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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
12/9/2024 6:34 PM
By: Eric Rowe, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

MARTIN PINEDA DAMIAN, an
individual,

Plaintiff,

vs.

AGRANI, INC., a California
corporation; BIJAL PATEL, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CIVSB2436570

COMPLAINT FOR:

- 1. EMPLOYEE MISCLASSIFICATION AS AN INDEPENDENT CONTRACTOR (Cal. Labor Code §226.8);**
- 2. FAILURE TO PAY PREMIUM OVERTIME/DOUBLE TIME WAGES (Cal. Labor Code §§ 510, 511, 1194, 1198; IWC Wage Order No. 9);**
- 3. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 9);**
- 4. FAILURE TO PROVIDE MEAL PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 9);**
- 5. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 9);**
- 6. WAITING TIME PENALTIES (Cal. Labor Code §226; IWC Wage Order No. 9);**
- 7. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code §2802);**
- 8. FAILURE TO PROVIDE DAY OF REST (Cal. Labor Code §§ 551, 552);**
- 9. NON-PAYMENT OF WAGES EARNED (Cal. Labor Code §§204, 210);**
- 10. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. Labor Code §1198.5); and**

1 **11. UNFAIR COMPETITION (Cal. Bus. & Prof.**
2 **Code §§17200 et seq.**

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7 **DEMAND FOR A JURY TRIAL**
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10 Martin Pineda Damian (“Plaintiff”) alleges the following:

11 **PARTIES**

12 1. Plaintiff was, at all times relevant to the matters alleged herein, over age 18 and
13 a resident of Anaheim, California.

14 2. Plaintiff is informed and believes, and based on that information and belief,
15 alleges, Defendant Agrani, Inc. (“AGRANI”) is, and at all times mentioned herein was, a
16 California corporation, with a principal place of business at 3218 Clover Ln., Ontario, CA
17 91761. Defendant has been authorized to do business and has been doing business in the
18 County of San Bernardino.

19 3. Plaintiff alleges on information and belief that Defendant Bijal Patel (“Bijal”)
20 (collectively with AGRANI “Defendants”) is an individual, who at all times relevant herein,
21 was a resident of San Bernardino, California. Bijal is the owner of AGRANI.

22 4. Starting on or about October 1, 2023, and continuing until the present.
23 Defendant AGRANI employed Plaintiff as a Driver. Plaintiff picked up medicine and made
24 deliveries thereof.

25 5. Plaintiff is ignorant of the true names and capacities of the defendants sued
26 herein as DOES 1 through 100, inclusive, and therefore Plaintiff sues these defendants by such
27 fictitious names and capacities. Plaintiff will amend her Complaint to show their true names
28 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon

1 alleges that at all times relevant, each of these fictitiously named DOE Defendants was an
2 individual person who owned, controlled, or managed the business for which Plaintiff worked
3 and/or who directly or indirectly exercised operational control over the wages, hours, and
4 working conditions of Plaintiff. These DOE Defendants held ownership, officer, director and/or
5 executive positions with the remaining Defendants, and acted on behalf of the remaining
6 Defendants, which included decision-making responsibility for, and establishment of, illegal
7 payroll practices and policies for Defendants which have damaged Plaintiff and others similarly
8 situated. Therefore, DOES 1 through 100, in addition to the remaining Defendants, are
9 "employers" as a matter of law and personally liable on the causes of action alleged herein
10 pursuant to Labor Code §558, as well as other California wage and hour laws and regulations
11 as alleged herein.

12 6. Plaintiff is informed and believes and thereon alleges that at least some of the
13 Defendant DOES 1 through 100 are, and at all times relevant hereto were, persons,
14 corporations or other business entities organized and existing under and by virtue of the laws
15 of the State of California, and are/were qualified to transact and conduct business in the State
16 of California, and did transact and conduct business in the State of California, and are thus
17 subject to the jurisdiction of the State of California. Specifically, said DOES 1 through 100
18 maintain offices, operate businesses, employ persons, and conduct business in, and illegally
19 pay employees by illegal payroll practices and policies in the County of San Bernardino.

20 7. Plaintiff is informed and believes and thereon alleges, that at all times relevant
21 herein, the named defendants and at least some of DOES 1 through 100 were the agents,
22 employees, and/or servants, masters, or employers of the remaining DOES 1 through 100, and
23 in doing the things herein alleged, were acting within the course and scope of such agency or
24 employment, and with the approval and ratification of each of the other defendants.

25 8. Plaintiff is informed and believes and thereon alleges that Defendants, and each
26 of them, directly employed or exercised control over his wages, hours, or working conditions.

