

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Jon Takasugi

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Jeffrey D. Klein (SBN 297296)

jeff@tomorrowlaw.com

Jean Hopkins Power (SBN 326509)

jean@tomorrowlaw.com

Anita Lodi (SBN 347554)

anita@tomorrowlaw.com

8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, LUIS JAIME VELIS,
as an aggrieved employee, and on behalf of all other
aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LUIS JAIME VELIS, as an aggrieved
employee, and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys' General Act of 2004,

Plaintiff,

v.

NAVARRO'S TOWING, LLC., a California
limited liability company; EDDIE
NAVARRO, an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: **23STCV02775**

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]

COMES NOW plaintiff LUIS JAIME VELIS (“Plaintiff”), as aggrieved employees, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys’ General Act of 2004, and alleges as follows:

JURISDICTION AND VENUE

1. This is a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against NAVARRO’S TOWING LLC, (“NAVARRO’S TOWING”) a California limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California, and EDDIE NAVARRO, (“MR. NAVARRO”) an individual residing in California, and any of its respective subsidiaries or affiliated companies within the State of California (“NAVARRO’S TOWING” and together with “MR. NAVARRO” and DOES 1 through 100, as further defined below, “Defendants”), as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

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

3. Venue is proper in Los Angeles County, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the causes of action complained of herein arose; the county in which the employment relationship

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

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

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

19
20 6. During the period beginning one (1) year preceding the provision of notice to
21 the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
22 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
23 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
24 1197.1, 1197.5, 1198.5, 2699, 2802, 2810.3, and 2810.5, among others.

25 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved
26 employees such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former
27

1 employees within the statutory period, to bring a civil action to recover civil penalties pursuant to
2 the procedures specified in Labor Code section 2699.3.

3 8. On or around November 29, 2022, Plaintiff provided written notice pursuant
4 to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of
5 Defendants' violation of various, including the herein-described, provisions of the Labor Code, to
6 the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
7 them.

8
9 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
10 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
11 calendar days of the November 29, 2022 postmarked date of the herein-described notice sent by
12 Plaintiff to the LWDA and Defendants.

13 **PAGA REPRESENTATIVE ALLEGATIONS**

14 10. At all relevant times mentioned herein, Defendants had and have a policy or
15 practice of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State
16 of California in violation of California state wage and hour laws as a result of, without limitation,
17 Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours
18 per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime
19 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes
20 actually worked; engaging, suffering, or permitting employees to work off the clock, including,
21 without limitation, by requiring employees: to remain on-call, to suffer under Defendants' control
22 to complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including
23 answering calls from dispatch and others), to clock out for meal periods and continue working, to
24 don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the
25 clock, to make phone calls or drive off the clock; failing to include all forms of remuneration,
26
27

1 including non-discretionary bonuses, incentive pay, meal allowances, and other forms of
2 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
3 additional compensation was earned for the purpose of calculating the overtime rate of pay;
4 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
5 less hours than actually worked, and for paying straight pay instead of overtime pay, to the
6 detriment of Plaintiff and other Aggrieved Employees.

7
8 11. At all relevant times mentioned herein, Defendants had and have a practice
9 or policy of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages
10 for all hours worked or otherwise under Defendants' control as a result of, without limitation,
11 failing to accurately track and/or pay for all minutes actually worked; by requiring employees: to
12 remain on-call; to suffer under Defendants' control to complete pre-shift tasks before clocking in
13 and post-shift tasks after clocking out (including answering calls from dispatch and others), to clock
14 out for meal periods and continue working, to don and doff uniforms and/or safety equipment off
15 the clock, to attend company meetings off the clock, to make phone calls or drive off the clock;
16 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
17 less hours than actually worked; failing to pay reporting time pay; paid time off and vacation time
18 owed; and failing to pay split shift premiums, to the detriment of Plaintiff and other Aggrieved
19 Employees.

