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ELIAS NAVA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE – CENTRAL JUSTICE CENTER**

30-2020-01176763-CU-OE-CJC

Assigned for All Purposes

Case No. Judge Richard Lee

COMPLAINT FOR DAMAGES FOR:

ELIAS NAVA, an individual,

Plaintiff,

v.

BIG BEN, INC., a California corporation; and
DOES 1 through 20, inclusive,

Defendants.

- 1. FAILURE TO PAY MINIMUM WAGES
LABOR CODE §§1182.12, 1194, 1194.2,
1197;**
- 2. FAILURE TO PAY OVERTIME
COMPENSATION (CAL. LABOR CODE
§§510, 1194; IWC WAGE ORDER NO. 16-
2001, § 3);**
- 3. FAILURE TO PROVIDE MEAL PERIODS
(CAL. LABOR CODE §§226.7, 512; IWC
WAGE ORDER NO. 16-2001, § 11);**
- 4. FAILURE TO PROVIDE REST PERIODS
(CAL. LABOR CODE §§226.7, 512; IWC
WAGE ORDER NO. 16-2001, § 12);**
- 5. FAILURE TO PROVIDE ITEMIZED
WAGE AND HOUR STATEMENTS (CAL.
LABOR CODE §§226, ET SEQ.; IWC
WAGE ORDER NO. 16-2001, § 7);**
- 6. FAILURE TO INDEMNIFY FOR
NECESSARY BUSINESS EXPENSES**

LABOR CODE § 2802;

7. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUITTING EMPLOYEES CAL. LABOR CODE §§ 201-203;

8. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.); AND

9. PRIVATE ATTORNEY GENERAL ACT CAL. LABOR CODE §§ 2698, ET SEQ. [PAGA].

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

PLAINTIFF, ELIAS NAVA brings this action on behalf of himself and on behalf of aggrieved employees pursuant to the California Private Attorneys General Act, alleges as follows:

JURISDICTION

1. This action is brought pursuant to California Code of Civil Procedure §382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court is the proper court, and this action is properly filed in Los Angeles County, because Defendants' obligations and liability arise therein, because Defendants maintain offices and transact business Orange County, and because the work that is the subject of this action was performed by Plaintiff in County.

THE PARTIES

3. Plaintiff, ELIAS NAVA, is and at all times relevant hereto was a resident of the County of Los Angeles, State of California.

4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant, BIG BEN, INC. (hereinafter referred to as "DEFENDANT") was and is a California

1 corporation doing business at 4790 Irvine Blvd #105-404, Irvine, California, in the County of Orange,
2 State of California.

3 5. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
4 hereto, Employer is a pipeline contracting company.

5 6. The true names and capacities, whether individual, corporate, associate, or otherwise, of
6 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
7 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
8 insert the true names and capacities of said Defendants when the same become known to Plaintiff. Plaintiff
9 is informed and believes, and based thereupon alleges, that each of the fictitiously named Defendants is
10 responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as alleged hereinafter.

11 7. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
12 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
13 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
14 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
15 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
16 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

17 8. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
18 of them, including those defendants named as DOES 1-20 and the INDIVIDUAL DEFENDANTS, acted
19 in concert with one another to commit the wrongful acts alleged herein, and aided, abetted, incited,
20 compelled and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so,
21 including pursuant to Government Code §12940(i). Plaintiff is further informed and believes, and based
22 thereupon alleges, that Defendants, and each of them, including those defendants named as DOES 1-20
23 and the INDIVIDUAL DEFENDANTS, and each of them, formed and executed a conspiracy or common
24 plan pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged
25 herein done as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff
26 harm.

1 9. Whenever and wherever reference is made in this complaint to any act or failure to act by
2 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts and/or
3 failures to act by each Defendant acting individually, jointly and severally.

4
5 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

6 10. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
7 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
8 defendants have ceased to exist.

9 11. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
10 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same as Defendants,
11 including, but not limited to because:

12 a. Employers are completely dominated and controlled by one another and DOES 1-
13 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
14 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or accomplish
15 some other wrongful or inequitable purpose.

