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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MARTHA GARCIA, MARTHA AREVALO,
BRIANA GARIBAY, and NOEMI
RODRIGUEZ, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

BALL GRILL, INC., a California
Corporation dba Waba Grill; SUPERIOR
EXPRESS, INC., a California Corporation
dba Waba Grill; and HARBOR 22, INC., a
California corporation, dba Waba Grill, and
DOES 1-50,

Defendants.

CASE NO: 30-2020-01153124-CU-WT-CXC

**FRIST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR**

**(1) FAILURE TO PAY ALL MINIMUM
WAGES (LABOR CODE §§ 1194, 1194.2
1197; IWC WAGE ORDER NO. 5);
(2) FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 510, 1198;
IWC WAGE ORDER NO. 5);
(3) FAILURE TO PROVIDE TIMELY,
DUTY-FREE MEAL PERIODS AND/OR
PAY MEAL PERIOD PREMIUMS FOR
LATE MEAL BREAKS (LABOR CODE §§
226.7, 512; IWC WAGE ORDER 5-2001;
(4) FAILURE TO PROVIDE TIMELY,
DUTY-FREE REST PERIODS AND/OR PAY
REST PERIOD PREMIUMS (LABOR CODE
§ 226.7; IWC WAGE ORDER 5-2001);
(5) FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS (LABOR
CODE § 226);
(6) WAITING TIME PENALTIES (LABOR
CODE § 201 – 203);
(7) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210);**

(8) FAILURE TO PAY FOR SICK LEAVE (LABOR CODE 246.A);
(9) UCL VIOLATIONS (BUS. & PROF. CODE §§ 17200-17204); AND
(10) PAGA AND OTHER PENALTIES (LABOR CODE §§ 2698 – 2699.5);
DEMAND FOR JURY TRIAL

Plaintiffs Martha Garcia, Martha Arevalo, Briana Garibay and Noemi Rodriguez, on behalf of themselves, the State of California, other aggrieved employees, and all others similarly situated (hereinafter “Class Members”) complain and allege as follows:

OVERVIEW OF CLAIMS

1. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as a class action, and as a representative action pursuant to Labor Code § 2699, *et seq.*, and on behalf of the California general public, against Defendants BALL GRILL, INC., SUPERIOR EXPRESS, INC. and HARBOR 22, INC., all California Corporation and all doing business as Waba Grill and DOES 1 to 100 (“Defendant”) for their (1) failure to pay all minimum wages for all the hours worked; (2) failure to pay overtime; (3) failure to provide timely and duty-free meal periods within the first five hours and to provide lawful second meal periods for shifts worked in excess of ten hours and/or pay meal period premiums for late meal breaks; (4) failure to provide timely, duty-free rest periods for every four hours of work or major fraction thereof and/or pay rest period premiums; (5) failure to provide accurate itemized wage statements within the one year prior to the filing of this Complaint; (6) failure to pay all wages due to former employees based on the foregoing; (7) failure to pay timely wages based on the foregoing; (8) failure to pay for sick leave; (9) UCL violations based on the foregoing; and (10) PAGA and other penalties based on the foregoing. As a result of the foregoing, Defendant has violated California statutory laws as described below.

2. The “Class Period” is designated as the period from four years prior to the filing of this action through the date of the motion for preliminary approval. The “PAGA Period” is designated as the period from one year prior to the sending of the PAGA letter to the LWDA (*i.e.*, on or around February 18, 2019) through the present. Defendants’ violations of California’s wage and hour laws and unfair competition laws, as described more fully below, have been ongoing

1 throughout the Class Period.

2 **VENUE**

3 3. Venue is proper in this county under section 395.5 of the California Code of Civil
4 Procedure. Many, if not all, of the putative Class Members were employed and/or performed work
5 during the Class Period by Defendants in Orange County. All the locations where Plaintiffs worked
6 are located in Orange County as well. Many of the acts alleged herein including Defendants' failure
7 to provide timely and duty-free meal and rest periods and pay meal and rest period premiums, and
8 failure to provide accurate itemized wage statements, occurred in Orange County. Venue is therefore
9 proper in Orange County.

10 **JURISDICTION**

11 4. Defendants are within the jurisdiction of this Court. Defendants transact millions of
12 dollars of business by managing and operating numerous restaurant chains throughout the State of
13 California, including in the County of Orange. Thus, Defendants have obtained the benefits of the
14 laws of the State of California. In addition, Plaintiffs assert no claims arising under federal law.
15 Rather, Plaintiffs bring causes of action based solely on, and arising from, California law. The
16 claims of the Class and the claims of the aggrieved employees are also based solely on California
17 law described herein. Furthermore, the total amount at issue in this case, inclusive of attorneys'
18 fees, is less than \$5 million. Therefore, jurisdiction is appropriate in Orange County Superior Court.

19 **THE PARTIES**

20 **A. The Plaintiffs**

21 5. Plaintiffs are California residents and were non-exempt employees of Defendants in
22 California during the relevant time period. Plaintiff Martha Garcia worked for Defendants from
23 February 2018 until June 2019. Plaintiff Martha Arevalo has worked for Defendants since August
24 2015. Plaintiff Briana Garibay has worked for Defendants since April 2019. Plaintiff Noemi
25 Rodriguez worked for Defendants from August 2017 until October 2019. From at least four years
26 from the filing of this complaint through the present, and until the date of the motion for preliminary,
27 Defendants' non-exempt employees, including Plaintiffs during their employment, were not
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1 provided timely and duty-free meal and rest periods and/or provided meal and rest period
2 premiums; were not provided accurate and/or complete wage statements; did not receive all of their
3 wages due upon termination of employment, and did not receive all wages timely.

4 6. Plaintiffs represent the state of California and groups of aggrieved employees defined
5 as:

6 All non-exempt individuals who or were employed by Defendants in the State of California
7 during the PAGA Period (hereinafter referred to as “Aggrieved Employees”).

