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VENTURA SUPERIOR COURT

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

MARICELA BARRON DE ESPINOZA, as an
aggrieved employee, and on behalf of all other
aggrieved employees under the Labor Code
Private Attorneys' General Act of 2004,

Plaintiff,

v.

SILICON RESOURCING SOLUTIONS, LLC
formerly known as SOLARSILICON
RECYCLING SERVICES, LLC, a California
limited liability company; ROBERT M.
BUSHMAN, an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 2023CUOE010215

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 Maricela Barron de Espinoza, as an aggrieved employee, and on behalf of all other
2 aggrieved employees under the Labor Code Private Attorneys' General Act of 2004, alleges as
3 follows:

4 **JURISDICTION AND VENUE**

5 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
6 Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against SILICON
7 RESOURCING SOLUTIONS, LLC formerly known as SOLARSILICON RECYCLING
8 SERVICES, LLC and any of its respective subsidiaries or affiliated companies within the State of
9 California ("SILICON"); and ROBERT M. BUSHMAN ("BUSHMAN") (collectively, and with
10 DOES 1 through 100, as further defined below, "Defendants"), as a proxy of the Labor and
11 Workforce Development Agency of the State of California ("LWDA"), on behalf of Plaintiff and
12 all other current and former non-exempt employees of Defendants working within the Civil Penalty
13 Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with
14 Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section
15 227.3, Labor Code section 245, *et seq.*, restraints on competition, whistleblowing and freedom of
16 speech on behalf of all employees of Defendants working within the Civil Penalty Period
17 (collectively, "Aggrieved Employees").

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

20 3. Venue is proper in Ventura County, California pursuant to Code of Civil Procedure
21 sections 392, *et seq.* because, among other things, Ventura County is where the causes of action
22 complained of herein arose; the county in which the employment relationship began; the county in
23 which performance of the employment contract, or part of it, between Plaintiff and Defendants was
24 due to be performed; the county in which the employment contract, or part of it, between Plaintiff
25 and Defendants was actually performed; and the county in which Defendants, or some of them,
26 reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Aggrieved
27 Employees in Ventura County, and because Defendants employ numerous Aggrieved Employees in
28 Ventura 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, 227.3, 232, 232.5, 245, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
16 1197.1, 1197.5, 1198.5, 2699, 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 April 7, 2023, Plaintiff provided written notice pursuant to Labor Code
22 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation
23 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as
24 by certified mail, with return receipt requested to Defendants, and each of them.

25 9. Plaintiff also provided Defendants, and each of them, with notice under Labor Code
26 section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other’s wage
27 and hour violations under Labor Code section 2810.3 on April 7, 2023 by certified mail with return
28 receipt requested.

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1 uniforms off the clock, to attend company meetings off the clock, to make phone calls the clock;
2 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
3 less hours than actually worked; failing to pay reporting time pay; paid time off and vacation time
4 owed; and failing to pay split shift premiums, to the detriment of Plaintiff and other Aggrieved
5 Employees.

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

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

24 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
25 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
26 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross
27 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
28 hourly rates in effect during the pay period and the corresponding number of hours worked at each

1 hourly rate by the employee; and other such information as required by Labor Code section 226,
2 subdivision (a).

3 16. 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 Plaintiff and other Aggrieved Employees with 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, making it difficult for Plaintiff and other Aggrieved Employees to
8 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other
9 Aggrieved Employees.

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

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

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

27 20. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
28 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to

1 California law (including, without limitation Labor Code section 245, *et seq.*), and also did not
2 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
3 all other Aggrieved Employees.

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

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

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

27 24. Defendants had and have a policy or practice of preventing Plaintiff and/or other
28 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state

1 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
2 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
3 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
4 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
5 economic liberty.

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

10 **PARTIES**

11 **A. Plaintiff**

12 26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
13 is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-
14 exempt employee, with duties that included, but were not limited to, inspecting products, managing
15 machines, and general labor. Plaintiff is informed and believes that Plaintiff worked for Defendants
16 from approximately March of 2017 through at least April of 2022.

