

ACKERMANN & TILAJEF, P.C.
Craig J. Ackerman, CA Bar No. 229832
cja@ackermanntilajef.com
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
Telephone: (310) 277-0614
Facsimile: (310) 277-0635

EMPLOYMENT RIGHTS LAW GROUP, APC.
Amir H. Seyedfarshi, CA Bar No. 301656
amir@employmentrightslawgroup.com
1180 South Beverly Drive, Suite 320
Los Angeles, California 90035
Telephone: (310) 997-0020

Attorneys for Plaintiffs, the Aggrieved Employees, and the Putative Class

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

KHALID ABU-DAYYEH and AMINAH
UWAIS, individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

GUIDANCE RESIDENTIAL, LLC, a Delaware
Limited Liability Company, and DOES 1 to 100,
inclusive,

Defendants.

CASE NO:BCV-20-102367

**PLAINTIFFS' CLASS ACTION AND PAGA
REPRESENTATIVE COMPLAINT FOR:**

**(1) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802);
(2) FAILURE TO PROVIDE
COMPLETE/ACCURATE WAGE
STATEMENTS (LABOR CODE § 226);
(3) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210);
(4) UCL VIOLATIONS (CAL. BUS. & PROF.
CODE §§ 17200-17204); AND
(5) PAGA PENALTIES (LABOR CODE § 2698
et seq.)**

1 Plaintiffs Khalid Abu-Dayyeh and Aminah Uwais (“Plaintiffs”), on behalf of themselves, all
2 similarly situated Class Members, the Aggrieved Employees, and the State of California, complain
3 and allege as follows:

4 **OVERVIEW OF CLAIMS**

5 1. Plaintiffs bring this action on behalf of themselves and all similarly situated Class
6 Members, as a Class Action, as a PAGA Representative Action, and on behalf of the California
7 general public, against Defendant Guidance Residential, LLC, and Does 1 to 100 (collectively,
8 “Defendants”) for their (1) failure to reimburse for gas mileage expenses, insurance expenses, and
9 business-related cell phone usage; (2) failure to provide accurate itemized wage statements; (3)
10 failure to pay timely wages; (4) unfair business practices based on the foregoing; and (5) PAGA
11 penalties based on the foregoing. As a result of the foregoing, Defendants have violated California
12 statutory laws as described below.

13 2. The “Class Period” is designated as the period from July 16, 2016 through the trial
14 date. Defendants’ violations of California’s wage and hour laws and unfair competition laws, as
15 described more fully below, have been ongoing throughout the Class Period.

16 3. The “PAGA Period” is designated as the period from one year prior to Plaintiff Abu-
17 Dayyeh’s mailing of the LWDA notice letter (*i.e.*, May 19, 2019) through the present.

18 **VENUE**

19 4. Venue is proper in this county under section 395.5 of the California Code of Civil
20 Procedure as the allegations herein took place within the County of Kern, and some of the putative
21 Class Members were employed and/or performed work for Defendants in Kern County during the
22 Class Period. Venue is therefore proper in Kern County.

23 **JURISDICTION**

24 5. Defendants are within the jurisdiction of this Court. Defendants transact business
25 by selling Islamic law-compliant mortgages in California. Thus, Defendants have obtained the
26 benefits of the laws of the State of California. In addition, Plaintiffs assert no claims arising under
27 federal law. Rather, Plaintiffs bring causes of action based solely on, and arising from, California
28

1 law. The claims of the class are also individual claims for violations of California law described
2 herein.

3 **THE PARTIES**

4 6. Plaintiff Khalid Abu-Dayyeh resides in Pomona, California in Los Angeles County,
5 California. Plaintiff Aminah Uwais resides in Bakersfield, California in Kern County, California.
6 Throughout the Class Period and the PAGA period, Defendants employed Plaintiffs as outside
7 salespersons. From at least four years prior to the filing of this Complaint through the present (the
8 “Class Period”), Defendants’ outsides salespersons, including Plaintiffs during their employment,
9 were not reimbursed for their business expenses in the course of carrying out their job duties in
10 California, specifically including gas mileage expenses insurance expenses, and business-related cell
11 phone usage, were not provided accurate wage statements, and were not provided all timely wages.

