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Attorneys for Plaintiff, ASUNCION GONZALEZ RUVALCABA and

on behalf of himself and all other aggrieved employees

Assigned for all purposes:
Judge Peter Wilson
Dept. CX101

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ASUNCION GONZALEZ RUVALCABA, as
an aggrieved employee and on behalf of all
other aggrieved employees under the Labor
Code Private Attorney's General Act of 2004,

Plaintiff,

v.

ROD FRASER ENTERPRISES, INC., a
California Corporation; RODERICK A
FRASER II, an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 30-2023-01320538-CU-OE-CXC

DEMAND FOR JURY TRIAL

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 Exceeds \$25,000.00]

COMES NOW Plaintiff ASUNCION GONZALEZ RUVALCABA ("Plaintiff"), on behalf of Plaintiff and all others similarly situated, 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 ROD FRASER ENTERPRISES, INC, a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("ROD FRASER ENTERPRISES,"); RODERICK A FRASER II an individual ("FRASER II"); and DOES 1 through 100, as further defined below, "Defendants"), as a proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved Employees").

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

3. Venue is proper in Orange County, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, Orange 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 Plaintiff, or some of them, and Defendants was due to be performed; the county in which the employment contract, or part of it, between Plaintiff, or some of them, 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 Plaintiff and similarly aggrieved employees in Orange County, and because Defendants employ numerous similarly aggrieved employees in Orange County.

1 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
2 Defendants during the applicable statutory period and suffered one or more of the Labor Code
3 violations set forth herein. Accordingly, Plaintiff seeks 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 Plaintiff and all other aggrieved current and former
7 employees of Defendants during the Civil Penalty Period.

8 5. Specifically, Plaintiff seeks 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, 200, 201, 202, 203, 204, 210, 226,
15 226.3, 226.7, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1,
16 1197.5, 1198.5, 2699, 2802, 2810.3 and 2810.5, among others.

17 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
18 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
19 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 8, 2023, Plaintiff provided written notice pursuant to Labor
22 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
23 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
24 as well as by certified mail, with return receipt requested to Defendants, and each of them.

25 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
26 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
27 calendar days of the February 28, 2023 postmarked date of the herein-described notice sent by
28 Plaintiff to the LWDA and Defendants.

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1 12. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted,
3 timely, and complete meal period for days on which the employee worked in excess of five (5) and
4 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
5 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
6 not providing timely meal periods; failing to provide first and second meal periods.

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

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

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

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

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

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

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

26 20. At all relevant times mentioned herein, Defendants have had a policy or practice of
27 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
28 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of

1 any calendar month shall be paid for between the 16th and 26th day of the month during which the
2 labor was performed, and labor performed between the 16th and the last day, inclusive of any
3 calendar month, shall be paid for between the 1st and 10th day of the following month.”

4 21. At all relevant times mentioned herein, Defendants had and have a policy or practice
5 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
6 and experience they obtained at Defendants for purposes of competing with Defendants, including,
7 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
8 a prospective employer, and from disclosing who else works at Defendants and under what
9 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
10 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
11 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
12 Code sections 232, 232.5, and 1197.5, subdivision (k).

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

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

28 24. Plaintiff, in Plaintiff’s representative capacity, seeks civil penalties under Labor

1 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate
2 the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
3 Employees pursuant to PAGA.

4 **PARTIES**

5 **A. Plaintiff**

6 25. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
7 is informed and believes, and based thereon allege that Defendants employed Plaintiff as a non-
8 exempt employee, with duties that included, but were not limited to, preparing drinks and taking
9 food orders. Plaintiff is informed and believes, and based thereon allege that Plaintiff worked for
10 Defendants from approximately June of 1982 through approximately October of 2022.

11 **B. Defendants**

12 26. Plaintiff is informed and believes and based thereon allege that Defendant ROD
13 FRASER ENTERPRISES is, and at all times relevant hereto was, corporation organized and
14 existing under and by virtue of the laws of the State of California and doing business in the County
15 of Orange, State of California.

16 27. Plaintiff is informed and believes and based thereon allege that Defendant FRASER
17 II is, and at all times relevant hereto was, an individual residing in the State of California, as well as
18 the Chief Executive Officer of Defendant ROD FRASER ENTERPRISES.