16 b. Employers and DOES 1-20 derive actual and significant monetary benefits by and
17 through one another's unlawful conduct, and by using one another as the funding source for their own
18 personal expenditures.

19 c. Employers and DOES 1-20, while really one and the same, were segregated to
20 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
21 accomplishing some other wrongful or inequitable purpose.

22 d. Employers do not comply with all requisite corporate formalities to maintain a legal
23 and separate corporate existence.

24 e. The business affairs of Employers and DOES 1-20 are, and at all times relevant
25 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
26 inextricable confusion. Employers are, and at all times relevant hereto were, used by one another and
27 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and
28 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of Defendants

1 would not promote justice, in that it would permit Defendants to insulate themselves from liability to
2 Plaintiff for violations of the Government Code and other statutory violations. The corporate existence
3 of Employers and DOES 1-20 should be disregarded in equity and for the ends of justice because such
4 disregard is necessary to avoid fraud and injustice to Plaintiff herein.

5 12. Accordingly, Employers constitute the alter ego of one another and DOES 1-20, and the
6 fiction of their separate corporate existence must be disregarded.

7 13. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
8 thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
9 enterprise, and that Plaintiff was an employee of Employers and DOES 1-20. Plaintiff performed services
10 for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants
11 shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which
12 Defendants' business was and is conducted.

13 14. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
14 between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of
15 assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other
16 Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants amounts
17 to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere
18 continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for
19 the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES
20 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

21 **FACTUAL BACKGROUND**

22 15. Plaintiff was covered under one or more IWC Wage Orders and/or the California Labor
23 Code provisions relating to wage-and-hour laws, and other applicable wage orders, regulations, and
24 statutes, which imposed an obligation on the part of Defendants, among other things, to provide
25 uninterrupted meal and rest periods, to pay overtime wages, to pay wages for all hours worked, and to
26 provide accurate wage statements.
27
28

1 16. On or about December 3, 2018, Employers hired Plaintiff to work as a mechanic. Plaintiff
2 was a full-time, non-exempt employee, and performed all of his job duties satisfactorily. Plaintiff's
3 employment with Defendants ended on approximately April 22, 2020 after Plaintiff's employment with
4 Defendants was wrongfully terminated.

5 17. Between approximately December 2018 until December 2019, Plaintiff's hourly wage rate
6 was \$20.00. During this time period, Plaintiff worked 6 days a week, Monday through Saturday, for
7 approximately 10-12 hours per day.

8 18. Plaintiff worked over 40 hours each week, for which Plaintiff received no wages at all, not
9 Plaintiff's hourly wage rate, or even the requisite minimum wage.

10 19. Plaintiff worked approximately up to 12 hours of overtime each week, but received only
11 Plaintiff's regularly hourly wage rate for these hours, with no overtime premium.

12 20. Between approximately January 2020 until April 2020, Plaintiff's hourly wage rate was
13 \$30.00. During this time period, Plaintiff worked 6 days a week, Monday through Saturday, for
14 approximately 10-12 hours per day.

15 21. Plaintiff worked over 40 hours each week, for which Plaintiff received no wages at all, not
16 Plaintiff's hourly wage rate, or even the requisite minimum wage.

17 22. Plaintiff worked approximately up to 12 hours of overtime each week, but received only
18 Plaintiff's regularly hourly wage rate for these hours, with no overtime premium.

19 23. DEFENDANTS failed to pay the overtime premium wages for all hours worked beyond 8
20 hours in a day or 40 hours in a week.

21 24. Throughout Plaintiff's employment, Plaintiff was not permitted to, and not advised of
22 Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or substantial portion
23 thereof. Defendants had no policy, procedure, or practice for Plaintiff to report missed rest breaks or
24 recover lost wages, and Defendants had no policy, procedure, or practice to provide one hour of additional
25 wages for each workday that the rest break was not provided.