27 9. Plaintiff is further informed and believes, and thereon alleges, that each of the
28 fictitiously named Defendants aided and assisted the named Defendants in committing the

1 wrongful acts alleged herein, and that Plaintiff's damages were proximately caused by each
2 defendant.

3 10. At all times relevant herein, each of the named defendants was the agent of the
4 other named defendants and in doing the things alleged herein, was acting within the course
5 and scope of said agency.

6 **JURISDICTION AND VENUE**

7 11. This Court has jurisdiction over this Complaint under Code of Civil Procedure
8 §410.10 and *Business & Professions Code* §§ 17200 *et seq.*

9 12. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
10 395.5, because the claims made, and the *Labor Code* violations as against the persons identified
11 herein, occurred in the County of San Bernardino and because Defendant AGRANI owned and
12 operated their business in the County of San Bernardino.

13 **DEFENDANTS DID NOT PROPERLY COMPENSATE PLAINTIFF**

14 13. While employed by Defendants, Plaintiff is paid \$23.00 per hour. Plaintiff
15 works 10 or more hours per day, 7 days per week. He works between 65-70 hours per week.

16 14. The employment by Defendants of Plaintiff is governed by Industrial Welfare
17 Commission Wage Order 9, which covers those persons employed in the transportation
18 industry.

19 15. Plaintiff was misclassified by Defendants as an independent contractor.

20 16. Under California law, non-exempt employees as defined by Wage Order 9, are
21 entitled to premium wages for overtime/double time worked.

22 17. At all times relevant herein, Plaintiff routinely worked overtime/double time
23 hours such that he was due pay at overtime/double time rates. Monies for unpaid
24 overtime/double time remain due and owing.

25 18. As a result of Defendants' failure to pay Plaintiff at required overtime/double
26 time rates, the wage statements issued to him did not comply with *Labor Code* §226 and
27 California Industrial Welfare Commission ("IWC") Wage Order No. 9 in that they did not
28 accurately reflect all wages earned and due and owing.

1 19. Under California law, an employee is entitled to be paid a minimum wage.
2 Labor Code Section 1197 states the California requirement that employees must be paid at least
3 the minimum wage fixed by the Commission or by any applicable state or local law, and any
4 payment of less than the minimum wage is unlawful. Similarly, Labor Code Section 1194
5 entitles “any employee receiving less than the legal minimum wage...is entitled to recover in a
6 civil action the unpaid balance of the full amount of this minimum wage.” The applicable IWC
7 Wage Order(s), including IWC Wage Order No. 9-2001, obligates employers to pay each
8 employee minimum wages for all hours worked.

9 20. These minimum wage standards apply to each hour employees worked or were
10 subject to control by the employer for which they were not paid. Therefore, an employer’s
11 failure to pay for any particular hour of time worked by an employee or subject to the
12 employer’s control is unlawful, even if averaging an employee’s total pay over all hours
13 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
14 *Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

15 21. Defendants paid Plaintiff less than minimum wage rates due to the failure to
16 afford any meal/rest breaks. Monies for these underpaid amounts remain due and owing.

17 22. As a result of Defendants’ failure to pay Plaintiff a minimum wage, the wage
18 statements issued to Plaintiff did not comply with *Labor Code* §226 in that they did not
19 accurately reflect all wages earned and due and owing.

20 23. Defendants failed to afford Plaintiff any meal breaks.

21 24. Defendants failed to afford Plaintiff any rest breaks.

22 25. Defendants failed to reimburse Plaintiff for his necessary business expenses.

23 26. Defendants failed to provide Plaintiff with days of rest.

24 27. Defendants failed to pay Plaintiff his earned wages.

25 28. Defendants failed to provide Plaintiff with his requested employment records.
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1 **FIRST CAUSE OF ACTION**

2 **EMPLOYEE MISCLASSIFICATION AS AN INDEPENDENT CONTRACTOR**

3 **(Labor Code §226.8 - By Plaintiff Against all Defendants and Does 1-100)**

4 29. Plaintiff realleges and incorporates by reference all of the allegations set forth in
5 this Complaint.

6 30. Labor Code § 226.8 provides that it is unlawful for any person or employer to
7 engage in any of the following activities: Willful misclassification of an individual as an
8 independent contractor.

9 31. Defendants willfully misclassified Plaintiff as an independent contractor rather
10 than an employee in violation of the Labor Code, for their own financial benefit. Pursuant to
11 Labor Code § 226.8(i)(4), willful misclassification means avoiding employee status for an
12 individual by voluntarily and knowingly misclassifying that individual as an independent
13 contractor.

14 32. On information and belief, Defendant Bijal advised the other Defendant
15 AGRANI to wrongfully treat Plaintiff as an independent contractor.

16 33. Pursuant to Labor Code § 3353, Plaintiff was not an independent contractor.

