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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 LOS ANGELES**

IVONN NOHEMI MUNOZ-ACEVEDO, as
an aggrieved employee, and on behalf of all
other aggrieved employees under the Labor
Code Private Attorneys' General Act of 2004,

Plaintiff,

v.

PALMDALE 3670 INC., a California
corporation; YUCCA 3543 INC., a California
corporation; LANCASTER 3551, INC., a
California corporation; MORENO VALLEY
3610 INC., a California corporation; SAM'S
GROUP, LLC, a California limited liability
company; HOLLYWOOD FIVE, INC., a
California corporation; BARSTOW 3465,
INC., a California corporation; PALMDALE
794 INC., a California corporation; SAN
BERNARDINO 937 INC., a California
corporation; ONTARIO 947 INC., a California
corporation; MIDWEST FOOD
MANAGEMENT LLC, a California limited
liability company; LANCASTER 764 INC., a
California corporation; MORENO 760 INC., a
California corporation; SIYAVOUSH
SOLEIMANI, an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 23STCV28315

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 IVONN NOHEMI MUNOZ-ACEVEDO, as an aggrieved employee, and on behalf
2 of all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004,
3 alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
6 Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against PALMDALE 3670
7 INC., d.b.a. IHOP ("PALMDALE 3670"), YUCCA 3543 INC. ("YUCCA 3543"), LANCASTER
8 3551, INC. ("LANCASTER 3551"), MORENO VALLEY 3610 INC. ("MORENO VALLEY
9 3610"), SAM'S GROUP, LLC ("SAM'S GROUP"), HOLLYWOOD FIVE, INC.
10 ("HOLLYWOOD FIVE"), BARSTOW 3465, INC. ("BARSTOW 3465"), PALMDALE 794 INC.
11 ("PALMDALE 794"), SAN BERNARDINO 937 INC. ("SAN BERNARDINO 937"), ONTARIO
12 947 INC. ("ONTARIO 947"), MIDWEST FOOD MANAGEMENT LLC ("MIDWEST FOOD"),
13 LANCASTER 764 INC. ("LANCASTER 764"), MORENO 760 INC. ("MORENO 760"), and
14 SIYAVOUSH SOLEIMANI ("SOLEIMANI"), and any of its respective subsidiaries or affiliated
15 companies within the State of California (collectively, and with DOES 1 through 100, as further
16 defined below, "Defendants"), as a proxy of the Labor and Workforce Development Agency of the
17 State of California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt
18 employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as
19 it pertains to the alleged claims for failure to comply with Labor Code section 203, Labor Code
20 section 226, Labor Code section 227.3, Labor Code section 245, *et seq.*, Labor Code section 2802,
21 restraints on competition, whistleblowing and freedom of speech on behalf of all employees of
22 Defendants working within the Civil Penalty Period (collectively, "Aggrieved Employees").

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

25 3. Venue is proper in Los Angeles County, California pursuant to Code of Civil
26 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the
27 causes of action complained of herein arose; the county in which the employment relationship
28 began; the county in which performance of the employment contract, or part of it, between Plaintiff

1 and Defendants was due to be performed; the county in which the employment contract, or part of
2 it, between Plaintiff and Defendants was actually performed; and the county in which Defendants,
3 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff
4 and Aggrieved Employees in Los Angeles County, and because Defendants employ numerous
5 Aggrieved Employees in Los Angeles County.

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

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

17 6. During the period beginning one (1) year preceding the provision of notice to the
18 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
19 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 201, 202, 203, 204, 210, 226, 226.3,
20 226.7, 227.3, 232, 232.5, 245, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1,
21 1197.5, 1198.5, 2699, 2802, among others.

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

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

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

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

6 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

1 worked or otherwise under Defendants' control as a result of, without limitation, failing to
2 accurately track and/or pay for all minutes actually worked; by requiring employees: to come early
3 to work and leave late work without being able to clock in for all that time, to suffer under
4 Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in
5 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
6 out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend
7 company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding
8 of employee time entries; editing and/or manipulation of time entries to show less hours than
9 actually worked; and failing to pay split shift premiums, to the detriment of Plaintiff and other
10 Aggrieved Employees.