26 25. Throughout Plaintiff's employment, Plaintiff did not receive a second uninterrupted
27 statutory 30-minute meal periods for days on which Plaintiff worked at least 10 hours, which was 6 days
28 each week. Defendants had no policy, procedure, or practice for Plaintiff to report missed meal periods

1 or recover lost wages, and Defendants had no policy, procedure, or practice to provide one hour of
2 additional wages for each workday that the meal breaks were not properly provided.

3 26. Throughout Plaintiff's employment, for each pay period, Plaintiff received inaccurate
4 paystubs that did not comply with Labor Code § 226, because they failed to show the correct amount of
5 overtime hours Plaintiff worked, failed to show pay for missed meal and rest periods, failed to show the
6 amount of wages earned and owed to Plaintiff.

7 27. As a direct result and proximate result of the unlawful actions of Defendants, Plaintiff has
8 suffered, and continue to suffer, from loss of earnings in amounts as yet unascertained, but subject to proof
9 at trial, and within the jurisdiction of this Court.

10
11 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

12 28. At all relevant times, PAGA was applicable to Plaintiff and his employment with
13 Defendants. PAGA provides for a civil penalty to be assessed and collected by the Labor and Workforce
14 Development Agency ("LWDA"). Plaintiff and other employees of Defendants are "aggrieved employees"
15 as defined by PAGA, because they are all current or former employees of Defendants, and one or more of
16 the alleged violations were committed against them.

17 29. On or about August 26, 2020, Plaintiff gave written notice of Defendants' violations of
18 various provisions of the California Labor Code and the applicable IWC Wage Order to (a) the LWDA
19 by filing with the LWDA through the LWDA website and (b) to Defendants by certified mail.

20 30. The LWDA did not provide notice of its intention to investigate Defendants' violations
21 within 65 calendar days of the August 26, 2020 notice.

22 31. In doing so, Plaintiff has satisfied the administrative prerequisites under PAGA to recover
23 civil penalties against Defendants, in addition to the other remedies, for violations of California Labor
24 Code §§ California Labor Code §§ 204, 210 (untimely payment of wages), 204, 1118.12, 1197.1
25 (minimum wage), 226 (inaccurate itemized wage statements), 226.7 (meal and rest break violations), 512
26 (meal breaks), and 203 (waiting time penalties), as well as IWC Wage Order No. 16-2001.

FIRST CAUSE OF ACTION
FOR FAILURE TO PAY MINIMUM WAGES
LABOR CODE §§1182.12, 1194, 1194.2, 1197
AGAINST ALL DEFENDANTS

32. Plaintiff re-alleges and incorporates by reference the above as though set forth in full herein.

33. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law is unlawful. An employer violates the minimum wage statute even if the average rate for paid and unpaid hours exceeded the minimum wage.

34. At all relevant times, Defendants failed and refused to pay Plaintiff the legal minimum wage in the State of California, as set forth in Labor Code §1182.12 and Industrial Welfare Commission Wage Order No. 4-2001. Specifically, Defendants did not pay Plaintiff any wages, his hourly wage or the requisite minimum wage, for several hours each week. Under California law, Plaintiff is entitled to at least the minimum wage for every hour worked.

35. At all relevant times, Defendants failed to pay Plaintiff the requisite minimum wage in each of the following ways:

- a. From approximately December 2018 until December 2019, Defendants failed or refused to pay Plaintiff, the requisite minimum wage (\$12.00 per hour), for approximately 4 hours per day for each day worked on Monday through Saturday (approximately 312 days). Hence for this period, Defendants owe Plaintiff approximately \$14,976.00.
- b. From approximately January 1, 2020, until April 2020, Defendants failed or refused to pay Plaintiff, the requisite minimum wage (\$13.00 per hour), for approximately 4 hours per day for each day worked on Monday through Saturday (approximately 104 days). Hence for this period, Defendants owe Plaintiff approximately \$5,408.00.

36. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover unpaid minimum wages in the combined amount of approximately \$20,384.00.

37. Defendants' failure to pay the legal minimum wage to Plaintiff as alleged herein is

1 unlawful and creates entitlement, pursuant to Labor Code §§1194 and 1197, to recovery by Plaintiff in a
2 civil action for the unpaid balance of the full amount of the unpaid wages owed, including interest
3 thereon, reasonable attorneys' fees, and costs of suit.