17 34. Because of this misclassification, Plaintiff suffered damages as a result of
18 Defendants' violation of the applicable Labor Code, in the amount of \$281,520.00.

19 35. Based on Defendants' conduct as alleged herein, Defendants are liable for
20 damages and statutory penalties pursuant to Labor Code § 226.8.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY OVERTIME/DOUBLE TIME WAGES**

23 **(Labor Code §§510, 558, 1194, 1194.3, 1198 and Wage Order 9 By Plaintiff Against all**
24 **Defendants and Does 1-100)**

25 36. Plaintiff realleges and incorporates by reference all of the allegations set forth in
26 this Complaint.

27 37. During Plaintiff's entire employment with Defendants, pursuant to Cal. Lab.
28 Code §§200, 510, 1194, and 1198, and IWC Wage Order No. 9, Defendants were required to

1 compensate Plaintiff with premium pay for all overtime work performed, for hours worked in
2 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
3 hours on the seventh (7th) consecutive day of any work week. Further, Defendants were
4 required to compensate Plaintiff with premium pay for all double-time performed, for hours
5 worked in excess of twelve (12) hours per workday and for work in excess of eight hours on
6 any seventh day of a workweek.

7 38. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
8 who had not been paid overtime compensation could recover the unpaid balance of the full
9 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
10 fees and costs of suit.

11 39. California Labor Code section 510, subdivision (a), states in relevant part:

12 Any work in excess of 12 hours in one day shall be compensated at the rate of
13 no less than twice the regular rate of pay for an employee. In addition, any work
14 in excess of eight hours on any seventh day of a workweek shall be compensated
15 at the rate of no less than twice the regular rate of pay of an employee.

16 40. California Labor Code section 1198 provides,

17 The maximum hours of work and the standard conditions of labor fixed by the
18 commission shall be the maximum hours of work and the standard conditions
19 of labor for employees. The employment of any employee for longer hours than
20 those fixed by the order or under conditions of labor prohibited by the order is
21 unlawful.

22 41. Pursuant to IWC Wage Order No. 9-2001, § 3, "Employment beyond eight (8)
23 hours in any workday is permissible provided the employee is compensated for such overtime
24 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
25 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
26 workday..."

27 42. California Labor Code section 558 provides in pertinent part:
28

1 (a) Any employer or other person acting on behalf of an employer who
2 violates, or causes to be violated, a section of this chapter or any
3 provision regulating hours and days of work in any order of the
4 Industrial Welfare Commission shall be subject to a civil penalty as
5 follows:

6 (1) For any initial violation, fifty dollars (\$50) for each underpaid
7 employee for each pay period for which the employee was underpaid in
8 addition to an amount sufficient to recover underpaid wages.

9 (2) For each subsequent violation, one hundred dollars (\$100) for each
10 underpaid employee for each pay period for which the employee was
11 underpaid in addition to an amount sufficient to recover underpaid
12 wages.

13 (3) Wages recovered pursuant to this section shall be paid to the affected
14 employee...

15 (c) The civil penalties provided for in this section are in addition to any
16 other civil or criminal penalty provided by law.

17 43. Pursuant to Cal. Labor Code §558.1:

18 (a) Any employer or other person acting on behalf of an employer, who
19 violates, or causes to be violated, any provision regulating...hours and days of
20 work in any order of the Industrial Welfare Commission, or violates, or causes
21 to be violated Sections 203, 226, 226.7...may be held liable as the employer for
22 such violation.

23 (b) For purposes of this section, the term "other person acting on behalf of
24 an employer" is limited to a natural person who is an owner, director, officer, or
25 managing agent of the employer, and the term "managing agent" has the same
26 meaning as in subdivision (b) of Section 3294 of the Civil Code.

27 (c) Nothing in this section shall be construed to limit the definition of
28 employer under existing law.

44. Bijal is a person acting on behalf of AGRANI and is therefore liable to Plaintiff
as an employer. Bijal caused the laws relating to overtime/double time to be violated.

45. Plaintiff worked 10 or more hours per day, 7 days per week. Throughout
Plaintiff's employment, Defendants failed and refused to pay and properly pay overtime/double

1 time compensation to Plaintiff as required by law. When Plaintiff worked overtime/double
2 time, he was paid at his regular rate of pay, not time and one half and/or double time.

3 46. Plaintiff worked approximately 25-30 hours per week of overtime/double time.
4 At times, Plaintiff was required to work in excess of 12 hours per day. However, Plaintiff was
5 never paid at the correct rate for the hours he worked double time. Plaintiff was paid at his
6 regular rate of pay, not double time. Plaintiff was not paid overtime/double time that was due to
7 him.