- 8 a. All Aggrieved Employees who were issued one or more wage statements from
9 Defendants during the PAGA Period (hereinafter referred to as “Wage Statement
10 Aggrieved Employees”);
- 11 b. All Aggrieved Employees who did not receive their timely ten-minute, duty free
12 rest breaks while working for Defendants during the PAGA Period (hereinafter
13 referred to as “Rest Break Aggrieved Employees”);
- 14 c. All Aggrieved Employees who did not receive their timely thirty-minute meal
15 break on or before the fifth hour of work while working for Defendants on shifts
16 greater than five hours or who received a missed or late meal break premium
17 payment during the PAGA Period (hereinafter referred to as “Meal Break
18 Aggrieved Employees”);
- 19 d. All Aggrieved Employees whose employment with Defendants terminated during
20 the PAGA Period (hereinafter referred to “Waiting Time Penalty Aggrieved
21 Employees”);

22 7. By way of this action, Plaintiffs also seeks to represent the following Classes:

- 23 a. All non-exempt individuals who or were employed by Ball Grill, Inc.; Superior
24 Express, Inc.; and Harbor 22, Inc., in the State of California during the Class
25 Period and ending when notice to the Class is sent. (hereinafter referred to as
26 “Class Members” or the “Class”).
- 27 b. All Class Members who were issued one or more wage statements from
28 Defendant during the period from one year prior to the filing of this Complaint
and continuing into the present (hereinafter referred to as “Wage Statement Class
Members”);
- c. All Class Members who did not receive minimum wage while working for
Defendants during the Class Period (hereinafter referred to as “Minimum Wage
Class Members”);

- 1 d. All Class Members who did not receive overtime wage while working for
2 Defendants during the Class Period (hereinafter referred to as “Overtime Wage
3 Class Members”);
- 4 e. All Class Members who did not receive their timely ten-minute, duty free rest
5 breaks while working for Defendants during the Class Period (hereinafter referred
6 to as “Rest Break Class Members”);
- 7 f. All Class Members who did not receive their timely thirty-minute meal break on
8 or before the fifth hour of work while working for Defendants on shifts greater
9 than five hours during the Class Period (hereinafter referred to as “Meal Break
10 Class Members”);
- 11 g. All Class Members who did not receive sick leave while working for Defendants
12 during the Class Period (hereinafter referred to as “Sick Leave Class Members”);
and,
- 13 h. All Class Members whose employment with Defendants terminated during the
14 period from three years prior to the filing of this Complaint and continuing into
15 the present (hereinafter referred to “Waiting Time Penalty Class Members”).

16 **B. The Defendants**

17 8. Defendants Ball Grill, Inc., Superior Express, Inc., and Harbor 22, Inc., are California
18 corporations headquartered in City of Industry, California. They all operate under the business name
19 of Waba Grill. To operate their restaurants, Defendants employs non-exempt employees, such as the
20 Plaintiffs, the Class Members, and the Aggrieved Employees.

21 9. The true names and capacities, whether individual, corporate, associate, or otherwise,
22 of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to Plaintiffs, who
23 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs
24 are informed and believe, and based thereon allege, that each of the Defendants designated herein as
25 a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will
26 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
27 designated hereinafter as DOES when such identities become known.

28 10. Plaintiffs are informed and believe, and based thereon alleges, that each Defendant
acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are

1 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
2 employer and/or joint employer of Plaintiffs, the Class, and the Aggrieved Employees.

3 11. Defendants were and are the employer of Plaintiffs, the Aggrieved Employees and
4 Class Members for all relevant time periods. During the Class Period, and the PAGA Covered
5 Period, Defendant employed approximately 465 non-exempt individuals in California.

6 **FACTUAL ALLEGATIONS**

7 12. Defendants operate and, at all times during the PAGA Period and the Class Period,
8 have done and do business in California serving the food industry in California. Defendants, in the
9 course of operating its business in California during the Class Period and the PAGA Period,
10 employed Plaintiffs, the Aggrieved Employees and the Class Members.

11 13. Labor Code § 512 requires employers to provide employees with a thirty (30) minute
12 uninterrupted and duty-free meal period within the first five (5) hours of an employee's shift.
13 Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second
14 thirty (30) minute uninterrupted and duty-free meal period.

15 14. Under Labor Code § 512, if an employer maintains a uniform policy that does not
16 authorize and permit the amount of duty-free mealtime on or before the fifth hour of work as called
17 for under the law (as specified in the applicable Wage Order), "it has violated the wage order and is
18 liable." The *Brinker* Court explained in the context of rest breaks that employer liability attaches
19 from adopting an unlawful policy.

20 15. Here, Defendants violated and continues to violate Labor Code § 512 and IWC Wage
21 Order 5-2001 § 11 by, among other things, failing to provide and schedule duty-free meal breaks on
22 or before the fifth hour of work to Meal Break Aggrieved Employees and Meal Break Class
23 Members and failed to advise all other Meal Break Aggrieved Employees and Meal Break Class
24 Members of their meal break rights with respect to the timing of meal breaks, failed to provide Meal
25 Break Aggrieved Employees and Meal Break Class Members with thirty-minute, uninterrupted meal
26 periods within the first five (5) hours of their shifts, and failed to pay meal break premiums for late
27 meal breaks. Instead, Defendants often required employees to take their meal breaks at the end of
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1 their shifts without paying any late meal break premiums. As a result of Defendants' failure to
2 authorize or permit lawful and timely meal periods, Plaintiffs and the other Meal Period Class
3 Members and Meal Period Aggrieved Employees frequently did not receive compliant duty-free
4 meal periods within the first five (5) hours of their work. Furthermore, when Defendants paid missed
5 or late meal break premiums, thereby admitting to 226.7 and 512 violations, Defendants failed to
6 make any PAGA penalty payments associated with these violations.