12 7. Plaintiffs represent the State of California and the following group of employees: *all*
13 *persons who have been employed by Defendant in California as non-supervisory outside sales*
14 *account executives at any time from May 19, 2019 through the date of class certification* (the
15 “Aggrieved Employees”). All such Aggrieved Employees are and were subject to Defendants’
16 unlawful policies, as described in further detail below. There are estimated to be approximately 12
17 Aggrieved Employees

18 8. Plaintiffs further seek to represent a class defined as: *all persons who have been*
19 *employed by Defendant in California as non-supervisory outside sales account executives at any*
20 *time from July 16, 2016 through date of class certification* (“the Class Members”). All such Class
21 Members are and were subject to Defendants’ unlawful policies, as described in further detail below.
22 Including both current and former employees who fall within the class definition, the Class is
23 anticipated to consist of approximately 20 to 25 individuals.

24 9. Defendant Guidance Residential, LLC is a Delaware Limited Liability Company.
25 Defendant that provides Islamic law-compliant mortgages in California and around the world.
26 Defendant is the largest provider of such mortgages in the United States.

27 10. The true names and capacities, whether individual, corporate, associate, or otherwise,
28

1 of Defendants sued herein as DOES 1 to 100 inclusive, are currently unknown to Plaintiffs, who
2 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs
3 are informed and believe, and based thereon allege, that each of the Defendants designated herein
4 as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs
5 will seek leave of court to amend this Complaint to reflect the true names and capacities of the
6 Defendants designated hereinafter as DOES when such identities become known.

7 11. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
8 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
9 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
10 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
11 employer and/or joint employer of Plaintiffs, the Class Members, and the other Aggrieved
12 Employees. Further, Labor Code § 558.1 explicitly allows Plaintiffs to name any owner, director,
13 officer, or managing agent of Defendant as a Doe Defendant for violations of Labor Code §§ 2802,
14 226, 204, and 210.

15 12. Plaintiffs and the Class Members were employed by Defendants as non-supervisory
16 outsides sales account executives in California at various times during the Class Period. Due to
17 turnover during the Class Period, the total number of class members is estimated to be 25.

18 **FACTUAL ALLEGATIONS**

19 13. Defendants operate and, at all times during the Class Period and PAGA Period, has
20 done and does business in California selling Islamic law –compliant mortgages in California.
21 Defendants, in the course of operating their business in California during the Class Period, employed
22 Plaintiffs, the Aggrieved Employees, and the Class Members.

23 14. Pursuant to section 2802(a) of the California Labor Code, “[a]n employer shall
24 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
25 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions
26 of the employer....” Labor Code 2802(c) defines necessary to include all “reasonable” expenses.
27 The purpose of this statute is “to prevent employers from passing their operating expenses on to their
28

employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting legislative history from the 2000 amendment to the statute and holding that outside salespersons are entitled to gas mileage reimbursement in addition to their commission pay). Labor Code section 2804 also makes it crystal clear that claims under section 2802 are not waivable.

15. Furthermore, under Labor Code section 2802, employers must reimburse salespersons for reasonable work-related use of their personal cell phones – regardless of whether or not aggrieved employees incurred any additional out-of-pocket expense from that work-related use. *See, Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014) (“We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”); see also *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D.Cal. Aug. 27, 2014) (granting plaintiffs’ motion for partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (adopting the logic of *Cochran*)

16. The employer’s obligation to reimburse all reasonably-incurred business-related expenses, including both gas mileage expenses associated with work-related driving of personal vehicles, and personal cell phone expenses for work-related usage, arises when the employer “knew or should have known” that its employees incurred a business-related expense. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan Illston) (adopting the “knew or should have known” standard). In such cases, including this one, where outside salespersons have incurred reasonable work-related gas mileage and car insurance expenses that the employer is or should have been aware of, an employer in California thus has an affirmative obligation to reimburse expenses and cannot hide behind a policy advising employees to put in for their expenses if they want to be reimbursed for them. *Id.*; see also Labor Code section 2804.

