

1 **BIBIYAN LAW GROUP, P.C.**
David D. Bibiyan (SBN 287811)
2 david@tomorrowlaw.com
Jeffrey D. Klein (SBN 297296)
3 jeff@tomorrowlaw.com
Henry Glitz (SBN 349815)
4 henry@tomorrowlaw.com
8484 Wilshire Boulevard, Suite 500
5 Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705
6 Attorneys for Plaintiff, KING JOHNSON,
7 as an aggrieved employee, and on behalf of all other
aggrieved employees

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10
11 KING JOHNSON, as an aggrieved employee,
and on behalf of all other aggrieved employees
12 under the Labor Code Private Attorneys'
General Act of 2004,

13 Plaintiff,

14 v.

15 INSOMNIAC HOLDINGS, LLC, a Delaware
16 limited liability company; and DOES 1
17 through 100, inclusive,

18 Defendants.

CASE NO.: 23STCV21336

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 COMES NOW plaintiff KING JOHNSON (“Plaintiff”), as aggrieved employees, and on
2 behalf of all other aggrieved employees under the Labor Code Private Attorneys’ General Act of
3 2004, and 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 INSOMNIAC
7 HOLDINGS, LLC, a Delaware limited liability company, and any of its respective subsidiaries or
8 affiliated companies within the State of California (“INSOMNIAC”), and DOES 1 through 100, as
9 further defined below, “Defendants”), as a proxy of the Labor and Workforce Development Agency
10 of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-
11 exempt employees of Defendants working within the Civil Penalty Period, as further defined herein,
12 and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor
13 Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 24, *et*
14 *seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on
15 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 Plaintiffs,
23 or some of them, and Defendants was due to be performed; the county in which the employment
24 contract, or part of it, between Plaintiff and Defendants was actually performed; and the county in
25 which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct
26 effect on Plaintiffs and Aggrieved Employees in Los Angeles County, and because Defendants
27 employ numerous Aggrieved Employees in Los Angeles County.

28 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by

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

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

11 6. During the period beginning one (1) year preceding the provision of notice to the
12 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
13 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
14 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
15 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

20 8. On or around November 9, 2022, Plaintiff provided written notice pursuant to Labor
21 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
22 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
23 as well as by certified mail, with return receipt requested to Defendants, and each of them.

24 9. Plaintiff also provided Defendants, and each of them, with notice under Labor Code
25 section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other’s wage
26 and hour violations under Labor Code section 2810.3 on November 9, 2022, by certified mail with
27 return receipt requested.

28 10. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not

1 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
2 calendar days of the November 9, 2022, postmarked date of the herein-described notice sent by
3 Plaintiff to the LWDA and Defendants.

4 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

1 periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to
2 attend company meetings off the clock, to make phone calls or drive off the clock; detrimental
3 rounding of employee time entries, editing and/or manipulation of time entries to show less hours
4 than actually worked; failing to pay reporting time pay; paid time off and vacation time owed; and
5 failing to pay split shift premiums, 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 legal
2 entity securing the employer's services if the employer is a farm labor contractor; and other such
3 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 Plaintiffs 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 equipment, for the
25 purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the
26 discharge of their duties, or of their obedience to the directions of Defendants, as required by Labor
27 Code 2802.

28 ///

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

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

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

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

1 INSOMNIAC is, and at all times relevant hereto was, a company organized and existing under and
2 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
3 State of California.

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

17 **JOINT LIABILITY ALLEGATIONS**

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

23 31. All of the acts and conduct described herein of each and every corporate defendant
24 was duly authorized, ordered, and directed by the respective and collective defendant corporate
25 employers, and the officers and management-level employees of said corporate employers. In
26 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
27 their said employees, agents, and representatives, and each of them; and upon completion of the
28 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant

1 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
2 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
3 aforementioned corporate employees, agents and representatives.

4 32. Plaintiff is informed and believes, and based thereon alleges, that despite the
5 formation of the purported corporate existence of INSOMNIAC, and DOES 1 through 50, inclusive
6 (the “Alter Ego Defendants”), they, and each of them, are one and the same with DOES 51 through
7 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following reasons:

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

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

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

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

27 e. The recognition of the separate existence of the Individual Defendants from
28

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

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

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

11 **FIRST CAUSE OF ACTION**

12 **(Civil Penalties Under Labor Code § 210 – Against All Defendants)**

13 34. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
14 and incorporates each by reference as though fully set forth hereat.