7 16. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
8 authorize and permit the amount of rest time on the schedule called for under the law (as specified
9 in Section 12 of the applicable Wage Order), "it has violated the wage order and is liable." The
10 *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting
11 an unlawful policy:

12 An employer is required to authorize and permit the amount of rest break time called for
13 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
14 policy authorizing and permitting only one rest break for employees working a seven-hour
15 shift when two are required—***it has violated the wage order and is liable.*** (*Brinker Rest.*
Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

16 17. Here, Defendants did not authorize Plaintiffs, the Rest Break Class Members, and the
17 Rest Break Aggrieved Employees to take their ten-minute rest breaks during each 4 hours of work
18 or major fraction thereof during their shifts. Moreover, Defendants' scheduling practices were often
19 rest break preclusive for Rest Break Class Members and Rest Break Aggrieved Employees.

20 18. Labor Code § 226 obligates employers, semi-monthly or at the time of each payment
21 to furnish an itemized wage statement in writing showing:

- 22 (1) gross wages earned;
- 23 (2) total hours worked by the employee;
- 24 (3) the number of piece-rate units earned and any applicable piece rate if the employee
25 is paid on a piece rate;
- 26 (4) all deductions, provided that all deductions made on written orders of the employee
27 may be aggregated and shown as one item;
- 28 (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 or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the 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...

1 19. Defendants' wage statements issued fail to include the start date of each pay period
2 in violation of Labor Code § 226(a)(6). Moreover, due to, *inter alia*, Defendants' failure to pay
3 Plaintiffs and the other Aggrieved Employees for all meal and rest break premiums, the wage
4 statements issued by Defendants to Plaintiffs, the Wage Statement Class Members, and the Wage
5 Statement Aggrieved Employees do not indicate the correct amount of gross wages earned, net
6 wages earned, or the applicable hourly rates in effect during the pay period and the corresponding
7 number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

8 20. Defendants' violation of Labor Code § 226 was knowing and intentional. *See*
9 *Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant
10 knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was
11 not providing total hours worked to plaintiff or other employees paid on commission" even though
12 it believed that employees paid solely on commission or commission and salary "are exempt and
13 therefore we do not record hours on a wage statement").

14 21. Defendants' failure to furnish accurate itemized wage statements has caused
15 Plaintiffs, the Wage Statement Class Members, and the other Wage Statement Aggrieved Employees
16 to incur economic damages in that they were not aware that they were owed and not paid appropriate
17 premiums for their non-compliant statutory rest breaks and meal periods. *See Cicairos v. Summit*
18 *Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee to add up the daily hours shown
19 on the time cards or other records so that the employee must perform arithmetic computations to
20 determine the total hours worked during the pay period, the requirements of section 226 would not
21 be met"); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage
22 statements violated California Labor Code by not including, *inter alia*, total hours worked giving
23 rise to claims under both Section 226 and for PAGA penalties); Labor Code § 226(e)(2)(B)
24 (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5),
25 among other provisions, and where employees cannot easily determine the gross or net wages earned
26 by the employee during the pay period).

27 22. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial
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1 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not
2 to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in
3 which the employer fails to provide accurate itemized statements to the employee causing the
4 employee to suffer injury.

5 23. Aggrieved Employees will prevail on their claim for PAGA penalties under Labor
6 Code § 226(a). *See Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain
7 judgment on a PAGA claim, "all [plaintiff] needs to establish is a violation of section 226(a), which
8 she has done, as discussed above."); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D.
9 Cal. 2011) (holding that "for the purposes of recovering PAGA penalties, one need only prove a
10 violation of Section 226(a), and need not establish a Section 226(e) injury."); *Aguirre v. Genesis*
11 *Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) ("Plaintiffs do not need
12 to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.").

13 24. Further and in addition to the penalties outlined above, Labor Code § 226.3 provides
14 that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty
15 in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation
16 and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which
17 the employer fails to provide the employee a wage deduction statement or fails to keep the required
18 in subdivision (a) of Section 226." As explained in detail above, Defendants failed to provide
19 Plaintiffs, the Wage Statement Class Members, and the other Wage Statement Aggrieved Employees
20 with accurate itemized wage statements. Accordingly, Defendants are additionally liable for Labor
21 Code § 226.3 penalties for their violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.*
22 (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 ["the weight of
23 authority counsels that violations of Section 226.3 may be the basis of a PAGA claim."]; *Pedroza v.*
24 *PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012)
25 ("Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may
26 trigger civil penalties.").

27 25. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an
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1 employee who is discharged or who quits, the wages of the employee shall continue as a penalty. .
2 .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

3 26. Due to Defendants’ faulty policies described above, including its failure to pay for
4 all meal and rest break premiums due, Defendants violated Labor Code § 203, for those employees
5 whose employment ended within the last three years and ongoing (i.e., the Waiting Time Class
6 Members and Waiting Time Aggrieved Employees) by willfully failing to pay them all wages due
7 upon the termination of their employment.

8 27. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
9 employment are due and payable twice during each calendar month, on days designated in advance
10 by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are
11 “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the
12 wages are paid not more than seven calendar days following the close of the payroll period.

13 28. Due to Defendants’ failure to pay Plaintiffs, the Class, and the other Aggrieved
14 Employees all meal and rest break period premiums owed,¹ Defendants violated Labor Code § 204
15 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular
16 and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL
17 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period
18 premiums can support claims under Labor Code §§ 203 and 204).

19 29. Labor Code § 210 provides that “in addition to, an entirely independent and apart
20 from, any other penalty provided in this article, every person who fails to pay the wages of each
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22 ¹ Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting
23 time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal.
24 Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties
25 based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling*
26 *vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time
27 claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5”);
28 *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016)
(finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204);
Brewer v. Gen. Nutrition Corp. (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant’s motion for
summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes
of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7, 2013) 2013 WL 4038617, at *3–4
[distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay wages...can be based on amounts
owed under section 226.7.”). The issue is currently before the California Supreme Court in the *Naranjo* case. *See*
Naranjo v. Spectrum Security Services, Inc., Cal. Supreme Court Case No. S258966.

