms. Plaintiffs are informed and believe and based thereon allege, that
2 Plaintiff JUAN AGUILAR worked for Defendants from approximately April 13, 2020 through
3 approximately August 29, 2022.

4 **B. Defendants**

5 28. Plaintiffs are informed and believe and based thereon allege that Defendant
6 BACHEM is, and at all times relevant hereto was, a corporation organized and existing under and
7 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
8 State of California.

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

22 **JOINT LIABILITY ALLEGATIONS**

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

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

32. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based thereon allege that Defendants, and each of them, are joint employers.

FIRST CAUSE OF ACTION

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

33. Plaintiffs re-allege and incorporate by reference all of the allegations set forth in the preceding paragraphs as though fully set forth hereat.

Civil Penalties Under Labor Code § 210

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

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

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

9 Civil Penalties Under Labor Code § 226.3

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

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

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

25 40. Plaintiffs are informed and believe, and based thereon allege, that Defendants had
26 and have a policy or practice of failing to furnish non-exempt employees, including, without
27 limitation, Plaintiffs, with itemized wage statements that accurately reflect gross wages earned; total
28 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the

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

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

10 Violation of Labor Code § 558

11 42. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person
12 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
13 hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil
14 penalty as follows:

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

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

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

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

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

Violation of Labor Code § 1174.5

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

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

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

48. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate 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 49. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
4 willfully failed to keep adequate or accurate time records including wage statements and similar
5 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
6 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
7 under Labor Code section 1174.

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

12 Violation of Labor Code § 1197.1

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

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

24 (2) For each subsequent violation for the same specific offense, two hundred fifty
25 dollars (\$250) for each underpaid employee for each pay period for which the
26 employee is underpaid regardless of whether the initial violation is
27 intentionally committed. This amount shall be in addition to an amount
28 sufficient to recover underpaid wages, liquidated damages pursuant to Section

1 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

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

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

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

27 55. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
28 Code except those for which a civil penalty is specifically provided, the established civil penalty for

1 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
2 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
3 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
4 employee per pay period for each subsequent violation.

5 56. Plaintiffs are informed and believe, and based thereon allege that Defendants, and
6 each of them, violated the Labor Code sections described herein, including, without limitation, for
7 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
8 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
9 name of the employer, including “doing business as” names used, the name, address, and telephone
10 number of the workers’ compensation insurance carrier, information regarding paid sick leave, and
11 other pertinent information required to be disclosed by Defendants under Labor Code section
12 2810.5, failing to provide Plaintiffs and other Aggrieved Employees with the amount of paid sick
13 leave required to be provided pursuant to California and local laws.

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

17 **REQUEST FOR JURY TRIAL**

18 58. Plaintiffs hereby request a trial by jury.

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1 **PRAYER**

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

- 4 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
5 1174.5, 1197.1, and 2699;
- 6 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
7 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 8 C. Pre-judgment and post-judgment interest;
- 9 D. For costs of suit incurred herein; and
- 10 E. Such other and further relief as the Court deems just and proper.

11 Dated: July 11, 2023

BIBIYAN LAW GROUP, P.C.

12
13 BY: /s/ Sarah H. Cohen

14 DAVID D. BIBIYAN

15 JEFFREY D. KLEIN

SARAH H. COHEN

16 Attorneys for Plaintiffs ISMAEL LOPEZ and
17 JUAN AGUILAR, as aggrieved employees,
18 and on behalf of all other aggrieved employees
19 under the Labor Code Private Attorneys'
20 General Act of 2004,
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