4 38. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated
5 damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, an
6 additional \$20,384.00, plus interest thereon.

7
8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME WAGES**

10 **CAL. LABOR CODE §§ 510, 558, 1194 ET SEQ., 1197.1, 1198,**

11 **IWC WAGE ORDER NO. 16-2001, § 3**

12 **AGAINST ALL DEFENDANTS**

13 39. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as
14 though set forth fully herein. Plaintiff alleges as follows as a representative cause of action on behalf of
15 himself.

16 40. California Labor Code § 204, IWC Wage Order No. 16-2001, §3, and other applicable
17 laws and regulations, provide that an employer must timely pay its employees for all hours worked.

18 41. California Labor Code § 510 provides that employees in California shall not be employed
19 more than eight hours per workday or forty hours per workweek unless they receive additional
20 compensation beyond their regular wages in amounts specified by law.

21 42. California Labor Code § 510 further provides that employees in California shall not be
22 employed more than twelve hours per workday unless they receive wages at double their regular rate of
23 pay.

24 43. California Labor Code § 1194 establishes an employee's right to recover unpaid wages,
25 including overtime compensation and interest, and the cost of suit. California Labor Code § 1198 further
26 provides that the employment of an employee for longer than those fixed by the IWC Wage Orders is
27 unlawful.

28 44. Plaintiff and former non-exempt employees are entitled to the protections of California

1 Labor Code §§ 510 and 1194, and IWC Wage Order No. 16-2001.

2 45. Defendants maintained and enforced policies and practices of refusing to pay Plaintiff for
3 all hours worked. Defendants employed Plaintiff for more than eight hours per day and more than 40
4 hours per workweek during the operative timeframe, but Defendants failed to pay Plaintiff the correct
5 applicable overtime rate for the number of overtime hours they worked as required by the California
6 Labor Code and the applicable IWC Wage Order.

7 46. Defendants thus required Plaintiff to work under conditions prohibited by order of the
8 IWC, in violation of those orders.

9 47. Defendants owe Plaintiff overtime wages, have failed and refused, and continues to fail
10 and refuse, to pay the overtime wages owed. Additionally, Defendants did not include all the required
11 compensation in calculating the overtime rate of Plaintiff.

12 48. Defendants' conduct described herein violates, and continues to violate, California Labor
13 Code §§ 510, 1194 and 1198 and IWC Wage Order No. 16-2001, §3. Therefore, pursuant to California
14 Labor Code §§ 200, 203, 226, 558, 1194, and 1197.1 and other applicable provisions under the Labor
15 Code and IWC Wage Order No. 16-2001, Plaintiff is entitled to recover the unpaid balance of wages
16 owed to him by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

17
18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PROVIDE MEAL PERIODS**

20 **CAL. LABOR CODE §§ 226.7, 512, IWC WAGE ORDER NO. 16-2001, § 11**

21 **AGAINST ALL DEFENDANTS**

22 49. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
23 forth fully herein. Plaintiff alleges as follows as a representative cause of action on behalf of himself.

24 50. Plaintiff regularly worked greater than five hours and on occasion greater than ten hours
25 per day. Pursuant to California Labor Code § 512, an employer may not employ someone for a shift of
26 more than five hours without providing him or her with a meal period of not less than thirty minutes or
27 for more than ten hours without providing him or her with a second meal period of not less than thirty
28 minutes.

1 51. Despite the requirements of the applicable IWC Wage Order and California Labor Code
2 §§ 512 and 226.7, Defendants required, permitted or otherwise suffered Plaintiff to take less than the 30
3 minute meal period, or to work through them, and have failed to otherwise provide the required meal
4 periods to Plaintiff.

5 52. Plaintiff was required to work through or cut short his meal breaks due to Defendants'
6 failure to maintain adequate staffing levels. Defendants required Plaintiff to perform his job duties as a
7 maintenance worker non-stop and was not allowed to enjoy a timely, uninterrupted meal breaks.
8 Defendants failed to properly staff enough employees to help make sure all employees could be relieved
9 to take a meal break without pressure to forego or delay their meal breaks.

