

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Mel Red Recana

Matthew Rabban, SBN 277910
Law Offices of Matthew Rabban, APC
401 Wilshire Blvd., 12th Floor Penthouse
Santa Monica, CA 90401
Phone: (818) 448-5625
Fax: (424) 645-1180
E-mail: mattrabban@hotmail.com

Eli Banayan, Esq., SBN 322075
BANA LEGAL GROUP, P.C.
10250 Constellation Boulevard, Suite 100
Los Angeles, CA 90067
Telephone: (310) 736-3616
Facsimile: (310) 736-3616
Email: eb@banalegal.com

Attorneys for Plaintiff, FERMIN GARCIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

FERMIN GARCIA,

Plaintiff,

vs.

NAVARRO'S TOWING, LLC dba
NAVARRO'S TOWING NORTH
HOLLYWOOD, HERIBERTO EDDIE
NAVARRO, and DOES 1 through 20, inclusive,
Defendants.

Case Nos.: **22STCV31354**

Hon.
Dept.:

COMPLAINT FOR:

- 1. Failure To Provide Meal and Rest Periods [Cal. Lab. Code §§226.7, 512]**
- 2. Failure To Pay All Wages Due Upon Termination: Waiting Time Penalties [Cal. Lab. Code § 201-203]**
- 3. Failure To Pay All Wages Earned [Cal. Lab. Code § 201-202, 218, 218.5, 1194, 1194.2, 1198]**
- 4. Failure To Issue Accurate Itemized Wage Statements [Cal. Lab. Code § 226, 226.3]**
- 5. Failure To Timely Produce Personnel File [Cal. Lab. Code § 1198.5]**
- 6. Violations Of California's Unfair Competition Act [Bus. & Prof. Code § 17200 et seq.]**
- 7. Reimbursement of Employee Expenses [Cal. Lab. Code § 2802]**
- 8. Private Attorney General Act**

JURY TRIAL DEMANDED

COMES NOW, Plaintiff, FERMIN GARCIA (“Plaintiff”), who alleges as follows against NAVARRO'S TOWING, LLC dba NAVARRO'S TOWING NORTH HOLLYWOOD, HERIBERTO EDDIE NAVARRO, and DOES 1 through 20, inclusive, (“Defendants”):

JURISDICTION

1. This Court has personal jurisdiction over Defendants because Defendants engaged in wrongful conduct in the State of California, which caused harm to Plaintiff in this state.

2. Venue is proper in this Court, because Defendants employ persons in this county, employed Plaintiff in this county, and thus a substantial portion of the occurrences related to this action occurred in this county. *Cal. Civ. Proc.* §395.

PARTIES

3. Plaintiff is now, and at all times relevant to this complaint, a competent adult over 18 years of age and a resident of the County of Los Angeles in the State of California.

4. Defendant, NAVARRO'S TOWING, LLC dba NAVARRO'S TOWING NORTH HOLLYWOOD, is organized and existing under the laws of the State of California, and at all relevant times was doing business in the transportation industry in the County of Los Angeles.

5. Defendant, HERIBERTO EDDIE NAVARRO, is an individual, and a resident and citizen of the State of California.

6. At all times relevant herein, Defendant NAVARRO'S TOWING, LLC dba NAVARRO'S TOWING NORTH HOLLYWOOD was Plaintiff's employer within the meaning of the Labor Code as they were joint employers or are each liable per the labor code, including California Labor Code 2810.3. Plaintiff has provided notice to Defendant to the extent necessary to provide notice as required under California 2810.3.

7. Plaintiff is informed and believes that at all times herein mentioned Defendants and DOES 1 through 20, are and were individuals, sole proprietorships, corporations, business entities, persons, and partnerships, licensed to do business and/or actually doing business in the State of California.

1 8. Plaintiff is unaware of the true names and capacities and is informed and believes
2 and thereon alleges that at all times herein mentioned Defendants and DOES 1 through 20, are
3 and were individual, corporate, associate, or otherwise, of the defendants sued as DOES 1
4 through 20, inclusive. They are unknown to Plaintiff and therefore Plaintiff sues them by such
5 fictitious names. Plaintiff will amend this complaint to allege their true names and capacities
6 when they become known to Plaintiff. Plaintiff is informed and believes, and thereon alleges,
7 that DOES 1 through 20, inclusive, are indebted to Plaintiff as hereinafter alleged, and that
8 Plaintiff's rights against such fictitiously named Defendants arise from such indebtedness.