19 28. The true names and capacities, whether individual, corporate, associate, or otherwise,
20 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
21 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
22 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
23 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
24 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
25 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
26 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
27 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
28 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the

1 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
2 include ROD FRASER ENTERPRISES and any of its parent, subsidiary, or affiliated companies
3 within the State of California, as well as FRASER II and DOES 1 through 100 identified herein.

4 **JOINT LIABILITY ALLEGATIONS**

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

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

19 31. Plaintiff is informed and believes, and based thereon alleges, that despite the
20 formation of the purported corporate existence of ROD FRASER ENTERPRISES, FRASER II, and
21 DOES 1 through 50, inclusive (the “Alter Ego Defendants”), they, and each of them, are one and
22 the same with DOES 51 through 100 (“Individual Defendants”), and each of them, due to, but not
23 limited to, the following reasons:

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

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

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

11 d. Plaintiff is informed and believes, and thereon alleges, that the business affairs
12 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned
13 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same
14 are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein
15 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of
16 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
17 herein were, the alter egos of the Individual Defendants;
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19 e. The recognition of the separate existence of the Individual Defendants from
20 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to
21 insulate themselves from liability to Plaintiffs for violations to the Civil Code, Government Code,
22 and other statutory violations. The corporate existence of these defendants should thus be
23 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
24 and injustice to Plaintiff herein;
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26 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
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1 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be
2 disregarded.

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

5 **FIRST CAUSE OF ACTION**

6 **(Civil Penalties under the Private Attorneys General Act (2004) – Against All Defendants)**

7 33. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
8 and incorporates each by reference as though fully set forth hereat.

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

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

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

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

3 Civil Penalties Under Labor Code § 226.3

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

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

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

18 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
19 and have a policy or practice of failing to furnish non-exempt employees, including, without
20 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
21 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
22 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
23 name of the employer and; and other such information as required by Labor Code section 226,
24 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 Violation of Labor Code § 558

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

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

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

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

14 43. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
15 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
16 causing Plaintiffs and other Aggrieved Employees not to: be paid with the rates of pay and overtime
17 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
18 regular payday designated by Employer, the name of the employer, including any “doing business
19 as” names used, the name, address and telephone number of the workers’ compensation insurance
20 carrier, information regarding paid sick leave, and other pertinent information.

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

26 Violation of Labor Code § 1174.5

27 45. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
28 every person employing labor in California to “[a]llow any member of the commission or the

1 employees of the Division of Labor Standards Enforcement free access to the place of business or
2 employment of the person to secure any information or make any investigation that they are
3 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
4 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
5 or papers of the person.”

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

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

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

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

28 50. As a direct and proximate result of the herein-described Labor Code violations,

1 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
2 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five
3 hundred dollars (\$500) per violation per Aggrieved Employee.

4 Violation of Labor Code § 1197.1

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

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

25 52. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
26 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
27 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees' to pay
28 minimum wages for all hours worked; detrimental rounding or manipulation of time entries; paying

1 straight pay instead of overtime or otherwise failing to pay overtime hours at the proper overtime
2 rate of pay; engaging, suffering, or permitting employees to work off the clock, entitling Plaintiff
3 and other aggrieved Employees to actual and liquidated damages

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

10 Civil Penalties Under Labor Code § 2699

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

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

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

1 leave, and other pertinent information required to be disclosed by Employer under Labor Code
2 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of paid
3 sick leave, required to be provided pursuant to California and local laws.

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

7 **REQUESTS FOR JURY TRIAL**

8 58. Plaintiff hereby requests a trial by jury on all causes of action contained herein.

9 **PRAYER**

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

- 12 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
13 1174.5, 1197.1, 2699, and 2802, and all other applicable sections listed *infra*;
14 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
15 210, 226.3, 558, 1174.5, 1197.1, 2699, 2802, and all other applicable sections listed
16 *infra*;
17 C. Pre-judgment and post-judgment interest;
18 D. For costs of suit incurred herein; and
19 E. Such other and further relief as the Court deems just and proper.

20
21 Dated: April 20, 2023

BIBIYAN LAW GROUP, P.C.

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23
24 BY: /s/ Anita Lodi

DAVID D. BIBIYAN

JEFFREY D. KLEIN

ANITA LODI

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