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13 Attorneys for Plaintiff, ZOILA HERNANDEZ,
14 as an aggrieved employee, and on behalf of all other
15 aggrieved employees,

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **FOR THE COUNTY OF LOS ANGELES**

18 ZOILA HERNANDEZ, as an aggrieved
19 employee, and on behalf of all other aggrieved
20 employees under the Labor Code Private
21 Attorneys' General Act of 2004,

22 Plaintiff,

23 v.

24 TACOS EL GAVILAN, INC., a California
25 corporation; ROBERTO VELASQUEZ, an
26 individual; and DOES 1 through 100,
27 inclusive,

28 Defendants.

Electronically FILED by
Superior Court of California,
County of Los Angeles
11/03/2023 2:19 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By M. Ceballos, Deputy Clerk

CASE NO.: 23NWCV03565

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]

26 COMES NOW plaintiff ZOILA HERNANDEZ ("Ms. Hernandez" or "Plaintiff"), as an
27 aggrieved employee, and on behalf of all other aggrieved employees under the Labor Code Private
28 Attorneys' General Act of 2004, and alleges as follows:

1 **JURISDICTION AND VENUE**

2 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
3 Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against TACOS EL
4 GAVILAN, INC. (“GAVILAN”), and any of its respective subsidiaries or affiliated companies
5 within the State of California, and ROBERTO VELASQUEZ (“VELASQUEZ”, and GAVILAN,
6 collectively with its respective subsidiaries or affiliated companies within the State of California,
7 and DOES 1 through 100, as further defined below, are collectively hereinafter referred to as
8 “Defendants”), as a proxy of the Labor and Workforce Development Agency of the State of
9 California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees
10 of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains
11 to the alleged claims for failure to comply with Labor Code section 6400, *et seq.*, Labor Code section
12 2810.5, Labor Code section 203, Labor Code sections 206 and 206.5, Labor Code section 226, Labor
13 Code section 227.3, Labor Code sections 432, Labor Code section 245, *et seq.*, Labor Code section
14 1198.5, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech
15 on behalf of all employees of Defendants working within the Civil Penalty Period (collectively,
16 “Aggrieved Employees”).

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

19 3. Venue is proper in Los Angeles County, California pursuant to Code of Civil
20 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the
21 causes of action complained of herein arose; the county in which the employment relationship
22 began; the county in which performance of the employment contract, or part of it, between Plaintiff
23 and Defendants was due to be performed; the county in which the employment contract, or part of
24 it, between Plaintiff and Defendants was actually performed; and the county in which Defendants,
25 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff
26 and Aggrieved Employees in Los Angeles County, and because Defendants employ numerous
27 Aggrieved Employees in Los Angeles County.

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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, 201.3, 202, 203, 204, 206,
15 206.5, 210, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 432, 432.3, 432.5, 432.6,
16 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5,
17 2699, 2802, and 2810.5, among others.

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

22 8. On or around August 29, 2023, Plaintiff provided written notice pursuant to Labor
23 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
24 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
25 as well as by certified mail, with return receipt requested to Defendants, and each of them.

26 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
27 provide notice of its intention to investigate Defendant’s alleged violations within sixty-five (65)
28 calendar days of the August 29, 2023 postmarked date of the herein-described notice sent by

1 Plaintiff to the LWDA and Defendants.

2 **PAGA REPRESENTATIVE ALLEGATIONS**

3 10. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of
5 California in violation of California state wage and hour laws as a result of, without limitation,
6 Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per
7 week, and/or seven (7) straight workdays in a workweek without paying them proper overtime
8 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes and
9 hours actually worked at the proper overtime rate of pay; detrimental rounding of time entries,
10 editing and/or manipulation of time entries to show less hours than actually worked; deduction of
11 time worked; automatically deducting time from employees' hours worked for meal periods not
12 actually taken or less than 30-minutes in length; and for paying straight pay instead of overtime pay,
13 to the detriment of Plaintiff and other Aggrieved Employees.

14 11. At all relevant times mentioned herein, Defendants had and have a practice or policy
15 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
16 worked or otherwise under Defendants' control as a result of, without limitation, failing to
17 accurately track and/or pay for all minutes and hours actually worked at their regular rate of pay that
18 is above the minimum wage; detrimental rounding of time entries, editing and/or manipulation of time
19 entries to show less hours than actually worked; deduction of time worked; automatically deducting
20 time from employees' hours worked for meal periods not actually taken or less than 30-minutes
21 in length, to the detriment of Plaintiff and other Aggrieved Employees.