8 47. This practice resulted in Defendants' failure to pay Plaintiff overtime/double
9 time that he had earned.

10 48. The foregoing overtime/double time compensation is owed and unpaid. As a
11 direct and proximate result of Defendants' failure and refusal to pay overtime/double time,
12 Plaintiff suffered damages in the amount of at least \$281,520.00, according to be proof at trial.

13 49. *Labor Code* § 558(a) mandates a civil penalty for failure to pay overtime/double
14 time wages against employers and those individuals acting in their behalf. Plaintiff requests
15 that this Court assess said penalty against Defendants in an amount to be proven at trial.

16 50. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
17 counsel in order to enforce Plaintiff's rights to overtime/double time pay, is entitled to recover
18 his attorneys' fees, costs and interest.

19 **THIRD CAUSE OF ACTION**

20 **FOR FAILURE TO PAY MINIMUM WAGES**

21 **(Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order No. 9 By Plaintiff**
22 **Against all Defendants and Does 1 through 100)**

23 51. Plaintiff realleges and incorporates by reference all of the allegations set forth in
24 this Complaint.

25 52. *Labor Code* § 1197 states the California requirement that employees must be
26 paid at least the minimum wage fixed by the Commission, and any payment of less than the
27 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles "any employee receiving
28 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of

1 the full amount of this minimum wage.” IWC Wage Order No. 9-2001 also obligates employers
2 to pay each employee minimum wages for all hours worked. These minimum wage standards
3 apply to each hour employees worked for which they were not paid. Therefore, an employer’s
4 failure to pay for any particular hour of time worked by an employee is unlawful, even if
5 averaging an employee’s total pay over all hours worked, paid or not, results in an average
6 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
7 (2005).

8 53. Pursuant to Cal. Labor Code §558.1:

9 (c) Any employer or other person acting on behalf of an employer, who
10 violates, or causes to be violated, any provision regulating...hours and days of
11 work in any order of the Industrial Welfare Commission, or violates, or causes
12 to be violated Sections 203, 226, 226.7...may be held liable as the employer for
13 such violation.

14 (d) For purposes of this section, the term “other person acting on behalf of
15 an employer” is limited to a natural person who is an owner, director, officer, or
16 managing agent of the employer, and the term “managing agent” has the same
17 meaning as in subdivision (b) of Section 3294 of the Civil Code.

18 (c) Nothing in this section shall be construed to limit the definition of
19 employer under existing law.

20 54. Bijal is a person acting on behalf of AGRANI and is therefore liable to Plaintiff
21 as an employer. Bijal caused the laws relating to minimum wage to be violated.

22 55. Here, Plaintiff was never afforded any meal/rest breaks. As a result, he was paid
23 less than minimum wage.

24 56. *Labor Code* § 1194 provides, in part, that any employee receiving less than the
25 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
26 wage, including interest thereon, reasonable attorneys’ fees, and costs of suit.

27 57. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
28 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*

1 *Code* § 1194. Where an employee, such as Plaintiff is not paid for all hours worked under
2 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with
3 the overtime for which they received no compensation. *See Sillah v. Command Int'l Sec. Servs.*,
4 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime
5 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
6 minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
7 (N.D. Cal. 2016).

8 58. Plaintiff suffered and continues to suffer losses related to the use and enjoyment
9 of compensation due and owing to him as a direct result of Defendants' unlawful acts and
10 Labor Code violations in the amount of at least \$281,520.00, to be shown according to proof at
11 trial.

12 59. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
13 wages against employers and those individuals acting in their behalf. Plaintiff requests that this
14 Court assess said penalty against Defendants, in an amount to be proven at trial.

15 60. Therefore, pursuant to Labor Code §§200, 218.5, 226, 558,1194 and 1194.2,
16 Plaintiff is entitled to recover the unpaid balances of the minimum wages Defendants owes
17 him, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to
18 proof.

19 61. Under *Labor Code* § 1194.2, Plaintiff is entitled to recover as liquidated
20 damages, amounts equal to the wages unlawfully unpaid and interest thereon.

21 **FOURTH CAUSE OF ACTION**

22 **FOR FAILURE TO PAY FOR MEAL PERIODS NOT PROVIDED**

23 **(Labor Code §§ 226.7, 512, IWC Wage Order No. 9 By Plaintiff Against all Defendants**
24 **and Does 1 through 100)**

25 62. Plaintiff realleges and incorporates by reference all of the allegations set forth in
26 this Complaint.

27 63. California Labor Code §226.7(a) prohibits an employer from requiring an
28 employee to work during any meal period mandated by an applicable Industrial Wage Order.

1 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
2 employee to work during a meal or rest break or recovery period mandated pursuant to an
3 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
4 Commission..."