17. Here, Plaintiffs, the Class, and the Aggrieved Employees are and were outside

1 salespersons selling Islamic law-compliant mortgages in California, who were required to spend
2 50% or more of their time outside of the office, driving to and attending events, meetings, sales calls
3 and mosque visits in the field. As Defendants know, the only way to do these work-related business
4 tasks and job duties is by utilizing personal vehicles, personal cell phones and personal laptops.
5 Defendants have no policy or practice of affirmatively reimbursing salespersons for their out of
6 pocket gas mileage and car insurance expenses incurred, nor for their expenses association with
7 work-related use of their personal cell phones and laptops used to communicate with clients and
8 Defendants' managers and to do sales presentations when outside salespersons are making sales calls
9 in the field. Plaintiffs and all the other outside salespersons, estimated to be 12 or more over the last
10 year with turn-over, spent a significant amount of time, particularly on Fridays and the weekends,
11 driving around to Defendants' clients and potential clients making presentations and sales calls as
12 part of his and their job/ duties, but they were not reimbursed for their gas mileage, monthly cell
13 phone or car insurance expenses, in violation of Labor Code section 2802.

14 18. Plaintiffs, the Class, and the Aggrieved Employees were thus all expected to have
15 and to use their personal vehicles, and to pay for, and have paid for, gas expenses and car insurance,
16 and were also expected by Defendants to pay for, and have personally paid for, the purchase and
17 maintenance of cell phones (as well as cell phone data, text and call plans) and laptops, all of which
18 were used, and were reasonably known by Defendants to have been used, in the discharge of their
19 job duties.

20 19. In short, Defendants' policies and/or practices require and expect, and/or with
21 Defendants' knowledge thereof permit, Plaintiffs, the Aggrieved Employees, and Class Members to
22 pay for gas mileage expenses, insurance expenses, and cell phone business expenses incurred in
23 direct consequence of discharging their duties on behalf of Defendants, without reimbursement in
24 full by Defendants for such expenses. Defendants have maintained its policies and/or practices of
25 denying reimbursement in full of Plaintiffs', the Aggrieved Employees, and Class Members'
26 necessarily incurred business expenses, or substantially similar policies, throughout California and
27 throughout the Class Period and PAGA Period.

1 20. Plaintiffs, the Aggrieved Employees, and Class Members have been harmed by
2 Defendants' unlawful business expense policies and/or practices in that they have not been paid for
3 certain gas mileage expenses, insurance expenses, and cell phone business expenses incurred while
4 employed by Defendants in California, thereby diminishing their agreed-upon compensation, in
5 substantial amounts to be proved at trial.

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

- 8 (1) Gross wages earned;
- 9 (2) Total hours worked by the employee;
- 10 (3) The number of piece-rate units earned and any applicable piece rate if the employee is
11 paid on a piece rate;
- 12 (4) All deductions, provided that all deductions made on written orders of the employee may
13 be aggregated and shown as one item;
- 14 (5) Net wages earned;
- 15 (6) The inclusive dates of the period for which the employee is paid;
- 16 (7) The name of the employee and only the last four digits of his or her social security
17 number an employee identification number other than a social security number;
- 18 (8) The name and address of the legal entity that is the employer...;
- 19 (9) All applicable hourly rates in effect during the pay period and the corresponding number
20 of hours worked at each hourly rate by the employee...

21 Similarly, Labor Code § 226(e) provides:

22 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
23 employer to comply with subdivision (a) is entitled to recover the greater of all actual
24 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
25 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to
26 exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
27 costs and reasonable attorney's fees.

28 (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer
fails to provide accurate and complete information as required by any one or more of items
(1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily
determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay
period or any of the other information required to be provided on the itemized wage
statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net
wages paid to the employee during the pay period. Nothing in this subdivision alters
the ability of the employer to aggregate deductions consistent with the requirements
of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682, the name and address of the
legal entity that secured the services of the employer during the pay period.

(iv) 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.

22. Here, Defendants failed to provide Plaintiffs, the Class, and the Aggrieved Employees with complete wage statements, thus violating Labor Code § 226(a). Specifically, the wage statements issued by Defendants to Plaintiffs, the Class and the Aggrieved Employees did not and do not include the correct gross and net wages in violation of Labor Code § 226(a).

