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Assigned for All Purposes

Judge William Claster

Dept. CX101

Attorneys for Plaintiff, AMIR H. MOAYERI,
as an aggrieved employee, and on behalf of all other
aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

AMIR H. MOAYERI, as an aggrieved
employee, and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys' General Act of 2004,

Plaintiff,

v.

FINANCIAL INSIGHT TECHNOLOGY,
INC., a Delaware corporation;
SMARTASSET ADVISORS, LLC, a
Delaware limited liability company;
ROOPESH VARIER, an individual; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 30-2024-01371883-CU-OE-CXC

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 Amir H. Moayeri, as an aggrieved employee, and on behalf of all other aggrieved
2 employees under the Labor Code Private Attorneys' General Act of 2004, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
5 Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against Financial Insight
6 Technology, Inc., a Delaware corporation, and any of its respective subsidiaries or affiliated
7 companies within the State of California ("Financial Insight"); SmartAsset Advisors, LLC, a
8 Delaware limited liability company, and any of its respective subsidiaries or affiliated companies
9 within the State of California ("SmartAsset") ; and Roopesh Varier (Varier" and collectively, and
10 with 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.*, Labor Code section 2802, restraints on competition,
16 whistleblowing and freedom of speech on behalf of all employees of Defendants working within the
17 Civil Penalty Period (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 Orange County, California pursuant to Code of Civil Procedure
21 sections 392, *et seq.* because, among other things, Orange 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 Orange County, and because Defendants employ numerous Aggrieved Employees in
28 Orange County.

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

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

12 6. During the period beginning one (1) year preceding the provision of notice to the
13 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
14 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
15 226.3, 226.7, 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, 2802, , 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 October 6, 2023, Plaintiff provided written notice pursuant to Labor
22 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
23 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
24 as well as by certified mail, with return receipt requested to Defendants, and each of them.

25 9. On or around November 1, 2023, Plaintiff provided an amended written notice
26 pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested,
27 of Defendants’ violation of various, including the herein-described, provisions of the Labor Code,
28 to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of

1 them.

2 10. 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 November 1, 2023, postmarked date of the herein-described amended notice
5 sent by Plaintiff to the LWDA and Defendants.

6 **PAGA REPRESENTATIVE ALLEGATIONS**

7 11. 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 remain on-call, to suffer under Defendants' control to
15 complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for
16 meal periods and continue working, to don and doff uniforms off the clock, to attend company
17 meetings off the clock, to make phone calls the clock; failing to include all forms of remuneration,
18 including non-discretionary bonuses, incentive pay, meal allowances, and other forms of
19 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
20 additional compensation was earned for the purpose of calculating the overtime rate of pay;
21 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
22 less hours than actually worked, for paying straight pay instead of overtime pay, to the detriment of
23 Plaintiff and other Aggrieved Employees.

24 12. At all relevant times mentioned herein, Defendants had and have a practice or policy
25 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
26 worked or otherwise under Defendants' control as a result of, without limitation, failing to
27 accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-
28 call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift

1 tasks after clocking out, to clock out for meal periods and continue working, to don and doff
2 uniforms off the clock, to attend company meetings off the clock, to make phone calls the clock;
3 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
4 less hours than actually worked; failing to pay reporting time pay; paid time off and vacation time
5 owed, to the detriment of Plaintiff and other Aggrieved 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/or 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/or
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; the legal name of the employer and/or the name and address of the
2 legal entity securing the employer's services if the employer is a farm labor contractor; and other
3 such information as required by Labor Code section 226, subdivision (a).

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

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

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

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

27 20. At all relevant times mentioned herein, Defendants have had a policy or practice of
28 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft

1 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
2 Employees with the rates of pay and overtime rates of pay applicable to their employment;
3 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
4 name, address, and telephone number of the workers' compensation insurance carrier; information
5 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
6 under Labor Code section 2810.5.

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

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

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

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

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

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

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

18 **PARTIES**

19 **A. Plaintiff**

20 27. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
21 is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-
22 exempt employee, with duties that included, but were not limited to, client experience specialist
23 Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately May of
24 2022 through at least May of 2023.