5 64. California Labor Code §1198 makes unlawful the employment of an employee
6 under conditions the IWC prohibits.

7 65. IWC Wage Order No. 9 provides, in relevant part: "No employer shall employ
8 any person for a work period of more than five (5) hours without a meal period of not less than
9 30-minutes, except that when a work period of not more than six (6) hours will complete the
10 day's work the meal period may be waived by mutual consent of the employer and the
11 employee."

12 66. IWC Wage Order No. 9 further provides, in relevant part: "Unless the employee
13 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an
14 'on duty' meal period and counted as time worked."

15 67. Section 512(a) of the California Labor Code provides, in relevant part, that:
16 An employer may not employ an employee for a work period of more than five
17 hours per day without providing the employee with a meal period of not less
18 than 30-minutes, except that if the total work period per day of the employee is
19 no more than six hours, the meal period may be waived by mutual consent of
20 both the employer and employee. An employer may not employ an employee for
21 a work period of more than 10 hours per day without providing the employee
22 with a second meal period of not less than 30-minutes, except that if the total
23 hours worked is no more than 12 hours, the second meal period may be waived
24 by mutual consent of the employer and the employee only if the first meal
25 period was not waived.

26 68. The Labor Code and Wage Order provisions cited above require California
27 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
28 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees

1 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
2 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
3 the fifth hour of their shifts.

4 69. Defendants violated Labor Code § 512 and IWC Wage Order No. 9 by failing to
5 provide Plaintiff the requisite 30-minute meal periods, required by law. Plaintiff was never
6 afforded any meal breaks.

7 70. Pursuant to Cal. Labor Code §558.1:

8 (e) Any employer or other person acting on behalf of an employer, who
9 violates, or causes to be violated, any provision regulating...hours and days of
10 work in any order of the Industrial Welfare Commission, or violates, or causes
11 to be violated Sections 203, 226, 226.7...may be held liable as the employer for
12 such violation.

13 (f) For purposes of this section, the term “other person acting on behalf of
14 an employer” is limited to a natural person who is an owner, director, officer, or
15 managing agent of the employer, and the term “managing agent” has the same
16 meaning as in subdivision (b) of Section 3294 of the Civil Code.

17 (c) Nothing in this section shall be construed to limit the definition of
18 employer under existing law.

19 71. Bijal is a person acting on behalf of AGRANI and is therefore liable to Plaintiff
20 as an employer. Bijal caused the laws relating to meal breaks to be violated.

21 72. Defendants further violated IWC Wage Order No. 9 and Labor Code
22 § 226.7 by failing to pay one hour of compensation to Plaintiff at his individual and regular rate
23 of pay for each work day that the meal period was not provided, in the amount of at least
24 \$128,217.60, according to proof. This amount remains owed and unpaid.

25 73. Cal. Labor Code § 218 authorizes Plaintiff to bring a private right of action to
26 recover wages due based on the deprivation of timely meal periods under Cal. Labor Code
27 § 226.7(b).

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74. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff has sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and is entitled to recover economic and statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendants' violations of the California Labor Code and IWC Wage Order No. 9.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Labor Code §226.7 and IWC Wage Order No. 9 – By Plaintiff Against all Defendants Does 1 through 100)

75. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

76. Labor Code § 226.7 and IWC Wage Order No. 9 provide that employers shall authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours of work, or major fraction thereof.

77. Labor Code § 226.7 and IWC Wage Order No. 9 provide that if an employer fails to provide an employee with rest periods in accordance with those provisions, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest periods were not so provided.

78. Pursuant to Cal. Labor Code §558.1:

(g) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating...hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated Sections 203, 226, 226.7...may be held liable as the employer for such violation.

(h) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

1 (c) Nothing in this section shall be construed to limit the definition of
2 employer under existing law.

3 79. Bijal is a person acting on behalf of AGRANI and is therefore liable to Plaintiff
4 as an employer. Bijal caused the laws relating to rest breaks to be violated.

5 80. Defendants have intentionally and improperly denied any rest periods to
6 Plaintiff in violation of Labor Code § 226.7 and IWC Wage Order No. 9.

7 81. At all times relevant hereto, Plaintiff has worked 10 or more hours daily.

8 82. At all times relevant hereto, Defendants failed to provide rest periods as required
9 by Labor Code § 226.7 and IWC Wage Order No. 9.

10 83. By virtue of Defendants' unlawful failure to provide rest periods to the Plaintiff,
11 Plaintiff has suffered, and will continue to suffer, damages the amount of at least \$281,520.00,
12 according to proof at trial.

13 **SIXTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

15 **(Labor Code §226 By Plaintiff Against all Defendants and Does 1 through 100)**

16 84. Plaintiff realleges and incorporates by reference all of the allegations set forth in
17 this Complaint.