1 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
2 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
3 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
4 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
5 compensation policies and practices described in detail above, Plaintiffs, the Class, and the other
6 Aggrieved Employees are entitled to recover penalties under Labor Code § 210.

7 30. The administrative prerequisites of PAGA will be satisfied after 65 days have elapsed
8 from February 18, 2020 (i.e. 65 days since Plaintiffs Martha Garcia and Martha Arevalo’s mailing
9 of the PAGA notice with no further communication from the LWDA to Plaintiffs’ counsel).
10 Plaintiffs Martha Garcia and Martha Arevalo have paid the \$75.00 fee and have otherwise satisfied
11 the administrative prerequisites of PAGA.

12 31. Plaintiffs by this action seeks to recover, on behalf of themselves and all other current
13 and former Aggrieved Employees of Defendants, the civil penalties provided by PAGA, as specified
14 in Labor Code § 2699(f). Plaintiffs seek to recover the PAGA civil penalties through a representative
15 action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal.
16 4th 969 (2009). Class certification of the PAGA claims is not required.

17 CLASS ACTION ALLEGATIONS

18 32. Plaintiffs bring this action, on behalf of themselves and all others similarly situated,
19 as a class action pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent Classes
20 composed of and defined as:

21 All non-exempt individuals who or were employed by Ball Grill, Inc., Superior Express, Inc.,
22 and Harbor 22, Inc., in the State of California during the Class Period and ending when notice
23 to the Class is sent (hereinafter referred to as “Class Members” or the “Class”).

- 24 a. All Class Members who were issued one or more wage statements from
25 Defendants during the period from one year prior to the filing of this Complaint
26 and continuing into the present (hereinafter referred to as “Wage Statement Class
27 Members”);
28 b. All Class Members who did not receive their timely ten-minute, duty free rest
breaks while working for Defendants during the Class Period (hereinafter referred
to as “Rest Break Class Members”);

- 1 c. All Class Members who did not receive their timely thirty-minute meal break on
2 or before the fifth hour of work while working for Defendant on shifts greater
3 than five hours during the Class Period (hereinafter referred to as “Meal Break
4 Class Members”);
- 5 d. All Class Members whose employment with Defendants terminated during the
6 period from three years prior to the filing of this Complaint and continuing into
7 the present (hereinafter referred to “Waiting Time Penalty Class Members”).

8 33. This action has been brought and may properly be maintained as a class action under
9 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation,
10 the proposed class is easily ascertainable, and Plaintiffs are proper representatives of the Class:

11 a. Numerosity: The potential members of the Class as defined are so numerous
12 that joinder of all the members of the Class is impracticable. While the precise number of Class
13 Members has not been determined at this time, Plaintiffs are informed and believes that Defendants
14 have, on average, at any one time during the Class Period employed over 250 Class Members as
15 non-exempt employees who were subject to Defendants’ unlawful policies. The total number of
16 Class Members is estimated to be more than 465. The Class Members are dispersed throughout
17 California. Joinder of all members of the proposed classes is therefore not practicable.

18 b. Commonality: There are questions of law and fact common to Plaintiffs and
19 the Class that predominate over any questions affecting only individual members of the Class. These
20 common questions of law and fact include, without limitation:

21 i. Whether Defendants violated Labor Code sections 226.7 and 512 and Section
22 11 of IWC Wage Order No. 5 by failing to provide timely, duty-free meal periods to Plaintiffs and
23 the members of the Meal Break Class in California during the Class Period;

24 ii. Whether Defendants violated Labor Code section 226.7 by failing to provide
25 one hour of premium pay to each member of the Meal Break Class for each day that a timely, duty-free
26 meal period was not provided in California during the Class Period;

27 iii. Whether Defendants violated Labor Code section 226.7 and Section 12 of
28 IWC Wage Order No. 5 by failing to provide timely, duty-free rest periods to Plaintiff and the
members of the Rest Break Class in California during the Class Period;

1 iv. Whether Defendants violated Labor Code section 226.7 by failing to provide
2 one hour of premium pay to each member of the Rest Break Class for each day that a timely, duty-free
3 rest period was not provided in California during the Class Period;

4 v. Whether Defendants failed to provide Plaintiff and the members of the Wage
5 Statement Class complete wage statements in violation of Labor Code Section 226(a);

6 vi. Whether Defendants violated Section 203 of the Labor Code by failing to pay
7 members of the Waiting Time Class for all wages due to them (including their unpaid meal and rest
8 break premiums) upon their separation of employment from Defendants;

9 vii. Whether Defendants violated Sections 204 and 210 of the Labor Code by
10 failing to pay member of the Class all wages due on a timely basis;

11 viii. Whether Defendants engaged in an unfair practice and violated section 17200
12 of the California Business and Professions Code by failing to provide Plaintiffs and the members of
13 the Meal Break Class with timely, duty-free meal breaks during the Class Period;

14 ix. Whether Defendants engaged in an unfair practice and violated section 17200
15 of the California Business and Professions Code by failing to provide Plaintiffs and members of the
16 Meal Break Class with meal period premiums for each day they were not provided a compliant meal
17 break;

18 x. Whether Defendants engaged in an unfair practice and violated section 17200
19 of the California Business and Professions Code by failing to provide Plaintiffs and the members of
20 the Rest Break Class with timely, duty-free rest breaks during the Class Period;

21 xi. Whether Defendants engaged in an unfair practice and violated section 17200
22 of the California Business and Professions Code by failing to provide Plaintiffs and members of the
23 Rest Break Class with rest period premiums for each day they were not provided a compliant meal
24 break;

25 xii. Whether Plaintiffs and the Class are entitled to restitution under Business and
26 Professions Code § 17200;

27 xiii. The proper formula(s) for calculating damages, interest, and restitution owed
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1 to Plaintiffs and the Class Members;

2 xiv. The nature and extent of class-wide damages.