23. In *Gattuso v. Harte-Hanks Shoppers*, 42 Cal. 4th 554, 569 (2007), the California Supreme Court outlined three possible methods for companies to pay outside salespersons' automobile expenses: mileage reimbursement (paying x cents per mile driven and tracking miles), actual expense method (where gas receipts of employees are simply reimbursed and paid), and the lump-sum method (where a flat auto allowance is paid and that amount covers the gas expenses of outside salespersons). In footnote 6 of *Gattuso*, the California Supreme Court noted that commission plans could be structured such that commission increases could include a component for gas mileage reimbursements; however, if employers take this approach, their wage statements issued to employees, in order to satisfy Labor Code Section 226, would have to separately itemize the components of the commissions attributable to reimbursements. *Id.* (footnote 6: "In the future, employers that provide business expense reimbursement to employees through increases in base salary or commission rates should, in providing the documentation required by Section 226, subdivision (a), separately identify the amounts that represent payment for labor performed and the amounts that represent reimbursement for business expenses").

24. Here, Defendants did not pay for salespersons' automobile expenses at all. However, even if Defendants somehow could argue that its commissions included automobile expenses, Defendants' wage statements issued to Plaintiffs and its other outside salespersons did not include any separate break-out for reimbursements from commission wages paid. Accordingly, even this potential "defense" of Defendants would simply give rise to another set of underlying Labor Code violations of Section 226(a), thereby triggering an independent basis for every pay period for every aggrieved employee for PAGA penalties.

25. Plaintiffs, the Class, and the Aggrieved Employees would prevail on this claim for

1 PAGA penalties under Labor Code § 226(a). *See Lopez v. Friant & Assocs., LLC* (2017) 15 Cal.
2 Cal. App. 4th 773, 788 (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of
3 Labor Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’
4 requirements of section 226(e)(1).”); *Willner v. Manpower Inc.*, 35 F. Supp. 3d 1116, 1136 (N.D.
5 Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of
6 section 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.*, 765
7 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA
8 penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e)
9 injury.”).

10 26. Further, Labor Code § 226.3 provides that “[a]ny employer who violates subdivision
11 (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
12 per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee
13 for each violation in a subsequent citation, for which the employer fails to provide the employee a
14 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As
15 explained in detail above, if Defendants claim that reimbursements were part of the commissions
16 paid, then Defendants failed to provide Plaintiffs, the Class, and the Aggrieved Employees with
17 accurate itemized wage statements insofar as they lacked the correct gross and net wages paid and
18 did not itemize out the reimbursement component. Thus, Plaintiffs and the other aggrieved
19 employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of Labor Code
20 § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) 2015 WL 1137151, at *7 [“the
21 weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim.”];
22 *Pedroza v. PetSmart, Inc.*, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3
23 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.”).

24 27. Labor Code section 204 expressly requires that “[a]ll wages ... earned by any person
25 in any employment are due and payable twice during each calendar month, on days designated in
26 advance by the employer as regular paydays”. At all times relevant hereto, including within the past
27 year, whenever Plaintiffs and other outside salespersons worked part-time, Defendants only paid
28

1 them their commissions due once per month, in violation of Labor Code section 204. This failure to
2 pay twice per month triggers civil penalties under Labor Code Section 210, which can be collected
3 either through PAGA or through a direct class action claim for penalties under Section 210. *See*
4 *Amaral v. Cintas Corp.* No. 2, 163 Cal.App.4th 1157, 1209 (2008); *see also Peabody v. Time Warner*
5 *Cable*, 59 Cal. 4th 662 (2014) (commissions must be paid twice every calendar month).

6 28. Plaintiffs have fully and completely exhausted and/or will have fully and completed
7 and exhausted his administrative remedies under PAGA prior to proceeding with the PAGA claim.
8 On May 19, 2020, Plaintiff Abu-Dayyeh filed his PAGA Notice online with the Labor Workforce
9 Development Agency (“LWDA”) and sent a letter by certified mail to Defendants setting forth the
10 facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698
11 *et seq.* As required by PAGA, Plaintiffs submitted the \$75.00 filing fee with the LWDA by regular
12 mail. Pursuant to Labor Code § 2699.3(a)(2)(A), Plaintiffs will have satisfied his administrative
13 pre-requisites after sixty-five (65) calendar days of the postmark date of the PAGA notice have
14 elapsed.

15 **CLASS ACTION ALLEGATIONS**

16 29. Plaintiffs bring this action on behalf of himself and all others similarly situated as a
17 class action pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent a Class composed
18 of and defined as *all persons who have been employed by Defendant in California as non-*
19 *supervisory outside sales account executives at any time from July 16, 2016 through the date of class*
20 *certification* (“Class Members”). All such Class Members were subject to Defendants’ unlawful
21 policies as stated above.