18 85. At all times relevant hereto, Defendants failed to issue payrolls statements to
19 Plaintiff which complied with *Labor Code* § 226 in that the statements issued to Plaintiff did
20 not properly and accurately itemize the number of hours Plaintiff worked at the effective
21 regular rates of pay and the effective overtime/double time rates of pay, minimum wages, for
22 meal/rest breaks not afforded and days of rest.

23 86. Defendants knowingly and intentionally failed to comply with *Labor Code*
24 §226(a), causing damage to Plaintiff. These damages, including but not limited to, costs
25 expended calculating the actual hours worked and the amount of employment taxes which were
26 not properly paid to state and federal tax authorities, are difficult to estimate. Therefore,
27 Plaintiff elects to recover liquidated damages of \$50.00 for the initial pay period in which the
28

1 violations occurred, and \$100.00 for each violation in subsequent pay periods, pursuant to
2 *Labor Code* § 226(e), in the amount of \$4,000.00 plus reasonable attorneys' fees and costs.

3 87. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus
4 attorneys' fees and costs in obtaining the injunction, pursuant to *Labor Code* § 226(g).

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

7 **(Cal. Labor Code §2802 By Plaintiff Against all Defendants and Does 1 through 100)**

8 88. Plaintiff realleges and incorporates by reference all of the allegations set forth in
9 this Complaint.

10 89. Labor Code §2802 requires employers to indemnify employees for all necessary
11 expenditures incurred by employees in the discharge of his duties.

12 90. At all times relevant herein, Defendants were aware that Plaintiff was using his
13 cell phone and personal vehicle for business, but failed to indemnify Plaintiff for all his
14 business-related expenses, including wear and tear expenses, in accordance with Labor Code
15 §2802.

16 91. As a result of Defendants' conduct, Plaintiff suffered damages in an amount,
17 subject to proof, to the extent he was not reimbursed for all of his business-related expenses
18 incurred in the discharge of his duties.

19 92. Pursuant to Labor Code §2802, Plaintiff is entitled to recover the full amount of
20 her unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

21 **EIGHTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE DAY OF REST**

23 **(Cal. Labor Code §§ 551, 552 By Plaintiff Against all Defendants and Does 1 through 100)**

24 93. Plaintiff realleges and incorporates by reference all of the allegations set forth in
25 this Complaint.

26 94. Labor Code section 551 states: "Every person employed in any occupation of
27 labor is entitled to one day's rest therefrom in seven."
28

95. Labor Code section 552 states in part: “No employer of labor shall cause his employees to work more than six days in seven....”

96. Wage Order No. 9 requires employers to pay employees one and one-half times their regular rate of pay for the first eight hours worked on the seventh consecutive day of work in any workweek, and twice their regular rate for hours worked in excess of eight on the seventh day.

97. At times Plaintiff worked 7 days per week.

98. Defendants knowingly and intentionally failed to pay Plaintiff premium pay for working seven consecutive days as required by Labor Code sections 551 and 552 and Wage Order No. 9.

99. As a direct and proximate result of Defendants' conduct as alleged herein, Plaintiff has suffered monetary damages in an amount equal to his unpaid wages for work performed during seven consecutive work days, pursuant to Labor Code sections 551 and 552 and Wage Order No. 9, plus interest thereon pursuant to Labor Code 218.6.

100. Plaintiff further is entitled to recover from Defendants additional sums as a penalty, pursuant to Labor Code section 558 equal to fifty dollars (\$50) per unpaid pay period for Defendants' initial violation, and one hundred dollars (\$100) per unpaid pay period for each subsequent violation, in addition to the underpaid wages from each pay period.

101. In addition, Plaintiff has retained the services of an attorney to maintain and prosecute this action and these attorneys are entitled to recover fees and costs incurred on Plaintiff's behalf pursuant to Labor Code section 218.5.

NINTH CAUSE OF ACTION

NON -PAYMENT OF EARNED WAGES

(Cal. Labor Code §§204, 210 By Plaintiff Against all Defendants and Does 1 through 100)

102. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

103. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in

1 advance by the employer as the regular paydays.” Weekly or bi-weekly (every two weeks)
2 payroll must be paid within seven (7) days of the end of the pay period in which the wages
3 were earned (Labor Code §§ 204(a), 204(b)). Pursuant to Labor Code § 204(d), these
4 requirements are “deemed satisfied by the payment of wages for weekly, biweekly or
5 semimonthly payroll if the wages are paid not more than seven calendar days following the
6 close of the payroll period.

7 104. Defendants scheduled, required, suffered, and/or permitted Plaintiff to work
8 during pay periods, and did not compensate Plaintiff for his work within seven days of the
9 close of payroll.