3 c. Typicality: Plaintiffs' claims are typical of the claims of the Class. Both
4 Plaintiffs and Class Members sustained injuries and damages, and were deprived of property rightly
5 belonging to them, arising out of and caused by Defendants' common course of conduct in violation
6 of law as alleged herein, in similar ways and for the same types of unpaid wages.

7 d. Adequacy of Representation: Plaintiffs are members of the Class and will
8 fairly and adequately represent and protect the interests of the Class and Class Members. Plaintiffs'
9 interests do not conflict with those of Class and Class Members. Counsel who represent Plaintiffs
10 are competent and experienced in litigating large wage and hour class actions, including numerous
11 cases virtually identical to this one (i.e., wage and hour class action cases), and other employment
12 class actions, and will devote sufficient time and resources to the case and otherwise adequately
13 represent the Class and Class Members.

14 e. Superiority of Class Action: A class action is superior to other available
15 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
16 Members is not practicable, and questions of law and fact common to the Class predominate over
17 any questions affecting only individual members of the Class. Each Class Member has been
18 damaged or may be damaged in the future by reason of Defendants' unlawful policies and/or
19 practices. Certification of this case as a class action will allow those similarly situated persons to
20 litigate their claims in the manner that is most efficient and economical for the parties and the judicial
21 system. Certifying this case as a class action is superior because it allows for efficient and full
22 disgorgement of the ill-gotten gains Defendants have enjoyed by maintaining its unlawful break and
23 compensation policies and will thereby effectuate California's strong public policy of protecting
24 employees from deprivation or offsetting of compensation earned in their employment. If this action
25 is not certified as a Class Action, it will be impossible as a practical matter, for many or most Class
26 Members to bring individual actions to recover monies unlawfully withheld from their lawful
27 compensation due from Defendants, due to the relatively small amounts of such individual
28

1 recoveries relative to the costs and burdens of litigation.

2 **FIRST CAUSE OF ACTION**
3 **FAILURE TO PAY MINIMUM WAGES**
4 **[Labor Code §§ 1194, 1194.2 and 1197]**
5 **On Behalf of Plaintiffs and the Class Against Defendant**

6 1. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
7 in the preceding paragraphs.

8 2. Section 1194 of the Labor Code provides, in relevant part, “[n]otwithstanding any
9 agreement to work for a lesser wage, any employee receiving less than minimum wage...applicable
10 to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this
11 minimum wage ..., including interest thereon, reasonable attorney’s fees, and costs of suit.”

12 3. Section 1194.2 of the Labor Code provides, in relevant part, “[i]n any action
13 under...Section 1194 to recover wages because of the payment of a wage less than the minimum
14 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated
15 damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

16 4. Plaintiffs and other Class members were not paid at least minimum wage while
17 employed by the Defendant. As a result, Plaintiffs and other Class members were denied
18 compensation for all hours suffered or permitted to work.

19 5. Consequently, Defendants violated California Labor Code laws and minimum wage
20 laws, *inter alia*, Labor Code §§ 1194, 1194.2, 1197, and IWC Wage Order Nos. 5.

21 6. Plaintiffs are informed and believe and thereon alleges that Defendant intentionally,
22 willfully, and improperly failed to pay wages to Plaintiffs and other Class members.

23 7. Defendants’ conduct was willful, as Defendant knew that Plaintiffs and other
24 class members were entitled to be paid wages for each hour worked, including proper minimum
25 wages, yet Defendants chose not to pay him in accordance thereto.

26 8. As a result of Defendant’s wrongful conduct, Plaintiffs and other Class
27 members have been damaged in amounts to be proven at trial.

28 9. Accordingly, pursuant to sections 1194 and 1194.2 of the California Labor

1 Code, Plaintiffs and other class members are entitled to recover, either his unpaid hourly wages due,
2 or minimum wage plus interest and/or liquidated damages in an additional amount equal to the total
3 amount of wages unlawfully withheld for rest period time.

4 10. Plaintiffs and other class members seek recovery of all unpaid minimum
5 wages, liquidated damages, penalties, interest, attorneys' fees and costs of suit, pursuant to Labor
6 Code §§ 1194, 1194.2, and 1197, against Defendants in an amount to be proven at trial.

7
8 **SECOND CAUSE OF ACTION**
9 **FAILURE TO PAY OVERTIME WAGES**

[Labor Code §§ 510, 1194, 1194.2, 1197 and 1198; IWC Wage Order No. 5]

10 **On Behalf of Plaintiffs and the Class Against Defendant**

11 11. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
12 preceding paragraph.

13 12. Labor Code § 510 requires an employer to compensate an employee who works more
14 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
15 worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an
16 employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice
17 the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight
18 (8) hours on the seventh consecutive day of work.

19 13. Labor Code § 1194 provides that any employee receiving less than the legal overtime
20 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the
21 full amount of this overtime compensation, including interest thereon, reasonable attorney's fees, and
22 costs of suit.

23 14. Furthermore, pursuant to Labor Code § 1198, "[t]he maximum hours of work and the
24 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
25 standard conditions of labor for employees. The employment of any employee for longer hours than
26 those fixed by the order or under conditions of labor prohibited by the order is unlawful."

27 15. Plaintiffs and the Overtime Aggrieved Employees occasionally worked over eight hours
28 per day and were not paid overtime wages. Defendant violated Labor Code § 510 by failing to pay

1 Plaintiffs and the Class their overtime wages.

2
3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PROVIDE TIMELY AND DUTY-FREE MEAL BREAKS AND PAY**
5 **MISSED MEAL BREAK PREMIUMS**

6 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order 5-2001 Section 11]**

7 **On behalf of Plaintiff and the Meal Break Class Against Defendants**

8 16. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
9 in the preceding paragraphs.

10 17. California Labor Code § 226.7(a) provides, “No employer shall require any employee
11 to work during any meal or rest period mandated by an applicable order of the Industrial Welfare
12 Commission.”