10 53. Pursuant to California Labor Code § 226.7, Plaintiff has sustained economic damages,
11 including, but not limited to, unpaid wages and lost interest, in an amount according to proof at trial, and
12 are entitled to recover one-hour of premium pay for each day in which a lawful meal period was not
13 provided. Plaintiff is further entitled to attorneys' fees pursuant to Code of Civil Procedure § 1021.5, and
14 pursuant to Labor Code section 2699(g)(1), Plaintiff is entitled to an award of reasonable attorneys' fees
15 and costs relating to their claims for civil penalties due to Defendants' violation of the California Labor
16 Code and IWC Wage Order No. 16-2001.

17
18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REST PERIODS**

20 **CAL. LABOR CODE § 226.7, 512; IWC WAGE ORDER NO. 16-2001, §12**

21 **BY PLAINTIFF AGAINST ALL DEFENDANTS**

22 54. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
23 forth fully herein. Plaintiff alleges as follows as a representative cause of action on behalf of himself.

24 55. Pursuant to IWC Wage Order No. 16-2001, § 12 (A), "[e]very employer shall authorize
25 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
26 work period. . . . [The] authorized rest period time shall be based on the total hours worked daily at the
27 rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof. . . . Authorized
28 rest period time shall be counted as hours worked, for which there shall be no deduction from wages."

1 California Labor Code § 226.7(a) prohibits an employer from requiring any employee to work during
2 any rest period mandated by an applicable order of the IWC. Under these laws, Defendants were required
3 to authorize and permit Plaintiff and Class members to take rest periods, based upon the total hours
4 worked at a rate of ten minutes' net rest per four hours, or major fraction thereof, with no deduction from
5 wages.

6 56. Defendants provided Plaintiff with policies that did not permit first or second rest breaks
7 for shifts between six and eight hours or third rest breaks for shifts over ten hours.

8 57. Defendants violated, and continue to violate California Labor Code § 226.7 and IWC
9 Wage Order No. 16-2001, § 12 by failing to pay Plaintiff who was not provided with a rest break, in
10 accordance with the applicable wage order, one additional hour of compensation at each employees'
11 regular rate of pay for each workday that a rest period was not provided.

12 58. Pursuant to Labor Code § 226.7, Plaintiff has sustained economic damages, including, but
13 not limited to, unpaid wages and lost interest, in an amount according to proof at trial, and is entitled to
14 recover one-hour of premium pay for each day in which a lawful meal period was not provided. Plaintiff
15 is further entitled to attorneys' fees pursuant to Code of Civil Procedure § 1021.5, and pursuant to Labor
16 Code section 2699(g)(1), Plaintiff is entitled to an award of reasonable attorneys' fees and costs relating
17 to their claims for civil penalties due to Defendants' violation of the California Labor Code and IWC
18 Wage Order No. 16-2001.

19
20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

22 **CAL. LABOR CODE §§ 226 & 226.3, IWC WAGE ORDER NO. 16-2001, § 7**

23 **AGAINST ALL DEFENDANTS**

24 59. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
25 forth fully herein. Plaintiff alleges as follows as a representative cause of action on behalf of himself.

26 60. California Labor Code § 226(a) and IWC Wage Order 10-2001, § 7(B) require employers
27 semimonthly or at the time of each payment of wages to furnish each employee with a statement itemizing,
28 among other things, all applicable hourly rates. Labor Code § 226(b) provides that if an employer

1 knowingly and intentionally fails to provide a statement itemizing, among other things, all applicable
2 hourly rates, then the employee is entitled to recover the greater of all actual damages or fifty dollars for
3 the initial violation and one hundred dollars for each subsequent violation, up to four thousand dollars.

4 61. Defendants knowingly and intentionally failed to furnish Plaintiff with timely, itemized
5 statements as required by California Labor Code § 226(a) and IWC Wage Order 10-2001, § 7(B). As a
6 result, Defendants are liable to Plaintiff and to the Class for the amounts provided by Labor Code § 226(b)
7 and for penalties, and attorneys' fees.