22 12. At all relevant times mentioned herein, Defendants had and have a policy or practice
23 of failing to provide Plaintiff and other Aggrieved Employees a full, timely thirty (30) minute
24 uninterrupted meal period for days on which they worked more than five (5) hours in a work day
25 and a second thirty (30) minute uninterrupted meal period for days on which they worked in excess
26 of ten (10) hours in a work day, including, without limitation: by interrupting meal periods; not
27 providing timely meal periods; failing to provide first and second meal periods; providing short
28 meal periods; otherwise requiring on-duty/on-call meal periods, which in turn prevented employees

1 from leaving the premises for meal periods; auto-deducting meal periods that could not be auto-
2 deducted by law or during which employees worked, and failing to provide compensation for such
3 unprovided meal periods as required by California wage and hour laws.

4 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
5 of failing to authorize and permit Plaintiff and other Aggrieved Employees to take rest periods of at
6 least ten (10) minutes per four (4) hours worked or major fraction thereof in which they are
7 completely relieved of all of their duties, including, without limitation: by failing to provide rest
8 periods all together; interrupting them; not providing them in a timely fashion; not permitting
9 employees to leave the premises; and/or otherwise requiring on-duty/on-call rest periods, and failing
10 to provide compensation for such unprovided rest periods as required by California wage and hour
11 laws.

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

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

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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, paid time off and vacation time owed as required by Labor
5 Code sections 201, 202, 203, and 227.3.

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

10 18. At all relevant times mentioned herein, Defendants have had a policy or practice of
11 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
12 limitation, Plaintiff and other Aggrieved Employees, for the costs incurred in laundering mandatory
13 work uniforms separately from their regular clothes, in direct consequence of the discharge of their
14 duties, or of their obedience to the directions of Defendants, as required by Labor Code 2802.

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

23 20. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
24 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
25 California and local laws (including, without limitation Labor Code section 245, *et seq.*, 248.2
26 and/or 2021 COVID-19 Supplemental Paid Sick Leave Laws, *et seq.*), and also did not permit its
27 use upon request as contemplated under California laws, to the detriment of Plaintiff and all other
28 Aggrieved Employees.

1 21. At all relevant times mentioned herein, Defendants have had a policy or practice of
2 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
3 Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of
4 any calendar month shall be paid for between the 16th and 26th day of the month during which the
5 labor was performed, and labor performed between the 16th and the last day, inclusive of any
6 calendar month, shall be paid for between the 1st and 10th day of the following month” and for
7 payroll periods such as those that are weekly, biweekly, or semimonthly, wages must be paid within
8 seven (7) calendar days following the close of the payroll period in which wages were earned.

9 22. At all relevant times mentioned herein, Defendants have had a policy or practice of
10 requiring the execution of a claim or right on account of wages due, or to become due, or made as
11 an advance on wages to be earned, without payment of those wages having been made, in violation
12 of Labor Code section 206.5. Plaintiff is informed and believes and based thereon alleges that
13 Defendants also had and have a policy or practice of failing to pay all wages “without condition and
14 within the time set” conceded to be due, as required by Labor Code section 206 in a case of a dispute
15 over wages.

16 23. At all relevant times mentioned herein, Defendants have had a policy or practice of
17 failing to provide all temporary workers with owed wages weekly by not later than the regular
18 payday of the following week in violation of Labor Code section 201.3.

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

28 / / /

1 25. Defendants had and have a policy or practice of preventing Plaintiff and/or other
2 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
3 to their managers or outside to private attorneys or government officials, among others, in violation
4 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
5 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
6 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
7 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
8 of Labor Code section 232 and 232.5.

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

16 27. At all relevant times mentioned herein, Defendants had and have a policy or practice
17 of requiring, as a condition of employment, its applicants or employees to waive any right, forum,
18 or procedure for a violation of any provision of the California Fair Employment and Housing Act
19 or the Labor Code, including the right to file and pursue a civil action or a complaint with, or
20 otherwise notify, any state agency, other public prosecutor, law enforcement agency or any court or
21 other governmental entity of any violation, in violation of Labor Code sections 432.5 and 432.6.