9 9. Plaintiff is informed and believes, and on that basis alleges, that each defendant
10 sued in this action, including each defendant sued by the fictitious names DOES 1 through 20,
11 inclusive, are responsible and liable in some manner for the occurrences, controversies, and
12 damages alleged below.

13 10. All references to "Defendant", "Defendants", "company", "companies",
14 "employer", or any similar language, whether singular or plural, shall mean "defendants, and
15 each of them" when used throughout this complaint.

16 11. At all times herein mentioned, Defendants participated in the doing of the acts
17 and omissions herein alleged, were acting within the purpose, course and scope of said agency
18 and/or employment to have been done by the named Defendants; and furthermore, the
19 Defendants, and each of them, were the agents, managing agents, servants, employees, alter-
20 egos, co-conspirators, joint-venturers, partners, successors in interest and predecessors in
21 interest of each of the other Defendants.

22 12. At all times herein mentioned, Defendants were acting within the purpose, course
23 and scope of said agency and/or employment so as to invoke vicarious liability and respondeat
24 superior liability among other theories of liability to hold Defendants liable and responsible for
25 the injuries and damages to Plaintiff.

26 13. At all times herein mentioned, the acts and omissions of various Defendants
27 contributed to the various acts and omissions of each and all of the other Defendants in
28 proximity causing the injuries and damages as herein alleged.

1 14. At all times herein mentioned, Defendants, including all Defendants' managing
2 agents, officers, and directors, had advanced knowledge of and/or ratified each and every act or
3 omission complained throughout this complaint. At all times relevant herein, Defendants and/or
4 their managing agents, officers or directors committed and/or participated in the wrongful acts
5 and omissions complained of throughout this complaint or ratified such acts and omissions.

6 15. At all times herein mentioned, the Defendants aided and abetted the acts and
7 omissions of each and all of the other Defendants in proximately causing the damages as herein
8 alleged.

9 16. Plaintiff is informed and believes and thereon alleges that there exists such a
10 unity of interest and ownership between Defendants, that the individual and separateness of
11 Defendants have ceased to exist.

12 17. Plaintiff is informed and believes and thereon alleges that each Defendant had
13 the ability to determine wages, hire, fire, and discipline Plaintiff and similarly situated
14 employees.

15 18. The business affairs of Defendants are, and at all times relevant hereto were, so
16 mixed and intermingled that the same cannot reasonably be segregated, and the same
17 inextricably entwined.

18 19. The recognition of the separate existence of any Defendant would not promote
19 injustice, in that it would permit the Defendants to wrongfully insulate themselves from
20 liability to Plaintiff.

21 20. Adherences to the fiction of the separate existence of Defendants would permit
22 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
23 from liability for the wrongful acts committed by it.

24 21. Plaintiff is informed and believes, and based thereon alleges that Defendants
25 are alter egos of each other.

26 **GENERAL FACTS AND ALLEGATIONS**

27 22. Plaintiff is informed, believes and thereon alleges that at all times relevant
28 hereto, Defendant HERIBERTO EDDIE NAVARRO operated NAVARRO'S TOWING, LLC

1 dba NAVARRO'S TOWING NORTH HOLLYWOOD, a company that is involved in the
2 transportation industry. The company is located at 524 Monterey Pass Road, Monterey Park,
3 CA 91754.

4 23. On information and belief, Defendant HERIBERTO EDDIE NAVARRO is the
5 owner of NAVARRO'S TOWING, LLC dba NAVARRO'S TOWING NORTH
6 HOLLYWOOD, and exercised pervasive control over Plaintiff's wages and working
7 conditions.

8 24. Defendants NAVARRO'S TOWING, LLC dba NAVARRO'S TOWING
9 NORTH HOLLYWOOD employed Plaintiff, at all relevant times, as a driver, from in or about
10 January 2019, until the termination of Plaintiff's employment on March 15, 2022.