17 **B. Defendants**

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

22 28. Plaintiff is informed and believes and based thereon alleges that defendant
23 BUSHMAN is, and at all times relevant hereto was, an individual residing in California, as well as
24 the Chief Executive Officer of SILICON.

25 29. The true names and capacities, whether individual, corporate, associate, or otherwise,
26 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
27 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
28 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated

herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall include SILICON, BUSHMAN, and any of their parent, subsidiary, or affiliated companies within the State of California, as well as DOES 1 through 100 identified herein.

JOINT LIABILITY ALLEGATIONS

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

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. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of the purported corporate existence of SILICON, BUSHMAN, and DOES 1 through 50, inclusive (the "Alter Ego Defendants"), they, and each of them, are one and the same with DOES 51 through 100 ("Individual Defendants"), and each of them, due to, but not limited to, the following

1 reasons:

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

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

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

14 d. Plaintiff is informed and believes, and thereon alleges, that the business affairs
15 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned
16 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same
17 are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein
18 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of
19 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
20 herein were, the alter egos of the Individual Defendants;

21 e. The recognition of the separate existence of the Individual Defendants from
22 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to
23 insulate themselves from liability to Plaintiff for violations to the Civil Code, Government Code,
24 and other statutory violations. The corporate existence of these defendants should thus be
25 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
26 and injustice to Plaintiff herein;

27 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
28

Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be disregarded.

33. As a result of the aforementioned facts, Plaintiff is informed and believes, and based thereon alleges 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)

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

Civil Penalties Under Labor Code § 210

35. 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.”

36. 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.”

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

1 Code section 204.

2 Civil Penalties Under Labor Code § 226.3

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

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

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

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

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

28 ///

Violation of Labor Code § 558

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

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

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

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

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

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

Violation of Labor Code § 1174.5

46. 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

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

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

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

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

22 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
23 willfully failed to keep adequate or accurate time records including wage statements and similar
24 payroll documents under Labor Code section 226, 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.

27 51. As a direct and proximate result of the herein-described Labor Code violations,
28 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to

1 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five
2 hundred dollars (\$500) per violation per Aggrieved Employee.

3 Violation of Labor Code § 1197.1

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

10 (1) For any initial violation that is intentionally committed, one hundred dollars
11 (\$100) for each underpaid employee for each pay period for which the
12 employee is underpaid. This amount shall be in addition to an amount
13 sufficient to recover underpaid wages, liquidated damages pursuant to Section
14 1194.2, and any applicable penalties imposed pursuant to Section 203.

15 (2) For each subsequent violation for the same specific offense, two hundred fifty
16 dollars (\$250) for each underpaid employee for each pay period for which the
17 employee is underpaid regardless of whether the initial violation is
18 intentionally committed. This amount shall be in addition to an amount
19 sufficient to recover underpaid wages, liquidated damages pursuant to Section
20 1194.2, and any applicable penalties imposed pursuant to Section 203.

21 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
22 Section 203, recovered pursuant to this section shall be paid to the affected
23 employee."

24 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
25 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
26 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees' minimum wages for all
27 hours worked or otherwise under Defendants' control due to, without limitation, routinely failing to
28 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of

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

4 54. 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 55. 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 56. 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 57. 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 "doing business as" names used, the name, address, and telephone
28 number of the workers' compensation insurance carrier, information regarding paid sick leave, and

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

4 58. Moreover, Plaintiff and other Aggrieved Employees within the State of California
5 whom he seeks 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 **REQUEST FOR JURY TRIAL**

8 59. Plaintiff hereby requests a trial by jury.

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

19 Dated: June 15, 2023

BIBIYAN LAW GROUP, P.C.

21 BY: */s/ Felipe Gomez*

22 DAVID D. BIBIYAN
23 JEFFREY D. KLEIN
24 FELIPE GOMEZ

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