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

25 a. **Numerosity:** The potential members of the Class as defined are so numerous
26 that joinder of all the members of the Class is impracticable. While the precise number of Class
27 Members has not been determined at this time, Plaintiffs are informed and believe that due to
28

1 employee turn-over, the total number of Class Members, including Class Members who are no
2 longer employed by Defendants, is estimated to be 20 to 25. The Class Members are dispersed
3 throughout California. Joinder of all members of the proposed classes is therefore not practicable.

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

7 i. Whether Plaintiffs and Class Members incurred unreimbursed business
8 expenses in the discharge of their duties as employees, including but not limited to expenses for gas
9 mileage, insurance, cellular phones and monthly cellular phone bills, in violation of Labor Code §
10 2802;

11 ii. Whether Defendants intended, suffered and/or permitted, and/or knew and/or
12 should have known that Plaintiffs and Class Members incurred unreimbursed gas mileage expenses,
13 insurance expenses, cell phone business expenses, in the discharge of their duties as employees;

14 iii. Whether Defendants' failure to reimburse the gas mileage expenses,
15 insurance expenses, and cell phone business expenses incurred by Plaintiffs and Class Members was
16 the result of, and/or pursuant to, a business policy or regular practice of Defendants;

17 iv. Whether Defendants' failure to reimburse the gas mileage expenses,
18 insurance expenses, and cell phone business expenses incurred by Plaintiffs and Class Members was
19 the result of, and/or pursuant to, a business policy or regular practice of Defendants;

20 v. Whether Defendants failed to furnish Plaintiffs and Class Members with wage
21 statements that included accurate information in compliance with Labor Code § 226(a) and 226.3;

22 vi. Whether Defendants violated Labor Code § 204 by failing to pay Plaintiffs
23 and Class Members on a timely basis;

24 vii. Whether Plaintiffs are entitled to restitution under Business and Professions
25 Code § 17200;

26 viii. Whether Defendants owe penalties pursuant to PAGA for failing to reimburse
27 its account executives for the necessarily incurred business expenses, failing to provide accurate
28

1 wage statements, and failing to pay timely wages.

2 ix. The proper formula(s) for calculating damages, interest, and restitution owed
3 to Plaintiffs and the Class Members;

4 x. The nature and extent of class-wide damages.

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

9 d. Adequacy of Representation: Plaintiffs are members of the Class and will
10 fairly and adequately represent and protect the interests of the Class and Class Members. Plaintiffs'
11 interests do not conflict with those of Class and Class Members. Counsel who represent Plaintiffs
12 are competent and experienced in litigating large wage and hour class actions, and will devote
13 sufficient time and resources to the case and otherwise adequately represent the Class and Class
14 Members.

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

1 compensation due from Defendants', due to the relatively small amounts of such individual
2 recoveries relative to the costs and burdens of litigation.

3 **FIRST CAUSE OF ACTION**
4 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**
5 **[Cal. Labor Code § 2802]**
6 **On Behalf of Plaintiffs and the Class Against All Defendants**

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

9 32. The actionable period for this cause of action is July 1, 2016 through the present.

10 33. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her employee
11 for all necessary expenditures or losses incurred by the employee in direct consequence of the
12 discharge of his or her duties." Section 2802(c) defines necessary to include all reasonable costs.

13 34. Here, Plaintiffs and the Class are and were outside salespersons selling Islamic law-
14 compliant mortgages in California, who were required to spend 50% or more of their time outside
15 of the office, driving to and attending events, meetings, sales calls and mosque visits in the field. As
16 Defendants know, the only way to do these work-related business tasks and job duties is by utilizing
17 personal vehicles, personal cell phones and personal laptops. Defendants have no consistent policy
18 or practice of affirmatively reimbursing salespersons for their out of pocket gas mileage and car
19 insurance expenses incurred, nor for their expenses association with work-related use of their
20 personal cell phones and laptops used to communicate with clients and Defendant's managers and
21 to do sales presentations when outside salespersons are making sales calls in the field

22 35. Defendants' failure to pay for or reimburse the work-related business expenses of
23 Plaintiffs and Class Members violated non-waivable rights secured to Plaintiffs and Class Members
24 by Labor Code §2802. See Labor Code §2804. Plaintiffs and similarly situated Class Members are
25 entitled to reimbursement for these reasonable expenditures, plus interest and attorneys' fees and
26 costs, under Labor Code § 2802(c).