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

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

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

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

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

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

25 18. At all relevant times mentioned herein, Defendants have had a policy or practice of
26 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
27 limitation, Plaintiff and other Aggrieved Employees, , with their costs incurred for driving personal
28 vehicles (i.e., mileage and gas), purchasing uniforms, providing uniform and other deposits,

1 separately laundering mandatory uniforms, for the purchase of tools and safety equipment, and for
2 the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of
3 the discharge of their duties, or of their obedience to the directions of Defendants, as required by
4 Labor Code 2802.

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

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

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

25 22. Defendants had and have a policy or practice of preventing Plaintiff and/or other
26 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
27 to their managers or outside to private attorneys or government officials, among others, in violation
28 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section

1 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
2 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
3 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
4 of Labor Code section 232 and 232.5.

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

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

16 **PARTIES**

17 **A. Plaintiff**

18 25. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
19 is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-
20 exempt employee, with duties that included, but were not limited to, serving tables. Plaintiff is
21 informed and believes, and based thereon alleges that Plaintiff worked for Defendants from
22 approximately April 2020 through approximately April 2023.

23 **B. Defendants**

24 26. Plaintiff is informed and believes and based thereon alleges that Defendants
25 PALMDALE 3670, YUCCA 3543, LANCASTER 3551, MORENO VALLEY 3610, SAM'S
26 GROUP, HOLLYWOOD FIVE, BARSTOW 3465, PALMDALE 794, SAN BERNARDINO 937,
27 ONTARIO 947, MIDWEST FOOD, LANCASTER 764, and MORENO 760 (collectively,
28 "Defendants") are corporations and limited liability companies organized and existing under the

1 laws of the State of California. Some or all of the Entities have their principal places of business in
2 the County of Los Angeles. At all relevant times herein, Defendants employed Plaintiff and
3 similarly situated employees within the State of California.

4 27. Plaintiff is informed and believes and based thereon alleges that Defendant
5 SIYAVOUSH SOLEIMANI (“SOLEIMANI”) is, and at all times relevant hereto was, an individual
6 residing in Los Angeles County and the owner, member, principal, director, officer, or managing
7 agent of the Entities. Plaintiff is further informed and believes and based thereon alleges that
8 Soleimani violated, or caused to be violated, the Labor Code provisions set forth herein, including
9 Labor Code section 558.1.

10 28. The true names and capacities, whether individual, corporate, associate, or otherwise,
11 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
12 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
13 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
14 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
15 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
16 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
17 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
18 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
19 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
20 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
21 include PALMDALE 3670, YUCCA 3543, LANCASTER 3551, MORENO VALLEY 3610,
22 SAM’S GROUP, HOLLYWOOD FIVE, BARSTOW 3465, PALMDALE 794, SAN
23 BERNARDINO 937, ONTARIO 947, MIDWEST FOOD, LANCASTER 764, MORENO 760, and
24 SOLEIMANI, and any of their parent, subsidiary, or affiliated companies within the State of
25 California, as well as DOES 1 through 100 identified herein.

26 **JOINT LIABILITY ALLEGATIONS**

27 29. Plaintiff is informed and believes, and based thereon alleges, that at all times
28 mentioned herein, each of the defendants was the agent, principal, employee, employer,

1 representative, joint venture or co-conspirator of each of the other defendants, either actually or
2 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
3 employment, joint venture, and conspiracy.