11 25. On information and belief, given Defendants' illegal failure to timely produce
12 Plaintiff's personnel and payroll files, Plaintiff alleges as follows: From in or about January
13 2019 until Plaintiff's termination on or about March 15, 2022, Plaintiff was compensated at
14 the hourly rate of \$17. Plaintiff worked, on average, for seven days per week, working on
15 average nine hours per day, starting his shift at 8:00 a.m. and ending his shift at 5:00 p.m. At
16 all times mentioned herein, Plaintiff was a non-exempt employee entitled to all minimum and
17 overtime wages, meal period breaks, and rest period breaks.

18 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 controlled or affected the working conditions, wages, working hours, scope and conditions of
20 employment of Plaintiff during Plaintiff's employment with Defendant.

21 27. Plaintiff alleges he was never provided meal breaks in a timely manner as he
22 consistently worked from 8 a.m. – 5 p.m. seven days a week, but did not receive any meal
23 breaks or rest breaks because he was constantly needed to perform work. In other words, it
24 was not possible for Plaintiff to take his meal or rest breaks because of the workload,
25 understaffing, and company practice. Therefore, Defendants deterred Plaintiff from taking
26 compliant meal and rest periods.

27 ///

28 ///

1 **FIRST CAUSE OF ACTION BY PLAINTIFF AGAINST ALL DEFENDANTS**
2 **FAILURE TO PROVIDE MEAL AND REST PERIODS [Cal. Lab. Code §§ 226.7, 512]**

3 28. Plaintiff repeats, realleges, and incorporates all allegations throughout this
4 complaint as though set forth in full herein.

5 29. Labor Code § 512 requires employers to provide every employee with an
6 uninterrupted meal period of not less than 30 consecutive minutes, for every period of work
7 exceeding five hours.

8 30. Labor Code § 226.7 requires an employer to provide every employee with an
9 uninterrupted rest period of not less than 10 minutes, for every period worked in excess of
10 four hours.

11 31. Plaintiff regularly worked in excess of five hours per day, and was thereby
12 entitled to take the aforementioned uninterrupted 30-minute meal periods and 10-minute rest
13 periods on each day of work.

14 32. At all relevant times herein, Defendants failed and refused to provide Plaintiff
15 with timely meal periods and rest periods during his work shifts, and failed to compensate
16 Plaintiff for missed meal and rest periods, as required by Labor Code § 226.7, and the
17 applicable sections of 8 Code of Regulations § 11040 and Industrial Welfare Commission
18 Order No. 4-2001.

19 33. As alleged herein, Plaintiff is not exempt from the meal and rest breaks
20 requirements of 8 Code of Regulations § 11040 and Industrial Welfare Commission Order No.
21 4-2001. Consequently, Plaintiff is owed one hour of pay at his regularly hourly rate, or the
22 requisite minimum wage, whichever is greater, for each day that he was denied such meal and
23 rest periods, and is owed one hour of pay at his regular hourly rate, or the requisite minimum
24 wage, whichever is greater, for each day that he was denied such meal and rest periods.

25 34. Plaintiff has been deprived of his rightfully earned compensation for meal and
26 rest break violations as a direct and proximate result of Defendants' failure and refusal to pay
27 said compensation.
28

1 35. From in or about January 2019 until Plaintiff's termination on or about March
2 15, 2022, Defendants failed to provide Plaintiff with timely statutory meal and rest periods for
3 those days on which he worked at for approximately 167 work weeks. Consequently, Plaintiff is
4 owed one additional hour of pay at his normal hourly rate of \$17 for each day that he was
5 denied such a meal and rest periods pursuant to Labor Code § 226.7, or \$39,746, plus interest
6 therein.

7 36. Plaintiff is entitled to recover such amounts in the combined amount of \$39,746,
8 plus interests therein and costs of suit.

9 37. In addition to the alter ego theory of liability for HERIBERTO EDDIE
10 NAVARRO, as alleged throughout this Complaint, California Labor Code § 558.1 provides for
11 personal liability for employers, and persons acting on behalf of an employer, who violate
12 and/or cause to be violated the statute and related Industrial Welfare Commission Order
13 provision at issue throughout this cause of action.

14 **SECOND CAUSE OF ACTION BY PLAINTIFF AGAINST ALL DEFENDANTS**
15 **FAILURE TO PAY ALL WAGES DUE UPON TERMINATION: WAITING TIME**
16 **PENALTIES [Cal. Lab. Code § 201-203]**

17 38. Plaintiff repeats, realleges, and incorporates all allegations throughout this
18 complaint as though set forth in full herein.