25 **B. Defendants**

26 28. Plaintiff is informed and believes and based thereon alleges that defendant Financial
27 Insight is, and at all times relevant hereto was, a corporation organized and existing under and by
28 virtue of the laws of the State of Delaware and doing business in the County of Orange, State of

1 California.

2 29. Plaintiff is informed and believes and based thereon alleges that defendant
3 SmartAsset is, and at all times relevant hereto was, a limited liability company organized and
4 existing under and by virtue of the laws of the State of Delaware and doing business in the County
5 of Orange, State of California.

6 30. Plaintiff is informed and believes and based thereon alleges that defendant Varier is,
7 and at all times relevant hereto was, an individual residing in California, as well as the Vice President
8 of Financial Insight, SmartAsset, and DOES 1 through 100, as further defined below.

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

22 **JOINT LIABILITY ALLEGATIONS**

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

28 33. All of the acts and conduct described herein of each and every corporate defendant

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

9 34. Plaintiff is informed and believes, and based thereon alleges, that despite the
10 formation of the purported corporate existence of Financial Insight, SmartAsset, and DOES 1
11 through 50, inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same
12 with DOES 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to,
13 the following reasons:

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

19 b. The Individual Defendants derive actual and significant monetary benefits by
20 and through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego Defendants as
21 the funding source for the Individual Defendants’ own personal expenditures;

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

26 d. Plaintiff is informed and believes, and thereon alleges, that the business affairs
27 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned
28 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same

1 are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein
2 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of
3 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
4 herein were, the alter egos of the Individual Defendants;

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

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

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

16 **FIRST CAUSE OF ACTION**

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

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

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

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

26 38. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
27 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
28 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,

1 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
2 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
3 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
4 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

13 Civil Penalties Under Labor Code § 226.3

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

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

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

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

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

Violation of Labor Code § 558

45. 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.”

46. 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

1 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
2 regular payday designated by employer, the name of the employer, including any “doing business
3 as” names used, the name, address, and telephone number of the workers’ compensation insurance
4 carrier, information regarding paid sick leave, and other pertinent information.

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

10 Violation of Labor Code § 1174.5

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

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

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

1 earned.”

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

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

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

16 Violation of Labor Code § 1197.1

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

23 (1) For any initial violation that is intentionally committed, one hundred dollars
24 (\$100) for each underpaid employee for each pay period for which the
25 employee is underpaid. This amount shall be in addition to an amount
26 sufficient to recover underpaid wages, liquidated damages pursuant to Section
27 1194.2, and any applicable penalties imposed pursuant to Section 203.

28 (2) For each subsequent violation for the same specific offense, two hundred fifty

1 dollars (\$250) for each underpaid employee for each pay period for which the
2 employee is underpaid regardless of whether the initial violation is
3 intentionally committed. 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 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
7 Section 203, recovered pursuant to this section shall be paid to the affected
8 employee.”

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

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

23 Civil Penalties Under Labor Code § 2699

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

1 employees pursuant to the procedures specified in Labor Code section 2699.3.

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

8 59. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
9 each of them, violated the Labor Code sections described herein, including, without limitation, for
10 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
11 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
12 name of the employer, including “doing business as” names used, the name, address, and telephone
13 number of the workers’ compensation insurance carrier, information regarding paid sick leave, and
14 other pertinent information required to be disclosed by Defendants under Labor Code section
15 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick
16 leave required to be provided pursuant to California and local laws.

17 60. Moreover, Plaintiff and other Aggrieved Employees within the State of California
18 whom he seeks to represent are entitled to an award of reasonable attorneys’ fees and costs in
19 connection with their herein-described claims for civil penalties.

20 **REQUEST FOR JURY TRIAL**

21 61. Plaintiff hereby requests a trial by jury.

22 **PRAYER**

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

25 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
26 1174.5, 1197.1, and 2699;

27 B. An award of reasonable attorneys’ fees and costs pursuant to Labor Code sections
28 210, 226.3, 558, 1174.5, 1197.1, and 2699;

- 1 C. Pre-judgment and post-judgment interest;
2 D. For costs of suit incurred herein; and
3 E. Such other and further relief as the Court deems just and proper.

4 Dated: January 5, 2024

BIBIYAN LAW GROUP, P.C.

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7 BY: 

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9 BIJAN MOHSENI
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11 ARIELLA MEHRZADI

12 Attorneys for Plaintiff AMIR H. MOAYERI,
13 as an aggrieved employee, and on behalf of all
14 other aggrieved employees under the Labor
15 Code Private Attorneys' General Act of 2004,
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