27 ///

28 ///

///

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE COMPLETE/ACCURATE WAGE STATEMENTS
[Cal. Labor Code §§ 226 and 226.3]
On Behalf of Plaintiffs and the Wage Statement Subclass Against All Defendants

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

37. The actionable period for this cause of action is July 16, 2019 through the present.

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

- (1) Gross wages earned;
- (2) Total hours worked by the employee;
- (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (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 an employee identification number other than a social security number;
- (8) The name and address of the legal entity that is the employer...;
- (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...

39. Here, Defendant failed to provide Plaintiffs, the Class Members and the Aggrieved Employees with complete wage statements, thus violating Labor Code § 226(a). Specifically, the wage statements issued by Defendant to Plaintiffs and the other aggrieved employees did not and do not include the correct gross and net wages in violation of Labor Code § 226(a).

40. In *Gattuso v. Harte-Hanks Shoppers*, 42 Cal. 4th 554, 569 (2007), the California Supreme Court outlined three possible methods for companies to pay outside salespersons' automobile expenses: mileage reimbursement (paying x cents per mile driven and tracking miles), actual expense method (where gas receipts of employees are simply reimbursed and paid), and the lump-sum method (where a flat auto allowance is paid and that amount covers the gas expenses of outside salespersons). In footnote 6 of *Gattuso*, the California Supreme Court noted that commission plans could be structured such that commission increases could include a component for gas mileage reimbursements; however, if employers take this approach, their wage statements issued to

employees, in order to satisfy Labor Code Section 226, would have to separately itemize the components of the commissions attributable to reimbursements. *Id.* (footnote 6: “In the future, employers that provide business expense reimbursement to employees through increases in base salary or commission rates should, in providing the documentation required by Section 226, subdivision (a), separately identify the amounts that represent payment for labor performed and the amounts that represent reimbursement for business expenses”). Here, Defendants did not pay for all of their salespersons’ automobile expenses. However, even if Defendants somehow could argue that its commissions included automobile expenses, Defendants’ wage statements issued to Plaintiffs and its other outside salespersons did not include any separate break-out for reimbursements from commission wages paid.

41. Defendants’ violation of Labor Code § 226 was knowing and intentional. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the “[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission” even though 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”).

42. Defendants’ failure to furnish accurate itemized wage statements has caused Plaintiffs and the Class Members to incur economic damages in that the wage statements issued did not and do not include the correct gross and net wages earned. *See* Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the gross or net wages earned by the employee during the pay period).

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

44. Thus, as a result of Defendants’ failure to issue accurate itemized wage statements to

1 Plaintiffs and the Class Members in violation of section 226(a) of the California Labor Code,
2 Plaintiffs and the Class Members are each entitled to recover an initial penalty of \$50, and
3 subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 from
4 Defendants pursuant to Labor Code § 226(e).

5 **THIRD CAUSE OF ACTION**
6 **FAILURE TO PAY TIMELY WAGES**
7 **[Labor Code sections 204 and 210]**

8 **On Behalf of Plaintiffs and the Class Against All Defendants**

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

11 46. The actionable period for this cause of action is one year prior to the filing of this
12 Complaint through the present.

13 47. Labor Code section 204 expressly requires that “[a]ll wages ... earned by any person
14 in any employment are due and payable twice during each calendar month, on days designated in
15 advance by the employer as regular paydays”. At all times relevant hereto, including within the past
16 year, whenever Plaintiffs and other outside salespersons worked part-time, Defendant only paid them
17 their commissions due once per month, in violation of Labor Code section 204. This failure to pay
18 twice per month triggers civil penalties under Labor Code Section 210, which can be collected either
19 through PAGA or through a direct class action claim for penalties under Section 210. *See Amaral*
20 *v. Cintas Corp.* No. 2, 163 Cal.App.4th 1157, 1209 (2008); *see also Peabody v. Time Warner Cable*,
21 59 Cal. 4th 662 (2014) (commissions must be paid twice every calendar month).