19 39. At all relevant times herein, Defendants failed to pay all of Plaintiff's earned
20 wages and other compensation due immediately upon termination or within seventy-two hours
21 of resignation, as required. These wages refer to, at a minimum, the wages earned and unpaid at
22 time of discharge, minimum wages, overtime compensation, and meal and rest period
23 compensation that Defendants should have paid, but did not pay to Plaintiff during the term of
24 his employment and which were, at the latest, due within the time parameter of Labor Code §§
25 201- 203.

26 40. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code
27 §§ 201 – 203.

1 41. As a direct and proximate result of Defendants’ willful failure to pay these
2 wages, Plaintiff is entitled to repayment of his meal and rest periods premiums as previously
3 pleaded herein, and reimbursement for costs expended as pleaded below, amounting to \$4,845
4 in wait time penalties, calculated based on thirty days of wages at \$17 per hour.

5 42. Based on Defendants’ conduct as alleged herein, Defendants are liable for \$4,845
6 in statutory penalties pursuant to Labor Code § 203 and other applicable provisions, as well as
7 attorneys’ fees and costs.

8 43. Plaintiff alleges that Defendants are liable jointly and severally for damages
9 pursuant to Labor Code section § 558.1.

10 44. In addition to the alter ego theory of liability for HERIBERTO EDDIE
11 NAVARRO, as alleged throughout this Complaint, California Labor Code § 558.1 provides for
12 personal liability for employers, and persons acting on behalf of an employer, who violate
13 and/or cause to be violated the statute and related Industrial Welfare Commission Order
14 provision at issue throughout this cause of action.

15 **THIRD CAUSE OF ACTION BY PLAINTIFF AGAINST ALL DEFENDANTS**
16 **FAILURE TO PAY ALL WAGES EARNED [Cal. Lab. Code § 201-202, 218, 218.5,**
17 **1194, 1194.2, 1198]**

18 45. Plaintiff repeats, realleges, and incorporates all allegations throughout this
19 complaint as though set forth in full herein.

20 46. At all relevant times herein, Defendants were required to compensate its hourly
21 employees for all hours worked upon reporting to work at the appointed time stated by the
22 employer pursuant to the Industrial Commission Order 7-2001, California Code of Regulations,
23 Title 8.

24 47. Labor Code § 1194 provides in relevant part: “Notwithstanding any agreement
25 to work for a lesser wage, any employee receiving less than the legal minimum wage ...
26 applicable to the employee is entitled to recover in a civil action the unpaid balance of the full
27 amount of this minimum wage ..., including interest thereon, reasonable attorney’s fees, and
28 costs of suit.”

48. “In any action under ... Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount of the wages unlawfully unpaid and interest thereon.” Labor Code § 1194

49. As mentioned herein, Defendants failed to provide proper meal and rest breaks, failed to reimburse Plaintiff for costs expended in the direct discharge of his duties.

50. Accordingly, pursuant to Labor Code § 1194 and 218, Plaintiff is entitled to recover wages for all hours, for all hours worked and for all other hours worked that were not adequately compensated.

51. In addition to the alter ego theory of liability for HERIBERTO EDDIE NAVARRO, as alleged throughout this Complaint, California Labor Code § 558.1 provides for personal liability for employers, and persons acting on behalf of an employer, who violate and/or cause to be violated the statute and related Industrial Welfare Commission Order provision at issue in this cause of action.

**FOURTH CAUSE OF ACTION BY PLAINTIFF AGAINST ALL DEFENDANTS
FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS [Cal. Lab. Code
§ 226, 226.3]**

52. Plaintiff repeats, realleges, and incorporates all allegations throughout this complaint as though set forth in full herein.

53. Defendants failed to provide Plaintiff with accurate itemized wage statements in writing in violation of Labor Code § 226, which requires wage statements to show: (1) total hours worked, (2) hourly wages, (3) gross wages, (4) total deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number, (8) the name and address of the legal entity that is his employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. At the very least, wage statements that were issued were not accurate because Plaintiff was not

1 compensated meal or rest break premiums, and was not reimbursed for costs expended in the
2 direct discharge of his duties, as more fully set forth in this complaint.