10 105. Defendants have failed and refused to pay Plaintiff approximately one month’s
11 earned wages. Thus, Plaintiff did not receive his earned wages in a timely manner as required
12 by Labor Code § 204.

13 106. Plaintiff was also subjected to the non-payment of wages because Defendants
14 failed to pay Plaintiff earned overtime/double time and minimum wages.

15 107. Further, due to Defendants’ failure to pay Plaintiff for overtime wages/double
16 time, minimum wages, meal/rest period premiums owed and for days of rest, Defendants
17 violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of
18 the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*,
19 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding that a failure to pay rest period
20 premiums can support claims under Labor Code §§ 203 and 204).

21 108. Labor Code § 210 provides that “in addition to, an entirely independent and
22 apart from, any other penalty provided in this article, every person who fails to pay the wages
23 of each employee as provided in Sections...204...shall be subject to a civil penalty as follows:
24 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee;
25 (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars
26 (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.”
27 As a result of violations describe above, Plaintiff is entitled to recover penalties under Labor
28 Code § 210.

1 109. Plaintiff has retained the services of the attorney identified herein to maintain
2 and prosecute this action and these attorneys are entitled to recover fees and costs incurred on
3 Plaintiff's behalf pursuant to California Labor Code Sections 218.5.

4 **TENTH CAUSE OF ACTION**

5 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

6 **(Cal. Labor Code §1198.5 By Plaintiff Against all Defendants and Does 1 through 100)**

7 110. Plaintiff realleges and incorporates by reference all of the allegations set forth in
8 this Complaint.

9 111. California Labor Code Section 1198.5 provides:

10 (a) Every current and former employee, or his or her representative, has the right
11 to inspect and receive a copy of the personnel records that the employer
12 maintains relating to the employee's performance or to any grievance concerning
13 the employee.

14 (b) The employer shall make the contents of those personnel records available
15 for inspection to the current or former employee, or his or her representative, at
16 reasonable intervals and at reasonable times, but not later than 30 calendar days
17 from the date the employer receives a written request, unless the current or
18 former employee, or his or her representative, and the employer agree in writing
19 to a date beyond 30 calendar days to inspect the records, and the agreed-upon
20 date does not exceed 35 calendar days from the employer's receipt of the written
21 request to inspect the records. Upon a written request from a current or former
22 employee, or his or her representative, the employer shall also provide a copy of
23 the personnel records,... later than 30 calendar days from the date the employer
24 receives the request...

25 (k) If an employer fails to permit a current or former employee, or his or her
26 representative, to inspect or copy personnel records within the times specified I
27 this section... the current or former employee may recover a penalty of seven
28 hundred fifty dollars (\$750) from the employer.

1 (1) A current or former employee may also bring an action for injunctive relief
2 to obtain compliance with this section, and may recover costs and reasonable
3 attorney's fees in such an action.

4 112. Additionally, pursuant to Wage Order No. 9, at section 7 re: Records, employers
5 are required to keep accurate payroll records on each employee, and such records must be made
6 readily available for inspection by the employee upon reasonable request. The employer must
7 also maintain accurate production records.

8 113. On or about December 6, 2024, Plaintiff's counsel issued a written request to
9 AGRANI for copies of his personnel records.

10 114. Under California Labor Code Sections 226, 432 and 1198.5, such records were
11 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
12 Plaintiff's counsel and Defendants did not enter into an agreement to enlarge the time for
13 Defendants' compliance, and Defendants have failed and refused to permit Plaintiff copies of
14 his records.

15 115. As a direct result and consequence of Defendants' failure and refusal to permit
16 Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or
17 decree mandating Defendants' compliance. Plaintiff has suffered and will suffer harm as a
18 result of Defendants' ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
19 penalty of \$750 based upon Defendants' violation of §1198.5.

20 **ELEVENTH CAUSE OF ACTION**

21 **FOR UNFAIR COMPETITION**

22 **(Business & Professions Code §§ 17200 et seq. By Plaintiff Against all Defendants and**
23 **Does 1 through 100)**

24 116. Plaintiff realleges and incorporates by reference all of the allegations set forth in
25 this Complaint.

26 117. *Business & Professions Code* §§ 17200 et seq. prohibit acts of unfair
27 competition, which mean and include "unlawful and unfair business practices."
28

1 118. Defendants' conduct as alleged herein has been and continues to be unfair,
2 unlawful, and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights
3 affecting the public interest within the meaning of *Code of Civil Procedure* § 1021.5. Plaintiff
4 is a "person" within the meaning of *Business and Professions Code* § 17204 and therefore has
5 standing to bring this suit for restitution.