20
21 12. At all relevant times mentioned herein, Defendants had and have a policy or
22 practice of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute
23 uninterrupted, timely, and complete meal period for days on which the employee worked in excess
24 of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete
25 30-minute meal periods or compensation in lieu thereof including, without limitation, by
26 interrupting meal periods; not providing timely meal periods; failing to provide first and second
27

1 meal periods; providing short meal periods; requiring that employees carry cellular telephones or
2 walkie-talkies during meal periods; not permitting employees to leave the premises; otherwise
3 requiring on-duty/on-call meal periods; and/or auto-deducting meal periods that could not be auto-
4 deducted by law or during which employees worked, as required by California wage and hour laws

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

14 14. At all relevant times mentioned herein, Defendants had and have a policy or
15 practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing
16 to furnish Plaintiff and other Aggrieved Employees with itemized wage statements that accurately
17 reflect gross wages earned; total hours worked by the employee; net wages earned; all deductions;
18 all applicable hourly rates in effect during the pay period and the corresponding number of hours
19 worked at each hourly rate by the employee; the legal name of the employer and/or the name and
20 address of the legal entity securing the employer's services if the employer is a farm labor
21 contractor; and other such information as required by Labor Code section 226, subdivision (a).
22

23 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
24 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
25 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
26 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time
27

1 records under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved
2 Employees to calculate their unpaid wages and/or premium payments, to the detriment of Plaintiffs
3 and other Aggrieved Employees.

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

9
10 17. At all relevant times herein, Defendants had and have a policy or practice of
11 failing to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
12 separation of employment as wages at their final rate of pay in violation of Labor Code section
13 227.3 and applicable Wage Orders.

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

22
23 19. At all relevant times mentioned herein, Defendants have had a policy or
24 practice of failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the
25 Wage Theft Protection Act of 2011) by, among other things, failing to provide Plaintiff and other
26 Aggrieved Employees with the rates of pay and overtime rates of pay applicable to their
27

1 employment; allowances claimed as part of the minimum wage; the regular payday designated by
2 Defendants; the name, address, and telephone number of the workers' compensation insurance
3 carrier; information regarding paid sick leave; and other pertinent information required to be
4 disclosed by Defendants under Labor Code section 2810.5.

5 20. At all relevant times mentioned herein, Defendants failed to provide Plaintiff
6 and other Aggrieved Employees with the amount of paid sick leave required to be provided
7 pursuant to California law (including, without limitation Labor Code section 246, *et seq.*), and also
8 did not permit its use upon request as contemplated under California laws, to the detriment of
9 Plaintiff and all other Aggrieved Employees.

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

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

23. Defendants had and have a policy or practice of preventing Plaintiff and/or other Aggrieved Employees from disclosing violations of state and federal law, either within Defendants to their managers or outside to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information about unsafe or discriminatory working conditions, or about wage and hour violations in violation of Labor Code section 232 and 232.5.

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

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

PARTIES

A. Plaintiff

26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, towing vehicles and

1 equipment to different warehouses. Plaintiff is informed and believes that Plaintiff worked for
2 Defendants from approximately January of 2020 through approximately April of 2022.

3 **B. Defendants**

4 27. Plaintiff is informed and believes and based thereon alleges that defendant
5 NAVARRO'S TOWING is, and at all times relevant hereto was, a limited liability company
6 organized and existing under and by virtue of the laws of the State of California and doing business
7 in the County of Los Angeles, State of California.

8
9 28. Plaintiff is informed and believes and based thereon alleges that defendant MR.
10 NAVARRO is, and at all times relevant hereto was, an individual residing in California, as well as
11 Chief Executive Officer for NAVARRO'S TOWING.

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

25
26 //

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

30. Plaintiff is informed and believes, and based thereon alleges, that at all times

31. All of the acts and conduct described herein of each and every corporate

32. Plaintiff is informed and believes, and based thereon alleges, that despite the

a. The Alter Ego Defendants are completely dominated and controlled by the

1 Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or
2 inequitable purpose;

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

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

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

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

23 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
24
25
26
27

1 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be
2 disregarded.

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

5 **FIRST CAUSE OF ACTION**

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

7 34. Plaintiff re-alleges and incorporates by reference all of the allegations set
8 forth in the preceding paragraphs as though fully set forth hereat.

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

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

15 36. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
16 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
17 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
18 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
19 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
20 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
21 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

22 37. At all relevant times herein, Defendants have had a consistent policy or
23 practice of failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely
24 basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
25
26
27

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

6
7 Civil Penalties Under Labor Code § 226.3

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

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

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

24 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
25 and have a policy or practice of failing to furnish non-exempt employees, including, without
26 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
27

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
4 services if the employer is a farm labor contractor; and other such information as required by Labor
5 Code section 226, subdivision (a).