3 54. During the relevant time period, Defendants implemented an employment
4 practice whereby they willfully, intentionally, and not inadvertently, violated Labor Code
5 section 226 as they failed to provide Plaintiff with accurate wage statements compliant with the
6 Labor Code, as the wage statements were not accurate with respect to the applicable and correct
7 rates of pay including overtime rates of pay and paid sick leave rates of pay. As alleged herein,
8 Plaintiff is not exempt from the requirements of Labor Code § 226.

9 55. This failure has injured Plaintiff, by misrepresenting and depriving his hour,
10 wage, and earnings information to which he is entitled, causing him difficulty and expense in
11 attempting to reconstruct time and pay records, causing him not to be paid wage she earned,
12 causing him to be unable to rely on earnings statements in dealings with third parties, and
13 eliminating his right under Labor Code § 226(b) to review itemized wage statement information
14 by inspecting the employer's underlying records. For the time periods during which Plaintiff
15 was not provided with any pay stubs, his previously mentioned injuries are presumed as a matter
16 of law.

17 56. Based on Defendants' conduct as alleged herein, Plaintiff is owed the greater of
18 actual wages earned or entitled to a maximum penalty of \$4,000 based on \$50 for each pay
19 period in which there was an initial violation of Section 226 and \$100 for each subsequent pay
20 period in which there was a further violation. Based on the number of violations against
21 Defendants, Defendants are liable to Plaintiff for \$4,000 in damages and statutory penalties
22 pursuant to Labor Code § 226, civil penalties pursuant to Labor Code § 226.3, and other
23 applicable provisions, as well as attorneys' fees and costs.

24 57. Plaintiff seeks injunctive relief under Labor Code section 226 in the form of an
25 order from the Court ordering Defendants to properly state the wages earned, the proper hours
26 worked, and to furnish accurate wage statements to each Plaintiff herein as well as other
27 similarly situated employees.
28

1 58. In addition to the alter ego theory of liability for HERIBERTO EDDIE
2 NAVARRO, as alleged throughout this Complaint, California Labor Code § 558.1 provides for
3 personal liability for employers, and persons acting on behalf of an employer, who violate
4 and/or cause to be violated the statute and related Industrial Welfare Commission Order
5 provision at issue throughout this cause of action.

6 **FIFTH CAUSE OF ACTION BY PLAINTIFF AGAINST ALL DEFENDANTS**
7 **FAILURE TO TIMELY PRODUCE PERSONNEL FILE [Cal. Lab. Code § 1198.5]**

8 59. Plaintiff repeats, realleges, and incorporates all allegations throughout this
9 complaint as though set forth in full herein.

10 60. On or about April 20, 2022, Plaintiff made a written request to inspect his
11 personnel file from Defendant NAVARRO'S TOWING, LLC dba NAVARRO'S TOWING
12 NORTH HOLLYWOOD. Defendant NAVARRO'S TOWING, LLC dba NAVARRO'S
13 TOWING NORTH HOLLYWOOD, failed to respond to Plaintiff's written request to inspect
14 his personnel file and did not timely allow Plaintiff to inspect his personnel file.

15 61. Plaintiff is entitled to \$750 in civil penalties due to each Defendant that failed to
16 provide employment records including Defendant NAVARRO'S TOWING, LLC dba
17 NAVARRO'S TOWING NORTH HOLLYWOOD which violated Labor Code Section §
18 1198.5.

19 62. Plaintiff seeks injunctive relief to compel Defendants NAVARRO'S TOWING,
20 LLC dba NAVARRO'S TOWING NORTH HOLLYWOOD to produce a full and accurate copy
21 of Plaintiff's personnel files including payroll records.

22 63. Defendants' conduct described herein violates the Labor Code. Therefore,
23 Plaintiff is entitled to recover all damages and civil penalties that Defendants owe Plaintiff, plus
24 interest, statutory penalties, and attorneys' fees, expenses, and costs.

25 64. In addition to the alter ego theory of liability for HERIBERTO EDDIE
26 NAVARRO, as alleged throughout this Complaint, California Labor Code § 558.1 provides for
27 personal liability for employers, and persons acting on behalf of an employer, who violate
28

1 and/or cause to be violated the statute and related Industrial Welfare Commission Order
2 provision at issue in this cause of action.

3 **SIXTH CAUSE OF ACTION BY PLAINTIFF AGAINST ALL DEFENDANTS**
4 **VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION ACT Bus. & Prof.**
5 **Code § 17200 et seq**

6 65. Plaintiff repeats, realleges, and incorporates all allegations throughout this
7 complaint as though set forth in full herein.