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

20 36. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
21 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
22 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
23 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
24 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
25 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
26 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

27 37. At all relevant times herein, Defendants have had a consistent policy or practice of
28 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as

1 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
2 Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of Labor
3 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
4 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
5 for each subsequent violation in connection with each payment that was made in violation of Labor
6 Code section 204.

7
8 **SECOND CAUSE OF ACTION**

9 **(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)**

10 38. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
11 and incorporates each by reference as though fully set forth hereat.

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

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

25 41. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in
26 this section are in addition to any other penalty provided by law."

27 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
28 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

1 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
2 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
3 name of the employer and/or the name and address of the legal entity securing the employer's services
4 if the employer is a farm labor contractor; and other such information as required by Labor Code
5 section 226, subdivision (a).

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

11 **THIRD CAUSE OF ACTION**

12 **(Violation of Labor Code § 558 – Against All Defendants)**

13 44. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
14 and incorporates each by reference as though fully set forth hereat.

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

- 19 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
20 pay period for which the employee was underpaid in addition to an amount sufficient
21 to recover underpaid wages;
- 22 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
23 employee for each pay period for which the employee was underpaid in addition to
24 an amount sufficient to recover underpaid wages;
- 25 (3) Wages recovered pursuant to this section shall be paid to the affected employee."

26 46. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
27 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
28 causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and minimum

1 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
2 their employment and after their employment separation; receive accurate, itemized wage
3 statements; be provided with the opportunity to inspect employment records; be provided with
4 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of
5 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
6 of pay.

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

12 **FOURTH CAUSE OF ACTION**

13 **(Violation of Labor Code § 1174.5 – Against All Defendants)**

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

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

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

26 51. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
27 every person employing labor in California to “[k]eep, at a central location in the state or at the
28 plants or establishments at which employees are employed, payroll records showing the hours

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

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

12 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
13 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
14 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
15 inspection of records as required by Labor Code subdivision (b).

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

20 **FIFTH CAUSE OF ACTION**

21 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

22 55. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
23 and incorporates each by reference as though fully set forth hereat.

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

1 Section 203 as follows:

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

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

23 58. 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 **SIXTH CAUSE OF ACTION**

2 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

3 59. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
4 and incorporates each by reference as though fully set forth hereat.

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

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

17 62. Plaintiff is informed and believes and based thereon alleges that Defendants, and
18 each of them, violated the Labor Code sections described herein, including, without limitation, for
19 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
20 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
21 employment and after employment separation; provide employees the opportunity to inspect
22 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
23 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual
24 and use of paid sick leave; paying employees all owed paid time off and vacation time owed by
25 separation at the proper rate of pay; and placing restraints on competition, whistleblowing and
26 freedom of speech, entitling Plaintiff and other Aggrieved Employees to civil penalties for each of
27 these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

28 63. Moreover, Plaintiff and other Aggrieved Employees within the State of California

1 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
2 connection with their herein-described claims for civil penalties.

3 **REQUEST FOR JURY TRIAL**

4 64. Plaintiff hereby requests a trial by jury.

5 **PRAYER**

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

- 8 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
- 9 1174.5, 1197.1, and 2699;
- 10 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
- 11 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 12 C. Pre-judgment and post-judgment interest;
- 13 D. For costs of suit incurred herein; and
- 14 E. Such other and further relief as the Court deems just and proper.

15
16 Dated: September 5, 2023

BIBIYAN LAW GROUP, P.C.

17
18 BY: /s/ Henry Glitz
 19 DAVID D. BIBIYAN
 20 JEFFREY D. KLEIN
 21 HENRY GLITZ
 22 Attorneys for Plaintiff KING JOHNSON , as
 23 an aggrieved employee, and on behalf of all
 24 other aggrieved employees under the Labor
 25 Code Private Attorneys' General Act of 2004,
 26
 27
 28