8 62. Plaintiff suffered, and continues to suffer, injury as a result of Defendants' failure to provide
9 timely and accurate itemized wage statements, as Plaintiff could not promptly and easily determine from
10 the wage statement alone one or more of the following: the gross wages earned, the total hours worked,
11 all deductions made, the net wages earned, the name and address of the legal entity or entities employing
12 Plaintiff, and/or all applicable hourly rates in effect during each pay period and the corresponding number
13 of hours worked at each hourly rate.

14 63. As a direct and proximate result of defendants' unlawful actions and omissions, Plaintiff
15 has been damaged in an amount according to proof at trial, and seek all wages earned and due, plus interest
16 thereon. Additionally, Plaintiff is entitled to all available statutory and civil penalties, including but not
17 limited to statutory and civil penalties pursuant to California Labor Code § 226(e) and 1174.5, and an
18 award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in
19 California Labor Code § 226(e), as well as other available remedies.

20
21 **SIXTH CAUSE OF ACTION**

22 **FOR FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES**

23 **LABOR CODE § 2802**

24 **AGAINST ALL DEFENDANTS**

25 64. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though
26 set forth in full herein.

27 65. Pursuant to Labor Code § 450(a), "no employer...may compel or coerce any employee. . .
28 to patronize Plaintiff's or her employer, or any other person, in the purchase of any thing of value."

1 66. Pursuant to Labor Code § 2802(a), “an employer shall indemnify Plaintiff’s or her employee
2 for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
3 of Plaintiff’s or her duties, or of Plaintiff’s or her obedience to the directions of the employer.”

4 67. Plaintiff was required by Defendants to expend Plaintiff’s personal funds because of the
5 duties required by Defendants, as alleged hereinabove.

6 68. Pursuant to Labor Code § 2802(a), Defendants are legally required to reimburse Plaintiff for
7 all necessary expenditures incurred in the performance of his duties.

8 69. Defendants have failed and refused to reimburse Plaintiff for all necessary business
9 expenditures, including Plaintiff’s mileage when required to complete work for Plaintiff’s employer.

10 70. As a proximate result of the aforementioned violations of Labor Code §§ 450(a) and 2502(a),
11 Plaintiff is entitled to recover from Defendants the unpaid balance of all of the necessary aforementioned
12 expenditures.

13 71. As a proximate result of the aforementioned violations of Labor Code §§ 450(a) and 2502(a),
14 Plaintiff has been damaged in an amount according to proof at the time of trial, but estimated as follows:
15 Defendants failed to reimburse Plaintiff for clothes, maintenance of personal tools, use of cell phone for
16 each of the 72 weeks of Plaintiff’s employment.

17 72. Pursuant to Labor Code § 2802(b), Plaintiff requests that the Court award interest at the
18 same rate as judgments in civil actions, accruing from the date on which Plaintiff incurred the necessary
19 expenditure or loss.

20 73. Pursuant to Labor Code § 2802(c), Plaintiff requests that the Court award Plaintiff
21 reasonable attorneys’ fees and costs incurred in this action.

22
23 **SEVENTH CAUSE OF ACTION**

24 **FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUITTING EMPLOYEES**

25 **CAL. LABOR CODE §§ 201,202, 203**

26 **AGAINST ALL DEFENDANTS**

27 74. Plaintiff incorporates by reference and re-alleges the paragraphs set forth above as though
28 set forth fully herein. Plaintiff alleges as follows as a representative cause of action on behalf of himself.

1 75. Pursuant to California Labor Code § 201, 202, and 203, Defendants are required to pay all
2 earned and unpaid wages to discharged and quitting employees.

3 76. California Labor Code § 201 mandates that if an employer discharges an employee, the
4 employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

5 77. Pursuant to California Labor Code § 202, Defendants are required to pay all accrued wages
6 due to an employee no later than 72 hours after the employee quits his or her employment, unless the
7 employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is
8 entitled to his or her wages at the time of quitting.