8 66. California Business & Professional Code § 17200 prohibits any unlawful, unfair,
9 or fraudulent business practices.

10 67. California Business & Professional Code § 17204 allows “any person acting for
11 the interests of itself, its members or the general public” to prosecute a civil action for violation
12 of the UCL.

13 68. Labor code § 90.5(a) states that it is the public policy of California to force
14 vigorously minimum labor standards in order to ensure employees are not required to work
15 under substandard and unlawful conditions, and to protect employers who comply with the law
16 from those who attempt to gain competitive advantage at the expense of their workers by failing
17 to comply with minimum labor standards.

18 69. Defendants’ violation of 8 Code of Regulations §11040, Industrial Welfare
19 Commission Order No. 4-2001, Labor Code §§201, 203, 226, 226.7, 510, 512, 1194, 1194.2,
20 1197, and other applicable provisions, as alleged herein, including Defendants’ failure and
21 refusal to pay minimum wages and overtime wages, failure to provide accurate and complaint
22 wage statements, failure to timely pay compensation upon termination or resignation, and
23 Defendant's failure to maintain complete and accurate payroll records for the Plaintiff, constitute
24 unfair business practices in violation of Business & Professional Code §17200 et seq.

25 70. As a result of Defendants’ unfair business practices, Defendants have reaped
26 unfair benefits and illegal profits at the expense of Plaintiff and members of the public.
27 Defendants should be made to disgorge their ill-gotten gains and restore such monies to
28 Plaintiff.

1 71. Defendants' unfair business practices entitled Plaintiff to seek preliminary and
2 permanent injunctive relief, including but not limited to orders that the Defendants account for,
3 disgorge, and restore to the Plaintiff the overtime compensation and other monies and benefits
4 unlawfully withheld from her.

5 72. Under Section 17208 of the California Business and Professions Code, the statute
6 of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period
7 of the unpaid wage causes of actions alleged hereinabove are extended from three years of
8 recovery for wage claims to an additional fourth year of recovery.

9 73. Pursuant to Business & Professional Code §17000 and §17200, the acts
10 constitute continuing and ongoing unlawful activities that justify the issuance of an injunction
11 and all remedies available in the form of unpaid wages, penalties and specific damages that are
12 cumulative and recoverable for Plaintiff.

13 74. Plaintiff has assumed the responsibility of enforcement of the laws and lawful
14 claims specified herein. There is a financial burden incurred in pursuing this action which is in
15 the public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to California
16 Code of Civil Procedure section 1021.5.

17 **SEVENTH CAUSE OF ACTION BY PLAINTIFF AGAINST ALL DEFENDANTS**
18 **REIMBURSEMENT OF EMPLOYEE EXPENSES [Cal. Lab. Code § 2802]**

19 75. Plaintiff repeats, realleges, and incorporates all allegations throughout this
20 complaint as though set forth in full herein.

21 76. Cal. Labor Code 2802 states "(a) An employer shall indemnify their or her
22 employee for all necessary expenditures or losses incurred by the employee in direct
23 consequence of the discharge of their or her duties...."

24 77. Defendants, and each of them, required expend \$30 every month for cleaning
25 supplies.

26 78. Further, Defendants, and each of them, failed to reimburse Plaintiff for cellular
27 phone expenses, which were approximately \$60 per month.

28

1 79. As a direct and proximate result of Defendants' unlawful failure to reimburse
2 Plaintiff for expenses incurred as stated above Plaintiff has suffered, and will continue to suffer,
3 damages in the form of unpaid wages, the precise amounts of which will be ascertained
4 according to proof at trial. Plaintiff is entitled to recover such damages, as well as attorney's
5 fees, costs, and interest under Labor Code § 2802.

6 **EIGHTH CAUSE OF ACTION BY PLAINTIFF AGAINST ALL DEFENDANTS**
7 **VIOLATION OF THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**
8 **(Cal. Labor Code §§ 2698 et seq.)**

9 80. Plaintiff repeats, realleges, and incorporates all allegations throughout this
10 complaint as though set forth in full herein.