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

22 19. Here, Defendants violated and continue to violate Labor Code § 512 and IWC Wage
23 Order 5-2001 § 11 by, among other things, failing to provide and schedule duty-free meal breaks on
24 or before the fifth hour of work for Meal Break Class Member and failed to advise all other Meal
25 Break Class Members of their meal break rights with respect to the timing of meal breaks, failed to
26 provide Meal Break Class Members with thirty-minute, uninterrupted meal periods within the first
27 five (5) hours of their shifts, and failed to pay meal break premiums for late meal breaks. Instead,
28 Defendants often required employees to take their breaks at the end of their shifts without paying
any late meal break premiums. As a result of Defendants’ failure to authorize or permit lawful and

1 timely meal periods, Plaintiffs and the other Class members and Meal Period Class Members
2 frequently did not receive compliant duty-free meal periods within the first five (5) hours of their
3 work.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE TIMELY AND DUTY-FREE REST BREAKS AND PAY MISSED REST BREAK PREMIUMS**

6 **[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order 5-2001]**
7 **On behalf of Plaintiffs and the Rest Break Class Against Defendants**

8 20. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
9 in the preceding paragraphs.

10 21. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
11 authorize and permit the amount of rest time on the schedule called for under the law (as specified
12 in Section 12 of the applicable Wage Order), “it has violated the wage order and is liable.” The
13 *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting
14 an unlawful policy:

15 An employer is required to authorize and permit the amount of rest break time called for
16 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
policy authorizing and permitting only one rest break for employees working a seven-hour
shift when two are required—***it has violated the wage order and is liable.***

17 (*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

18 22. Here, Defendants did not authorize Plaintiffs and the Rest Break Class Members to
19 take their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their
20 shifts. Plaintiffs and the Rest Break Class Members did not receive timely rest breaks during their
21 shifts. Accordingly, Defendants are liable to Plaintiffs and the Rest Break Class Members for rest
22 break premiums for all such shifts on which they were not able to take compliant rest

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**

25 **[Cal. Labor Code § 226(a)]**

26 **On behalf of Plaintiffs and the Wage Statement Class Members Against Defendants**

27 23. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
28 in the preceding paragraphs.

1 24. Section 226(a) of the California Labor Code provides, in relevant part:

2 Every employer shall...furnish each of his or her employees...an accurate
3 itemized statement in writing showing (1) gross wages earned, (2) total hours
4 worked by the employee, except for any employee whose compensation is
5 solely based on a salary and who is exempt from payment of overtime under
6 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
7 Commission, (3) the number of piece-rate units earned and any applicable piece
8 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
9 that all -deductions made on written orders of the employee may be aggregated
10 and shown as one item, (5) net wages earned, (6) the inclusive dates of the
11 period for which the employee is paid, (7) the name of the employee and only
12 the last four digits of his or her social security number or an employee
13 identification number other than a social security number, (8) the name and
14 address of the legal entity that is the employer and (9) all applicable hourly rates
15 in effect during the pay period and the corresponding number of hours worked
16 at each hourly rate by the employee...

17 25. As set forth above, Defendants' wage statements issued fail to include the start date
18 of each pay periods in violation of Labor Code § 226(a)(6). Additionally, Defendants' failure to pay
19 Plaintiffs and the other Wage Statement Class Members for all meal and rest break premiums), the
20 wage statements issued by Defendants to Plaintiffs and the other Wage Statement Class Members
21 do not indicate the correct amount of gross wages earned, net wages earned, or the applicable hourly
22 rates in effect during the pay period and the corresponding number of hours worked at each hourly
23 rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

24 26. Defendants' violation of Labor Code § 226 was knowing and intentional. *See Garnett*
25 *v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant
26 knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was
27 not providing total hours worked to plaintiff or other employees paid on commission" even though
28 it believed that employees paid solely on commission or commission and salary "are exempt and
 therefore we do not record hours on a wage statement").

 27. Defendants' failure to furnish accurate and complete itemized wage statements has
caused Plaintiffs and the other Wage Statement Class Members to incur economic damages in that
they were not aware that they were owed and not paid appropriate premiums for their non-compliant
statutory rest breaks and meal periods. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954

1 (“If it is left to the employee to add up the daily hours shown on the time cards or other records so
2 that the employee must perform arithmetic computations to determine the total hours worked during
3 the pay period, the requirements of section 226 would not be met”); *McKenzie v. Federal Express*
4 *Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by
5 not including, inter alia, total hours worked giving rise to claims under both Section 226 and for
6 PAGA penalties); Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage
7 statement violated Section 226(a)(1), (2), or (5), among other provisions, and where employees
8 cannot easily determine the gross or net wages earned by the employee during the pay period).

9 28. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial
10 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not
11 to exceed \$4,000, as well as an award of costs and reasonable attorney’s fees, for all pay periods in
12 which the employer fails to provide accurate itemized statements to the employee causing the
13 employee to suffer injury.

14 **SIXTH CAUSE OF ACTION**

15 **WAITING TIME PENALTIES FOR** 16 **FAILURE TO PAY WAGES DUE ON TERMINATION** **[Cal. Labor Code §§ 201-203]**

17 **On Behalf of Plaintiffs and the Waiting Time Class Against Defendants**

18 29. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
19 in the preceding paragraphs.

20 30. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an
21 employee who is discharged or who quits, the wages of the employee shall continue as a penalty. .
22 .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

23 31. Due to Defendants’ faulty policies described above, including its failure to pay for
24 meal and rest break premiums, Defendants violated Labor Code § 203, for those employees whose
25 employment ended within the last three years and ongoing (i.e., the Waiting Time Class Members)
26 by willfully failing to pay them all wages due upon the termination of their employment.

SEVENTH CAUSE OF ACTION
FAILURE TO PAY WAGES ON A TIMELY BASIS
[Cal. Labor Code §§ 204, 210]

On Behalf of Plaintiffs and the Wage Statement Class Against Defendants

32. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraph.