22 28. At all relevant times mentioned herein, Defendants had and have a policy or practice
23 of relying on salary history information of an applicant for employment as a factor in determining
24 whether to offer employment to an applicant or what salary to offer the applicant in violation of
25 Labor Code section 432.3 by including, on Defendants' application for employment, an inquiry
26 regarding current and/or former salary history information, including, without limitation,
27 compensation and benefits of the applicant for employment.

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29. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor Code sections 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved Employees pursuant to PAGA.

PARTIES

A. Plaintiff

30. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, cashier duties and cleaning duties. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff worked for Defendants from approximately June of 2022 through approximately September of 2022.

B. Defendants

31. Plaintiff is informed and believes and based thereon alleges that defendant GAVILAN is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of California and doing business in the County of Los Angeles, State of California.

32. Plaintiff is informed and believes and based thereon alleges that GAVILAN is, and at all times relevant hereto was, a “person” as defined in Labor Code section 17 and Cal. Bus. & Prof. Code § 17201.

33. Plaintiff is informed and believes and based thereon alleges that defendant VELASQUEZ is, and at all times relevant hereto was, an individual residing in California, as well as an owner and Chief Executive Officer of GAVILAN. Plaintiff is further informed and believes and based thereon alleges that VELASQUEZ violated, or caused to be violated, the above-referenced and below-referenced Labor Code provisions in violation of Labor Code section 558.1.

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

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

10 **JOINT LIABILITY ALLEGATIONS**

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

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

27 37. Plaintiff is informed and believes, and based thereon allege, that there exists such a
28 unity of interest and ownership between Defendants, and each of them, that their individuality and

1 separateness have ceased to exist.

2 38. Plaintiff is informed and believes, and based thereon alleges that despite the
3 formation of the purported corporate existence of GAVILAN, and DOES 1 through 50, inclusive
4 (the “Alter Ego Defendants”), they, and each of them, are one and the same with VELASQUEZ and
5 DOES 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to, the
6 following reasons:

7 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
8 Defendants who personally committed the wrongful and illegal acts and violated the
9 laws as set forth in this Complaint, and who have hidden and currently hide behind
10 the Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish
11 some other wrongful or inequitable purpose;

12 B. The Individual Defendants derive actual and significant monetary benefits by and
13 through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego
14 Defendants as the funding source for the Individual Defendants’ own personal
15 expenditures;

16 C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants
17 and the Alter Ego Defendants, while really one and the same, were segregated to
18 appear as though separate and distinct for purposes of perpetrating a fraud,
19 circumventing a statute, or accomplishing some other wrongful or inequitable
20 purpose;

21 D. Plaintiff is informed and believes and thereon alleges that the business affairs of the
22 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
23 mentioned herein were, so mixed and intermingled that the same cannot reasonably
24 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
25 are, and at all relevant times mentioned herein were, used by the Individual
26 Defendants as mere shells and conduits for the conduct of certain of their, and each
27 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
28 herein were, the alter egos of the Individual Defendants;

1 E. The recognition of the separate existence of the Individual Defendants and the Alter
2 Ego Defendants would promote injustice insofar that it would permit defendants to
3 insulate themselves from liability to Plaintiff and Aggrieved Employees for
4 violations of the Civil Code, Labor Code, and other statutory violations. The
5 corporate existence of these defendants should thus be disregarded in equity and for
6 the ends of justice because such disregard is necessary to avoid fraud and injustice
7 to Plaintiff and Aggrieved Employees herein;

8 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
9 Defendants (and vice versa), and the fiction of their separate corporate existence must
10 be disregarded;

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

13 **FIRST CAUSE OF ACTION**

14 **(Violation of PAGA – Against All Defendants)**

15 40. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
16 and incorporates each by reference as though fully set forth hereat.

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

18 41. At all relevant times herein, Labor Code section 204, requires and required that:
19 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
20 between the 16th and 26th day of the month during which the labor was performed, and labor
21 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
22 between the 1st and 10th day of the following month” and for payroll periods such as those that are
23 weekly, biweekly, or semimonthly, wages must be paid within seven (7) calendar days following
24 the close of the payroll period in which wages were earned.