11 81. Plaintiff has satisfied all prerequisites to serve as a representative to enforce the
12 penalty provisions of PAGA. Plaintiff, through duly appointed counsel, gave written notice
13 properly with the LWDA, Case No. LWDA-CM-891539-22 and the employer by certified mail,
14 informing them of the specific provisions of the California Labor Code that Defendants
15 violated, including the facts and theories that support the alleged violations.

16 82. Plaintiff has not received notice from the LWDA that it intends to investigate and
17 has allowed sixty-five (65) days to elapse. Thus, Plaintiff is permitted to commence this civil
18 action.

19 83. Plaintiff thus seeks, as a representative of the State of California, to recover all
20 penalties otherwise capable of being collected by the LWDA, or any of its departments,
21 divisions, commissions, boards, agencies, or employees.

22 84. This includes the civil fines applicable to Plaintiff's violations of the California
23 Labor Code §§ 204, 226(a), 226.7, 512, and 558.

24 85. PAGA provides that for all provisions of the California Labor Code, except for
25 those for which a civil penalty is specifically provided, there is established a civil penalty of one
26 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
27 two hundred (\$200) for each aggrieved employee per pay period for each subsequent violation.
28 See Labor Code §2699(f).

1 86. Funds recovered under PAGA will be distributed as required by law, with 75%
2 of the civil fines being paid to the LWDA and 25% to the aggrieved employees.

3 87. Labor Code § 558(a) provides for a civil penalty that consists of both a penalty
4 and amount and any underpaid wages, with the underpaid wages going entirely to the affected
5 employee or employees as an express exception to the general rule that civil penalties recovered
6 in a PAGA action are distributed 75 percent to the LWDA and 25 percent to the aggrieved
7 employees. Thurman v. Bayshore Transit Management, Inc. (2102) 203 Cal.App.4th 1112,1114;
8 Lawson v. ZB, N.A. (2017) 18 Cal.App.5th 705, 717-718.

9 88. Plaintiff and other current and former employees of Defendants are “aggrieved
10 employees” under PAGA, as they were employed by Defendants on an hourly basis during the
11 relevant period and suffered one or more of the Labor Code violations set forth herein.
12 Accordingly, Plaintiff seeks to recover on his behalf and on behalf of other current and former
13 employees of Defendants, the civil penalties provided by PAGA, as well as attorney’s fees and
14 costs for the prosecution of this action.

15 89. Plaintiff seeks to recover the PAGA civil penalties for violations of the following
16 Labor Code provisions, as more thoroughly detailed throughout this Complaint, including in the
17 PAGA Notice attached hereto as Exhibit 1, incorporated into this Complaint.

- 18 a. Labor Code § 204: Defendants violated this section by failing to pay to
19 Plaintiff, and other aggrieved employees, all of their earned wages within
20 seven (7) days after the close of the pay period. Defendants still owed
21 Plaintiff, and the other aggrieved employees, underpaid wages;
- 22 b. Labor Code § 226(a): By underpaying, or failing to pay, Plaintiff, and other
23 aggrieved employees in violation of Labor Code provisions for timely paid
24 wages, meal break premiums, rest break premiums and wages upon
25 discharge, Defendants have violated Labor Code § 226’s requirement to
26 provide accurate wage statements.;
- 27 c. Labor Code § 226: Defendants did not provide compliant meal and rest
28 breaks to Plaintiff, and other aggrieved employees. Defendants failed to pay

1 the one-hour premium required when they caused an aggrieved employee to
2 miss a meal or rest break;

3 d. Labor Code § 512: Defendants did not provide Plaintiff, and other aggrieved
4 employees, with a thirty (30) minute uninterrupted meal period for each shift
5 of at least five (5) hours, nor a second third (30) minute uninterrupted meal
6 period for shifts exceeding ten (10) hours. Defendants failed to pay the one-
7 hour premium required when they caused an aggrieved employee to miss a
8 meal break;

9 e. Labor Code § 558: Defendants are liable to all aggrieved employees for
10 violations of Labor Code §§ 500-558.1, which include civil fines and
11 underpaid wages which must be paid to the affected employees;

12 **PRAYER**

13 PLAINTIFF PRAYS for judgment against Defendant as follows:

14 As to the First Cause of Action:

15 1. A declaratory judgment that Defendants violated Labor Code §§ 226.7 and 512
16 and applicable Industrial Welfare Commission Wage Orders 4-2001 by failing to provide meal
17 and rest periods and failing to pay premium wages for missed meal and rest periods;