9 78. California Labor Code § 203 provides that if an employer willfully fails to pay, in
10 accordance with California Labor Code §§ 201 and 202, any wages of an employee who discharged or who
11 quits, the employer is liable for waiting time penalties in the form of continued compensation to the
12 employee at the same rate for up to 30 workdays.

13 79. Defendants have willfully failed, and continue to willfully fail, to pay accrued wages and
14 other compensation to Plaintiff in accordance with California Labor Code §§ 201 and 202.

15 80. As a result, Plaintiff is entitled to all available statutory penalties, including the waiting time
16 penalties provided in California Labor Code § 203, together with interest thereon, as well as other available
17 remedies.

18
19 **EIGHTH CAUSE OF ACTION**

20 **UNFAIR AND UNLAWFUL BUSINESS PRACTICES**

21 **CAL. BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.**

22 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

23 81. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
24 forth fully herein. Plaintiff alleges as follows as a representative cause of action on behalf of himself.

25 82. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be
26 predicated on the violation of any state or federal law. Defendants' policies, activities, and actions as
27 alleged herein, are violations of California law and constitute unlawful business acts and practices in
28 violation of California Business and Professions Code §§ 17200, *et seq.* Defendants have engaged and

1 continue to engage in unfair and unlawful business practices in California by practicing, employing, and
2 utilizing the employment practices outlined above, including failing to pay reporting time pay, and failing
3 to provide meal and rest breaks in violation of the applicable IWC Wage Order and California Labor Code.

4 83. Defendants' violations of California wage and hour laws constitute a business practice
5 because Defendants' aforementioned acts and omissions were done repeatedly over a significant period of
6 time, and in a systematic manner, to the detriment of Plaintiff.

7 84. Defendants have avoided payment of wages, overtime wages, meal and rest break premium
8 payments, and other benefits as required by the California Labor Code, the California Code of Regulations,
9 and the applicable IWC Wage Order. Furthermore, Defendants have failed to record, report, and pay the
10 correct sums of assessment to the state authorities under the California Labor Code and other applicable
11 regulations.

12 85. Defendants' unfair and unlawful business practices, as alleged in this Complaint, have
13 allowed Defendants to reap in unfair and illegal profits at the expense of Plaintiff, and members of the
14 public. Defendants should be made to disgorge their ill-gotten gains and restore them to Plaintiff. Plaintiff
15 seeks to enforce important rights affecting the public interest within the meaning of the California Code of
16 Civil Procedure § 1021.5

17 86. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff is entitled
18 to restitution of the wages withheld and retained by Defendants; an award of attorneys' fees pursuant to
19 California Labor Code § 1194; and California Code of Civil Procedure § 1021.5; interest; and an award of
20 costs.

21
22 **NINTH CAUSE OF ACTION**

23 **PRIVATE ATTORNEY GENERAL ACT**

24 **CAL. LABOR CODE §§ 2698, ET SEQ. [PAGA]**

25 **BY PLAINTIFF AGAINST ALL DEFENDANTS**

26 87. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
27 forth fully herein. Plaintiff alleges as follows as a representative cause of action on behalf of himself.
28

1 88. PAGA authorizes an aggrieved employee, on behalf of himself or other current or former
2 employees, to bring a civil action to recover civil penalties against his or her employer pursuant to the
3 procedures specified in California Labor Code § 2699.3. Plaintiff is an aggrieved employee within the
4 meaning of PAGA, and pursuant to PAGA, Plaintiff is entitled to recover civil penalties on behalf of himself
5 and other similarly aggrieved persons who are, or were employed, by Defendants and against whom one or
6 more of the alleged violations were committed. If the employee prevails as private attorney general, the
7 employer may be subject to civil penalties, of which the aggrieved employee is entitled to 25 percent.

8 89. Plaintiff has complied with the procedures for bringing suit under PAGA. Specifically, on
9 or about October 15, 2020, Plaintiff gave written notice of Defendants' violations — including the facts
10 and theories to support the violations — of various provisions of the California Labor Code and the
11 applicable IWC Wage Order to (a) the LWDA by filing with the LWDA through the LWDA website and
12 (b) to Defendants by certified mail.