6 119. The prompt payment of overtime/double time, minimum wages affording of
7 meal/rest breaks, providing days of rest, reimbursing business expenses and payment of earned
8 wages, are fundamental public policies of California. It also is the public policy of California
9 to enforce minimum labor standards to ensure that employees are not required to or permitted
10 to work under substandard and unlawful conditions and to protect those employers who comply
11 with the law from losing competitive advantage to other employers who fail to comply with
12 labor standards and requirements.

13 120. Through the conduct alleged herein, Defendants acted contrary to these public
14 policies and have thus engaged in unlawful and/or unfair business practices in violation of
15 *Business & Professions Code* §§ 17200 *et seq.*, depriving Plaintiff of the rights, benefits and
16 privileges guaranteed to employees under California law.

17 121. Defendants regularly and routinely violated the following statutes and
18 regulations with respect to Plaintiff:
19

- 20 (a) *Labor Code* §226.8 (misclassification as an independent contractor);
- 21 (b) *Labor Code* §§ 510, 511, 558, 1194 and 1198 and IWC Wage Order No.
22 9 as amended (failure to pay overtime/double time);
- 23 (c) *Labor Code* §§ 1194, 1197, 1197.1, 1198, 119 and IWC Wage Order No.
24 9 (failure to pay minimum wages);
- 25 (d) *Labor Code* §226 (failure to afford meal breaks);
- 26 (e) *Labor Code* §226 (failure to afford rest breaks);
- 27 (f) *Labor Code* § 226 (failure to provide accurate wage statements to
28 employees at the time of payment of wages);

- 1 (h) *Labor Code* § 2802 (failure to reimburse business expenses);
2 (i) *Labor Code* §§ 551, 552 (failure to provide day of rest);
3 (j) *Labor Code* §§ 204, 210 (non-payment of earned wages); and
4 (k) *Labor Code* §1198.5 (failure to allow inspection of employment
5 records).

6 122. By engaging in these business practices, which are unfair business practices
7 within the meaning of *Business & Professions Code* §§17200 *et seq.*, Defendants harmed
8 Plaintiff and gained an unfair competitive edge. Under the *Business & Professions Code* §
9 17203, Plaintiff is entitled to obtain restitution of these funds.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor
12 and against Defendants, and each of them, as follows:

- 13 1. For compensatory damages in the amount of unpaid overtime/double time due to
14 Plaintiff, in the amount of at least \$281,520.00, according to proof;
15 2. For compensatory damages in the amount of unpaid minimum wages due to
16 Plaintiff, in the amount of at least \$281,520.00, according to proof;
17 3. For one (1) hour of pay at the regular rate of compensation for Plaintiff for each
18 workday that a meal and/or rest period was not provided;
19 4. For payment of unpaid wages in accordance with California labor and
20 employment law;
21 5. For an award of consequential damages in Plaintiff's favor and against
22 Defendants, in an amount to be proven at trial;
23 6. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
24 7. Premium pay for failure to provide a day of rest;
25 8. For compensatory damages in the amount of Plaintiff's out of pocket expenses
26 and/or reimbursement of monies incurred while performing Defendants' business-related
27 duties, plus interest, costs and attorneys' fees pursuant to *Cal. Code Civ. Proc.* §2802(c);
28

1 9. For specific relief enforcing waiting time penalties of 30 days of per diem wages
2 pursuant to *Cal. Bus. & Prof. Code* §17200, according to proof;

3 10. For prejudgment interest accrued on all due and unpaid overtime/double time
4 and minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab.*
5 *Code* §§218.6 and 1194(a), according to proof;

6 11. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 210, according
7 to proof;

8 12. For reasonable costs, including attorneys' fees, in an amount according to proof
9 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 218.5, 218.6, 1198.5(1), 2802 and/or *Cal.*
10 *Code of Civ. Proc.* §1021.5;

11 13. For an award of restitution of wages to Plaintiff in an amount equal to the
12 amount of wages owed and unpaid, according to proof;

13 14. For injunctive relief ordering the continuing unfair business acts and practices to
14 cease, as the Court deems just and proper;

15 15. For other injunctive relief ordering Defendants to notify Plaintiff that he has not
16 been paid the proper amounts in accordance with California law;

17 16. For injunctive relief requiring Defendants to comply with Labor Code
18 1198.5(b)(1);

19 17. For punitive and exemplary damages in a sum to be determined at trial; and

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

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff Martin Pineda Damian hereby respectfully requests a trial by jury for all claims
23 and issues raised in his Complaint that may be entitled to a jury trial.

24
25 LIPELES LAW GROUP, APC

26 Date: December 6, 2024

27 By: Jasmine Badawi
 Jasmine J. Badawi
 Attorneys for Plaintiff
28 Martin Pineda Damian