25 42. At all relevant times herein, Labor Code section 210, subdivision (a) states and
26 stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in
27 this article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
28 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any

1 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
2 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
3 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

12 Civil Penalties Under Labor Code § 226.3

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

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

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

26 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
27 and have a policy or practice of failing to furnish non-exempt employees, including, without
28 limitation, Plaintiff, itemized wage statements that accurately reflect: reflect gross wages earned;

1 total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and
2 the corresponding number of hours worked at each hourly rate; and other such information as
3 required by Labor Code section 226, subdivision (a).

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

9 Violation of Labor Code § 558

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

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

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

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

21 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
22 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
23 causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and minimum
24 wages, receive meal and rest periods or compensation in lieu thereof, be paid timely wages during
25 their employment and after their employment separation, receive accurate, itemized wage
26 statements, to be provided with the opportunity to inspect employment records, be provided with
27 notice as required under Labor Code section 2810.5, be provided wages due without being subjected
28 to Defendants' violations of Labor Code sections 206 and 206.5, be provided with the proper accrual

1 and use of paid sick leave, be reimbursed for all necessary costs incurred, and/or be paid out all paid
2 time off and/or vested vacation wages owed at the proper rate of pay.

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

8 Violation of Labor Code § 1174.5

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

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

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

28 55. Pursuant to Labor Code section 1174.5, "[a]ny person employing labor who willfully

1 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
2 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
3 member of the commission or employees of the division to inspect records pursuant to subdivision
4 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

5 56. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
6 willfully failed keep adequate or accurate time records including wage statements and similar
7 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
8 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
9 under Labor Code section 1174.

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

14 Violation of Labor Code § 1197.1

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

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

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

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

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

4 59. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
5 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
6 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ to pay minimum wages
7 for all hours worked or otherwise under Defendants’ control due to, without limitation, failing to
8 accurately track and/or pay for all minutes and hours actually worked at their regular rate of pay that
9 is above the minimum wage; detrimental rounding of time entries, editing and/or manipulation of time
10 entries to show less hours than actually worked; deduction of time worked; automatically deducting
11 time from employees’ hours worked for meal periods not actually taken or less than 30-minutes
12 in length; paid time off and vacation time owed; entitling Plaintiff and other Aggrieved Employees
13 to actual and liquidated damages.

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

20 Civil Penalties Under Labor Code § 2699

21 61. 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 62. 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 63. Plaintiff is informed and believes, and based thereon allege that Defendants, and each
6 of them, violated the Labor Code sections described herein, including, without limitation, for the
7 failure to: pay overtime wages and minimum wages; provide meal and rest periods or compensation
8 in lieu thereof; provide accurate, itemized wage statements; timely pay wages during employees'
9 employment and after employment separation; provide employees the opportunity to inspect
10 employment records; failure to maintain accurate and complete records; reimburse Aggrieved
11 Employees for costs incurred in furtherance of their work duties; provide notice as required under
12 Labor Code section 2810.5; provide notice as required under Labor Code section 2810.5, comply
13 with Labor Code sections 212, 213, 226.7 and 510 subsection (a) and Labor Code sections 432.3,
14 432.5 and 432.6; provide the proper accrual and use of paid sick leave pursuant to California and
15 local laws; paying employees all owed paid time off and vacation time owed by separation at the
16 proper rate of pay; and placing restraints on competition, whistleblowing and freedom of speech,
17 entitling Plaintiff and other Aggrieved Employees to civil penalties for each of these Labor Code
18 violations in the amounts set forth in Labor Code section 2699, subdivision (f).

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

22 **REQUEST FOR JURY TRIAL**

23 A. Plaintiff hereby requests a trial by jury.

24 **PRAYER**

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

27 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 558.1,
28 1174.5, 1197.1, and 2699;

- 1 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
2 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699;
3 C. Pre-judgment and post-judgment interest;
4 D. For costs of suit incurred herein; and
5 E. Such other and further relief as the Court deems just and proper.

6 Dated: November 3, 2023

J. GILL LAW GROUP, P.C.

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BY: /s/ Jasmin K. Gill

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JASMIN K. GILL

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Attorneys for Plaintiff ZOILA HERNANDEZ,
as an aggrieved employee, and on behalf of all
other aggrieved employees under the Labor
Code Private Attorneys' General Act of 2004,

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