13 90. Pursuant to California Labor Code § 2699.3, the LWDA must give written notice by certified
14 mail to the parties that it intends to investigate the alleged violations of the California Labor Code within
15 60 days of the date of the complainant's written notice and More than 65 days have passed since the
16 notice and the LWDA did not provide the parties notice that it intended to investigate her claims.

17 91. During the applicable time period preceding the filing of Plaintiff's notice to the LWDA,
18 Defendants violated California Labor Code §§ 204, 210 (untimely payment of wages), 204, 1118.12, 1197.1
19 (minimum wage), 226 (inaccurate itemized wage statements), 226.7 (meal and rest break violations), 512
20 (meal breaks), and 203 (waiting time penalties), as well as the applicable IWC Wage Order, as alleged in
21 more detail above.

22 92. Pursuant to California Labor Code §§ 2699(a) and (f), and 2699.5, and 2699(g)(1), Plaintiff
23 is entitled to an award of reasonable attorneys' fees and costs. To that end, Plaintiff seeks all relief entitled
24 under PAGA for any penalties assessed against Defendants as a result of Defendants' California Labor
25 Code violations, plus attorneys' fees and costs.

PRAYER FOR RELIEF

Wherefore, Plaintiff, individually, and on behalf of aggrieved employees, pray for an award and judgment against Defendants jointly and severally, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For civil penalties pursuant to Labor Code §98.6 in the amount of no less than \$10,000.00;
3. For civil penalties pursuant to Labor Code § 1102.5 in the amount of no less than \$10,000.00;
4. For payment of unpaid minimum wage compensation pursuant to Labor Code §§1182.12, 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 1-2001, in the amount of no less than \$20,384.00;
5. For liquidated damages pursuant to Labor Code §1194.2 in the amount of no less than \$20,384.00;
6. For statutory penalties or damages pursuant to Labor Code §558 in the amount of no less than \$1,250.00;
7. For payment of unpaid overtime compensation pursuant to Labor Code §510 and Industrial Welfare Commission Order No. 16-2001, in the amount of no less than \$27,120.00;
8. For payment of meal and rest period compensation pursuant to Labor Code §§226.7 and 512, in the amount of no less than \$20,384.00;
9. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;
10. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no less than \$9,250.00;
11. For waiting time penalties pursuant to Labor Code §203, in the amount of no less than \$7,200.00;
12. For an order appointing Plaintiff as class representative and Plaintiff's counsel as class counsel;
13. For statutory penalties pursuant to Labor Code §2699, in the amount of no less than \$7,600.00 on Plaintiff's own behalf, and similar amounts on behalf of all of Defendants' aggrieved employees, estimated to exceed \$500,000.00;

1 14. For prejudgment interest on each of the foregoing at the legal rate from the date the
2 obligation became due through the date of judgment in this matter;

3 15. For restitutionary disgorgement of profits garnered as a result of Defendants' unlawful
4 conduct, failure to pay minimum wages, failure to pay overtime wages, failure to pay meal and rest period
5 wages and other compensation in accordance with the law;

6 16. For punitive damages, pursuant to Civil Code §§3294 in amounts sufficient to punish
7 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

8 17. For costs of suit, attorneys' fees, and expert witness fees pursuant to the Labor Code and/or
9 any other basis;

10 18. For post-judgment interest; and

11 19. For any other relief that the Court deems just and proper.

12
13 DATED: December 31, 2020

THE DOMINGUEZ FIRM, LLP

14
15
16 By: 

Jace H. Kim, Esq.
Attorneys for Plaintiff,
ELIAS NAVA

17
18
19 **JURY TRIAL DEMANDED**

20
21 Plaintiff, ELIAS NAVA demands trial of all issues by jury.

22 DATED: December 31, 2020

THE DOMINGUEZ FIRM, LLP

23
24
25 By: 

Jace H. Kim, Esq.
Attorneys for Plaintiff,
ELIAS NAVA