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

49. As a result, Plaintiffs are entitled to penalties pursuant to Labor Code § 210.

FOURTH CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
[Bus. & Prof. Code § 17200]

On Behalf of Plaintiffs and the Class Against All Defendants

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

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

52. Under section 17208 of the California Business and Professions Code, the statute of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this cause of action is four years prior to the filing of this Complaint through the present.

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

54. Beginning on a date at least four years prior to the filing of this Complaint, and continuing to the present, Defendants have committed unlawful, unfair, and/or fraudulent business acts and practices as defined by the UCL, by failing to reimburse and indemnify Plaintiffs and similarly situated Class Members for employment-related gas mileage expenses, insurance expenses cell phone business expenses, in violation of Labor Code § 2802; failing to provide accurate itemized wage statements, in violation of Labor Code § 226; and failing to pay timely wages, in violation of Labor Code §§ 204 and 210.

55. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent

1 acts and practices described herein, Defendants have received and continues to hold unlawfully
2 obtained property and money belonging to Plaintiffs and the Class.

3 56. As a direct and proximate result of Defendants' unlawful business practices,
4 Plaintiffs and the Class Members have suffered economic injuries including, but not limited to out-
5 of-pocket business expenses. Defendants have profited from its unlawful, unfair, and/or fraudulent
6 acts and practices in the amount of those business expenses and interest accrued thereon.

7 57. Plaintiffs and similarly situated Class Members are entitled to monetary relief
8 pursuant to Business & Professions Code §§ 17203 and 17208 for all unreimbursed business
9 expenses, and interest thereon, from at least four years prior to the filing of this Complaint through
10 to the date of such restitution, at rates specified by law. Defendants should be required to disgorge
11 all the profits and gains they have reaped and restore such profits and gains to Plaintiffs and Class
12 Members from whom they were unlawfully taken.

13 58. Beginning four years prior to the filing of this Complaint, Defendants committed, and
14 continue to commit, acts of unfair competition, as defined in sections 17200 *et seq.* of the California
15 Business and Professions Code by, among other things, failing to reimburse Plaintiffs and the Class
16 members for gas mileage expenses insurance expenses and cell phone expenses, failing to provide
17 accurate itemized wage statements and failing to pay timely wages as required by California law,
18 and therefore was substantially injurious to Plaintiffs and the Class members.

19 59. Defendants engaged in unfair competition in violation of sections 17200 *et seq.* of
20 the California Business & Professions Code by violating Section 2802 of the Labor Code.

21 60. Defendants' course of conduct, act, and practice in violation of the California laws
22 mentioned above constitute independent violations of sections 17200 *et seq.* of the California
23 Business and Professions Code.

24 61. The unlawful, unfair and fraudulent business practices and acts of Defendants, as
25 described above, have injured Plaintiffs and the Class in that they were denied reimbursement for
26 business related expenses, not provided accurate itemized wage statements, and denied timely wages
27 and therefore was substantially injurious to Plaintiffs and the Class Members.

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

3 63. Plaintiffs have assumed the responsibility of enforcement of the laws and public
4 policies specified herein by suing on behalf of themselves and other similarly situated Class
5 Members previously or presently employed by Defendants in California. Plaintiffs' success in this
6 action will enforce important rights affecting the public interest. Plaintiffs will incur a financial
7 burden in pursuing this action in the public interest.

8 **FIFTH CAUSE OF ACTION**
9 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
 [Cal. Labor Code §§ 2698-2699]
10 **On Behalf of Plaintiffs and the Aggrieved Employees Against All Defendants**

11 64. Plaintiffs, on behalf of themselves and all Aggrieved Employees, re-allege and
12 incorporate by reference each and every allegation set forth in the preceding paragraphs.

13 65. Based on the above allegations incorporated by reference, Defendants have violated
14 Labor Code §§ 204, 210, 226, and 2802.

15 66. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code §
16 2699, et. seq., because of Defendants' violations of Labor Code §§ 204, 210, 226, and 2802.

17 67. Plaintiffs seek to recover the PAGA civil penalties through a representative action as
18 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46 Cal.4th
19 969. Therefore, class certification hereby of the PAGA claims is not required, but Plaintiffs may
20 choose to seek certification of the PAGA claims.