33. 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 advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

34. Due to Defendants’ failure to pay Plaintiffs and the Wage Statement Class all meal and rest break period premiums owed,² Defendants violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

35. Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each

² Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5’”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7, 2013) 2013 WL 4038617, at *3–4 [distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay wages...can be based on amounts owed under section 226.7.”). The issue is currently before the California Supreme Court in the *Naranjo* case. *See Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No. S258966.

1 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
2 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
3 compensation policies and practices described in detail above, Plaintiffs and the Class are entitled
4 to recover penalties under Labor Code § 210.

5 **EIGHTH CAUSE OF ACTION**

6 **FAILURE TO PAY FOR SICK DAYS**

7 **[(Labor Code §246(a)]**

8 **On Behalf of Plaintiffs and Class Members Against Defendants**

9 36. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
10 preceding paragraphs.

11 37. Cal. Labor Code Section 246(a) provides: (a) (1) An employee who, on or after July 1,
12 2015 works in California for the same employer for 30 or more days within a year from the
13 commencement of employment is entitled to paid sick days as specified in this section.

14 38. Defendants failed and refused to pay Plaintiffs for their sick days. Plaintiffs have been damaged
15 in a sum to be proven and request relief as described below.

16 **NINTH CAUSE OF ACTION**

17 **UNFAIR COMPETITION LAW VIOLATIONS**
18 **(BUS. & PROF. CODE § 17200, ET SEQ.)**

19 **On Behalf of Plaintiffs and the Class Against Defendants**

20 39. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
21 in the preceding paragraphs.

22 40. Section 17200 of the California Business & Professions Code prohibits any unlawful,
23 unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person
24 who has suffered injury in fact and has lost money or property” to prosecute a civil action for
25 violation of the UCL. Such a person may bring such an action on behalf of himself and others
26 similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

27 41. Under section 17208 of the California Business and Professions Code, the statute of
28

1 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this
2 cause of action is four years prior to the filing of this Complaint through the present, and on-going
3 until the violations are corrected, or the Class is certified.

4 42. Section 90.5(a) of the Labor Code states that it is the public policy of California to
5 enforce vigorously minimum labor standards in order to ensure employees are not required to work
6 under substandard and unlawful conditions, and to protect employers who comply with the law from
7 those who attempt to gain competitive advantage at the expense of their workers by failing to comply
8 with minimum labor standards.

9 43. As a direct and proximate result of Defendants' unlawful business practices, Plaintiffs
10 and the Class Members have suffered economic injuries. Defendants have profited from its
11 unlawful, unfair, and/or fraudulent acts and practices.

12 44. Plaintiffs and similarly situated Class Members are entitled to monetary relief
13 pursuant to Business & Professions Code §§ 17203 and 17208 for unpaid meal and rest period
14 premiums and unreimbursed business expenses due and interest thereon, from at least four years
15 prior to the filing of this complaint through to the date of such restitution, at rates specified by law.
16 Defendants should be required to disgorge all the profits and gains it has reaped and restore such
17 profits and gains to Plaintiffs and Class Members, from whom they were unlawfully taken.

18 45. Through its actions alleged herein, Defendants has engaged in unfair competition
19 within the meaning of section 17200 of the California Business & Professions Code, because
20 Defendants' conduct, as herein alleged has damaged Plaintiffs and the Class Members by wrongfully
21 denying them all meal and rest period premiums due, and therefore was substantially injurious to
22 Plaintiffs and the Class Members.

23 46. Defendants engaged in unfair competition in violation of sections 17200 et seq. of
24 the California Business & Professions Code by violating Sections 226.7 and 512 of the California
25 Labor Code, and Sections 11 and 12 of the IWC Wage Order 5-2001.

26 47. Defendants' course of conduct, act and practice in violation of the California laws
27 mentioned above constitute independent violations of sections 17200 et seq. of the California
28

1 Business and Professions Code.

2 48. Plaintiffs and similarly situated Class Members are entitled to enforce all applicable
3 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

4 49. Plaintiffs have assumed the responsibility of enforcement of the laws and public
5 policies specified herein by suing on behalf of themselves and other similarly situated Class
6 Members previously or presently employed by Defendants in California. Plaintiffs' success in this
7 action will enforce important rights affecting the public interest. Plaintiffs will incur a financial
8 burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'
9 fees to Plaintiffs is appropriate pursuant to Code of Civil Procedure §1021.5.

10
11 **TENTH CAUSE OF ACTION**

12 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
13 **PAGA PENALTIES FOR VIOLATIONS OF**
14 **LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, AND 512**
15 **(Labor Code §§ 2698-2699.5)**

16 **On Behalf of Plaintiffs and the Aggrieved Employees Against Defendants**

17 50. Plaintiffs, on behalf of themselves and all aggrieved employees, realleges and
18 incorporates by reference all previous paragraphs.

19 51. Based on the above allegations incorporated by reference, Defendant violated Labor
20 Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, and 512, as well as IWC Wage Order 5-2001.

21 52. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiffs and
22 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial
23 subject to the following formula:

24 \$100 for the initial violation per employee per pay period; and

25 \$200 for each subsequent violation per employee per pay period.

26 These penalties will be allocated 75% to the Labor Workforce Development Agency and
27 25% to the affected employees.

28 53. As set forth above, Defendants failed to provide Plaintiffs and all aggrieved
employees with accurate itemized wage statements in compliance with Labor Code § 226(a). Labor

1 Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be
2 subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation
3 in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a
4 subsequent citation, for which the employer fails to provide the employee a wage deduction
5 statement or fails to keep the required in subdivision (a) of Section 226.” Also, with respect to all
6 pay periods in which a missed or late meal break premium was paid, Defendants failed to make any
7 associated PAGA penalties that were triggered by same. In these instances, when Defendants paid
8 late or missed meal break premiums to Plaintiffs and the Meal Break Aggrieved Employees,
9 pursuant to Labor Code section 226.7, these late or missed meal break premiums demonstrated
10 violations of Labor Code section 226.7, as well as Section 512 of the Labor Code, that give rise to
11 independent PAGA penalty claims. *See Kim v. Reins International California, Inc.*, 9 Cal.5th 73
12 (Mar. 12, 2020) (“For example, employers can pay an additional hour of wages as a remedy for
13 failing to provide meal and rest breaks. (section 226.7(c)) But we have held that payment of this
14 statutory remedy “does not excuse a section 226.7 violation.” (*Kirby v. Immoos Fire Protection, Inc.*
15 (2012), 53 Cal.4th 1244, 1256”).