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

12 Violation of Labor Code § 558

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

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

25 44. Plaintiff is informed and believes, and based thereon allege, that Defendants,
26 and each of them, violated, or caused to be violated, the Labor Code sections described herein,
27

1 including causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and
2 overtime rates of pay applicable to their employment, allowances claimed as part of the minimum
3 wage, the regular payday designated by employer, the name of the employer, including any “doing
4 business as” names used, the name, address, and telephone number of the workers’ compensation
5 insurance carrier, information regarding paid sick leave, and other pertinent information.

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

12 Violation of Labor Code § 1174.5

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

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

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

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

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

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

24 Violation of Labor Code § 1197.1

25 52. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
26 person acting either individually or as an officer, agent, or employee of another person, who pays
27

1 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
2 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
3 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
4 Section 203 as follows:

5 (1) For any initial violation that is intentionally committed, one hundred dollars
6 (\$100) for each underpaid employee for each pay period for which the
7 employee is underpaid. This amount shall be in addition to an amount
8 sufficient to recover underpaid wages, liquidated damages pursuant to Section
9 1194.2, and any applicable penalties imposed pursuant to Section 203.

10 (2) For each subsequent violation for the same specific offense, two hundred fifty
11 dollars (\$250) for each underpaid employee for each pay period for which the
12 employee is underpaid regardless of whether the initial violation is
13 intentionally committed. This amount shall be in addition to an amount
14 sufficient to recover underpaid wages, liquidated damages pursuant to Section
15 1194.2, and any applicable penalties imposed pursuant to Section 203.

16 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
17 Section 203, recovered pursuant to this section shall be paid to the affected
18 employee.”
19

20
21 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 caused Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
23 without limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ minimum wages
24 for all hours worked or otherwise under Defendants’ control due to, without limitation, routinely
25 failing to accurately track and/or pay for all hours actually worked; detrimental rounding or
26 manipulation of time entries; paying straight pay instead of overtime or otherwise failing to pay
27

1 overtime hours at the proper overtime rate of pay; engaging, suffering, or permitting employees to
2 work off the clock, entitling Plaintiff and other aggrieved Employees to actual and liquidated
3 damages.

4 54. As a direct and proximate result of the herein-described Labor Code violations,
5 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
6 recover civil penalties for Defendants' herein-described Labor Code violations in the amount one
7 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
8 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
9 subsequent violation.
10

11 Civil Penalties Under Labor Code § 2699

12 55. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
13 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
14 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
15 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
16 action brought by an aggrieved employee on behalf of himself or herself and other current or former
17 employees pursuant to the procedures specified in Labor Code section 2699.3.
18

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

25 57. Plaintiff is informed and believes and based thereon alleges that Defendants,
26 and each of them, violated the Labor Code sections described herein, including, without limitation,
27

1 for the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
2 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
3 name of the employer, including “doing business as” names used, the name, address, and telephone
4 number of the workers’ compensation insurance carrier, information regarding paid sick leave, and
5 other pertinent information required to be disclosed by Defendants under Labor Code section
6 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick
7 leave required to be provided pursuant to California and local laws.

8
9 58. Moreover, Plaintiff and other Aggrieved Employees within the State of
10 California whom he seeks to represent are entitled to an award of reasonable attorneys’ fees and
11 costs in connection with their herein-described claims for civil penalties.

12 **REQUEST FOR JURY TRIAL**

13 59. Plaintiff hereby requests a trial by jury.

14 **PRAYER**

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

- 17 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
18 1174.5, 1197.1, and 2699;
19
20 B. An award of reasonable attorneys’ fees and costs pursuant to Labor Code sections
21 210, 226.3, 558, 1174.5, 1197.1, and 2699;
22
23 C. Pre-judgment and post-judgment interest;
24
25 D. For costs of suit incurred herein; and
26
27 E. Such other and further relief as the Court deems just and proper.

28 //

1 Dated: February 8, 2023

BIBIYAN LAW GROUP, P.C.

2

3

BY: /s/ Jean H. Power

4

JEAN H. POWER

JEFFREY D. KLEIN

DAVID D. BIBIYAN

5

Attorneys for Plaintiff LUIS JAIME VELIS,
as an aggrieved employee, and on behalf of all
other aggrieved employees under the Labor
Code Private Attorneys' General Act of 2004,

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28