21 68. 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 68. Pursuant to Labor Code section 2699(1), these penalties shall be allocated seventy-
27 five percent (75%) to the Labor and Workforce Development Agency (LWDA) and twenty-five
28 percent (25%) to the affected employees.

69. These penalties may be stacked separately for each of Defendants violations of the California Labor Code. *See e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S. Dist. LEXIS 86975, at *59, fn. 77 (C.D. Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked PAGA penalties, that “PAGA penalties can be ‘stacked,’ *i.e.*, multiple PAGA penalties can be assessed for the same pay period for different Labor Code violations.”); *See Lopez v. Friant & Assocs., LLC*, No. A148849, 2017 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26, 2017) (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1) and acknowledging that a Plaintiff could recover separately under PAGA for violations of Labor Code §§ 226(a) and 226(e)); *accord Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at *2-3 (E.D. Cal. Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

69. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As a result of Defendants’ failure to provide Plaintiffs and all other Statement Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code § 226(a), Defendants are liable to them for the additional PAGA civil penalties pursuant Labor Code § 226.3.

70. Furthermore, Plaintiffs, as Aggrieved Employees, need not demonstrate or prove that Defendants’ conduct in refusing to provide accurate and itemized wage statements was knowing, intentional, or willful. *Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App. 5th 773, 788, (“Consistent with the PAGA statutory framework and the plain language and legislative history of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section

226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1).”); *see Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

71. As a result of the acts alleged above, Plaintiffs seek the maximum penalties allowable by law under, without limitation, Labor Code § 2699, *et seq.* because of Defendants’ violation of Labor Code 204, 210, 226, and 2802.

PRAYER FOR RELIEF

Wherefore, Plaintiffs, on behalf of themselves, the LWDA, the Aggrieved Employees, and the Class Members, pray for judgment against Defendant as follows:

1. An Order that this action may proceed and be maintained as a class action;
2. A declaratory judgment that Defendants violated Labor Code §§ 204, 210, 226, and 2802;
3. That the Court award to Plaintiffs and Class Members all unreimbursed business expenses, and interest thereon, that they are owed, pursuant to Labor Code § 2802, and attorneys’ fees, pursuant to Labor Code § 2802(c), in an amount to be proved at trial;
4. An award to Plaintiffs and the Class Member of \$50 for each initial pay period in which a violation of Section 226 occurred and \$100 for each subsequent pay period in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of the Class, as well as an award of costs and reasonable attorney’s fees, pursuant to Labor Code § 226(e).
5. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiffs and the Class for penalties pursuant to Labor Code § 210.
6. That the Court find and declare that Defendants have violated the UCL and

1 committed unfair and unlawful business practices;

2 7. Restitution, including, but not limited to, the relief permitted by sections 204, 210,
3 226, and 2802 of the California Labor Code;

4 8. That Defendants be ordered to pay restitution to Plaintiffs and the Class Members
5 due to Defendants' UCL violations pursuant to Business and Professions Code §§ 17200-17205;

6 9. A civil penalty against Defendants in the amount of \$100 for the initial violation and
7 \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code
8 for Plaintiffs and the Aggrieved Employees during all of the pay periods from May 19, 2019 through
9 date of trial;

10 10. All penalties available under Section 226.3 of the California Labor Code and the
11 Labor Code Private Attorneys General Act of 2004, including a civil penalty in the amount of two
12 hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
13 dollars (\$1,000) per employee for each violation in a subsequent citation, for each of Defendants'
14 violations of Labor Code § 226(a);

15 11. An award of reasonable attorney's fees against Defendants as specified in Labor
16 Code §§ 2802(c) and 2699(g)(1), for all the work performed by the undersigned counsel in
17 connection with the PAGA claims;

18 12. An award of all costs incurred by the undersigned counsel for Plaintiffs in connection
19 with Plaintiffs' and Class Members' PAGA claim against Defendants as provided for in Labor Code
20 §§ 2802(c) and 2699(g)(1);

21 13. All other relief as this Court deems proper.

22 Dated: October 8, 2020

Respectfully submitted,

23 ACKERMANN & TILAJEF, P.C.
24 EMPLOYMENT RIGHTS LAW GROUP, APC

25 By:


26 Craig J. Ackermann, Esq.
27 Amir Seyedfarshi, Esq.
28 Counsel for Plaintiffs, the Aggrieved Employees, and
the Putative Class