16 54. Further, Plaintiffs Martha Garcia and Martha Arevalo, as Aggrieved Employees, do
17 need not demonstrate or prove that Defendants’ conduct in refusing to provide accurate and itemized
18 wage statements was knowing, intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above;
19 *see also Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment
20 on a PAGA claim, “all [plaintiff] needs to establish is a violation of section 226(a), which she has
21 done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal.
22 2011) (holding that “for the purposes of recovering PAGA penalties, one need only prove a violation
23 of Section 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*,
24 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do not need to establish
25 a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

55. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code § 2699, et seq. because of Defendant's violation of Labor Code §§ Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, and 512, as well as IWC Wage Order 5-2001.

JURY DEMAND

56. Plaintiffs hereby demands trial by jury of his and the Class's claims against Defendants, and of all claims except for the PAGA and UCL, claims which are subject to a bench trial.

PRAYER FOR RELIEF

Wherefore, Plaintiffs, on behalf of themselves and the members of the Class, pray for judgment against Defendants as follows:

1. An Order that this action may proceed and be maintained as a class action;

- ## 2. On the First Cause of Action:

- a. A declaratory judgement that Defendant violated Labor Code § 1194; Pursuant to 1194, an award to Plaintiff and the Class for penalties pursuant to Labor Code § 1194.

- ### 3. On the Second Cause of Action:

- | | |
|--|--|
| a. A declaratory judgement that Defendant violated Labor Code § 510; | |
| A declaratory judgement that Defendant violated Labor Code § 510; Pursuant to 510, an award to Plaintiff and the Class for penalties pursuant to Labor Code § 510. | |

1. On the Third Cause of Action:

- a. A declaratory judgment that Defendants violated California Labor Code §§ 226.7, 512 and Section 11 of IWC Wage Order 5-2001;

- b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiffs and the Meal Break Class Members for an hour of pay for each day that a timely, duty-free meal period was not provided during the Class Period.

- ## 2. On the Fourth Cause of Action:

- a. A declaratory judgment that Defendants violated California Labor Code § 226.7, and Section 12 of IWC Wage Order 5-2001;

1 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiffs and the Rest Break
2 Class Members for an hour of pay for each day that a timely, duty-free rest period was not provided
3 during the Class Period.

4 3. On the Fifth Cause of Action:

5 a. A declaratory judgment that Defendants violated California Labor Code §226
6 by issuing inaccurate and/or incomplete wage statements that failed to include the start date for each
7 pay period, the correct amount of gross wages earned, net wages earned, or the applicable hourly
8 rates in effect during the pay period and the corresponding number of hours worked at each hourly
9 rate to Plaintiffs and the wage statement Class Members;

10 b. An award to Plaintiffs and Class Members of \$50 for each initial pay period,
11 one year prior to the filing of this Complaint through the date of trial, in which a violation of Section
12 226 occurred and \$100 for each subsequent pay period, one year prior to the filing of this Complaint
13 through the date of trial, in which a violation of Section 226 occurred, not to exceed \$4,000 for each
14 member of the Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor
15 Code § 226(e).

16 5. On the Sixth Cause of Action:

17 a. A declaratory judgment that Defendants violated California Labor Code §§
18 201 through 203;

19 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiffs and
20 the Waiting Time Class members for waiting time penalties in the amount of 30 days' wages per
21 waiting time Class Member.

22 6. On the Seventh Cause of Action:

23 a. A declaratory judgment that Defendants violated California Labor Code §§
24 204 and 210;

25 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiffs and the Class
26 for penalties pursuant to Labor Code § 210.

27 7. On the Sixth Cause of Action:

1 a. A declaratory judgment that Defendants violated California Labor Code

2 8. On the Eighth Cause of Action:

3 a. A declaratory judgment that Defendants violated California Labor Code §246 (a);

4 9. On the Ninth Cause of Action:

5 a. That the Court find and declare that Defendants have violated the UCL and
6 committed unfair and unlawful business practices by failing to pay meal and rest break premiums;

7 b. Restitution, including, but not limited to, the relief permitted by section 226.7
8 of the California Labor Code (i.e., pay as specified for meal and rest period premiums to Plaintiffs
9 and the members of the Class during the Class Period.

10 10. On the Tenth Cause of Action:

11 a. A civil penalty against Defendants in the amount of \$100 for the initial
12 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California
13 Labor Code for Plaintiffs and the Aggrieved Employees during all of the pay periods in the PAGA
14 Period in which an underlying Labor Code violation occurred, and on-going until the violations are
15 corrected; ;

16 b. An award of reasonable attorney's fees against Defendants as specified in
17 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with
18 the PAGA claims;

19 c. An award of all costs incurred by the undersigned counsel for Plaintiffs in
20 connection with Plaintiffs' and Aggrieved Employees' PAGA claim against Defendants, as provided
21 for in Labor Code § 2699(g)(1); and

22 11. All other relief as this Court deems proper.

23 ///

24 ///

25 ///

1 Dated: August 18, 2021

Respectfully,

2 Law Offices of Farrah Mirabel, P.C.
3 Employment Rights Law Group, APC

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5 By:

6 Farrah Mirabel, Esq.
7 Amir Seyedfarshi, Esq.
8 Counsel for Plaintiff, the Class, and the
9 Aggrieved Employees