18 2. For unpaid premium wages for payment of missed meal and rest period
19 compensation pursuant to Labor Code §§ 226.7, 512, in the amount of no less than \$39,746;

20 3. For injunctive relief as justice requires, including an accounting of all hours
21 worked, all wages paid and any financial records relating to Plaintiff's employment,
22 restitution and other equitable relief as justice requires;

23 4. For costs under all applicable statutes alleged herein;

24 As to the Second Cause of Action:

25 5. For all penalties and an award of costs, interest and reasonable attorney fees in
26 accordance with Labor Code § 201 – 203, including \$4,845 in waiting time penalties;

27 6. A declaratory judgment that Defendants violated Labor Code §§ 201- 203 by
28 failing to provide plaintiff with all wages due at the time of his termination;

1 7. For injunctive relief as justice requires, including an accounting of all hours
2 worked, all wages paid and any other financial records relating to Plaintiff's employment,
3 restitution and other equitable relief as justice requires;

4 As to the Third Cause of Action:

5 8. A declaratory judgment that Defendants violated Labor Code §1194 and
6 §1194.2 by failing to pay all wages;

7 9. For unpaid wages as alleged herein, according to proof at time of trial;

8 10. For injunctive relief as justice requires, including an account of all hours
9 worked, all wages paid and any financial records relating to Plaintiff's employment,
10 restitution and other equitable relief as justice requires.

11 11. For attorney's fees and costs under all applicable statutes allege herein;

12 As to the Fourth Cause of Action:

13 12. For all penalties pursuant to Labor Code § 226 which is: (a) the greater of all
14 actual damages of \$4,000 (in the form of unpaid wages), or (b) the maximum penalty of
15 \$4,000 to each Plaintiff;

16 13. A declaratory judgment that Defendants violated Labor Code § 226 by failing
17 to provide Plaintiff an accurate itemized wage statement;

18 14. For all costs and attorneys' fees pursuant to statute;

19 15. For injunctive relief as justice requires, including an accounting of all hours
20 worked, all wages paid and any financial records relating to Plaintiff's employment,
21 restitution and other equitable relief as justice requires;

22 As to the Fifth Cause of Action:

23 16. For civil penalties in a sum according to proof, totaling at least \$750 per
24 Defendant;

25 17. For injunctive relief as justice requires, including an order for Defendants to
26 produce Plaintiff's personnel files or any other injunctive relief that justice requires in order to
27 obtain compliance with Labor Code § 1198.5;

28 ///

As to the Sixth Cause of Action:

18. For equitable relief in the form of an order requiring Defendants, its agents, servants, and employees and all persons acting directly or indirectly, in concert with them, to restore and disgorge all funds to Plaintiff acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and therefore constituting unfair competition under §17200 of the Cal. Business & Professions Code;

19. For all unpaid wages as alleged and detailed above;

20. For equitable relief in the form of an order and restitution in the form of an additional fourth year of recovery for unpaid wages as a result of Defendant's violation of California wage and hour laws mentioned herein.

As to the Seventh Cause of Action:

21. For an entry of judgment, in favor of Plaintiff in the amount of unreimbursed business expenses incurred by Plaintiff, pursuant to Labor Code § 2802 in an amount according to proof at time of trial;

22. For all costs and attorneys' fees pursuant to statute.

As to the Eighth Cause of Action:

23. For an award of civil penalties, per each violation, pursuant to PAGA;

24. For an award of wages unpaid, or underpaid pursuant to Labor Code §§ 500-558.1, to be paid to the affected employees.

As to all claims for relief:

25. For any and all penalties available under the California Labor Code;

26. For attorneys' fees and costs under all applicable statutes alleged herein;

27. For all costs and disbursements incurred in this suit;

28. For pre and post judgment interest as allowed by law;

29. For such other and further relief as the Court deems just and proper

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

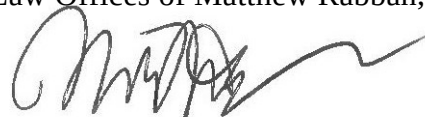
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all causes of action asserted herein.

Dated: September 26, 2022

Law Offices of Matthew Rabban, APC

BY:



Matthew Rabban, Esq.
Attorneys for Plaintiff,
FERMIN GARCIA