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

13 31. Plaintiff is informed and believes, and based thereon alleges, that despite the
14 formation of the purported corporate existence of PALMDALE 3670, YUCCA 3543,
15 LANCASTER 3551, MORENO VALLEY 3610, SAM'S GROUP, HOLLYWOOD FIVE,
16 BARSTOW 3465, PALMDALE 794, SAN BERNARDINO 937, ONTARIO 947, MIDWEST
17 FOOD, LANCASTER 764, MORENO 760, and SOLEIMANI, and DOES 1 through 50, inclusive
18 (the "Alter Ego Defendants"), they, and each of them, are one and the same with DOES 51 through
19 100 ("Individual Defendants"), and each of them, due to, but not limited to, the following reasons:

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

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

28 c. Plaintiff is informed and believes, and thereon alleges, that the Individual

1 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear
2 as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
3 accomplishing some other wrongful or inequitable purpose;

4 d. Plaintiff is informed and believes, and thereon alleges, that the business affairs
5 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned
6 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same
7 are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein
8 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of
9 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
10 herein were, the alter egos of the Individual Defendants;

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

17 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
18 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be
19 disregarded.

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

22 **FIRST CAUSE OF ACTION**

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

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

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

27 34. At all relevant times herein, Labor Code section 204, requires and required that:
28 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for

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

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

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

19 Civil Penalties Under Labor Code § 226.3

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

28 38. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)

1 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
2 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
3 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
4 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

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

7 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
8 and have a policy or practice of failing to furnish non-exempt employees, including, without
9 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
10 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
11 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
12 name of the employer and/or the name and address of the legal entity securing the employer’s
13 services if the employer is a farm labor contractor; and other such information as required by Labor
14 Code section 226, subdivision (a).

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

20 Violation of Labor Code § 558

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

- 25 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
26 pay period for which the employee was underpaid in addition to an amount sufficient
27 to recover underpaid wages;
28 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid

1 employee for each pay period for which the employee was underpaid in addition to
2 an amount sufficient to recover underpaid wages;

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

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

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

16 Violation of Labor Code § 1174.5

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

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

27 47. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
28 every person employing labor in California to “[k]eep, at a central location in the state or at the

1 plants or establishments at which employees are employed, payroll records showing the hours
2 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
3 piece rate paid to, employees employed at the respective plants or establishments. These records
4 shall be kept in accordance with rules established for this purpose by the commission, but in any
5 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
6 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
7 earned.”

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

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

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

22 Violation of Labor Code § 1197.1

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

- 1 (1) For any initial violation that is intentionally committed, one hundred dollars
2 (\$100) for each underpaid employee for each pay period for which the
3 employee is underpaid. This amount shall be in addition to an amount
4 sufficient to recover underpaid wages, liquidated damages pursuant to Section
5 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 6 (2) For each subsequent violation for the same specific offense, two hundred fifty
7 dollars (\$250) for each underpaid employee for each pay period for which the
8 employee is underpaid regardless of whether the initial violation is
9 intentionally committed. This amount shall be in addition to an amount
10 sufficient to recover underpaid wages, liquidated damages pursuant to Section
11 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 12 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
13 Section 203, recovered pursuant to this section shall be paid to the affected
14 employee.”

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

23 53. As a direct and proximate result of the herein-described Labor Code violations,
24 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
25 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
26 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
27 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
28 subsequent violation.

1 Civil Penalties Under Labor Code § 2699

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

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

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

17 **REQUEST FOR JURY TRIAL**

18 57. Plaintiff hereby requests a trial by jury.

19 **PRAYER**

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

- 22 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
23 1174.5, 1197.1, and 2699;
- 24 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
25 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 26 C. Pre-judgment and post-judgment interest;
- 27 D. For costs of suit incurred herein; and
- 28 E. Such other and further relief as the Court deems just and proper.

1 Dated: November 17, 2023

BIBIYAN LAW GROUP, P.C.

2
3 BY:

4 DAVID D. BIBIYAN

5 JEFFREY D. KLEIN

6 JARED V. WALDER

7 Attorneys for Plaintiff IVONN NOHEMI
8 MUNOZ-ACEVEDO, as an aggrieved
9 employee, and on behalf of all other aggrieved
10 employees under the Labor Code Private
11 Attorneys' General Act of 2004,
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