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County of Los Angeles

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KATRINA KELLER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SELECT FUNDING LLC., a California
limited liability company; and DOES 1 to
100, inclusive

Defendant.

CASE NO: 20STCV38948

**CLASS ACTION AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

- (1) FAILURE TO PAY TIMELY WAGES
(LABOR CODE § 204, 210);
- (2) FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS (LABOR
CODE § 226);
- (3) FAILURE TO PROVIDE TIMELY,
DUTY-FREE MEAL PERIODS AND/OR PAY
MEAL PERIOD PREMIUMS FOR MISSED
MEAL PERIODS (LABOR CODE §§ 226.7,
512; IWC WAGE ORDER 4-2001);
- (4) FAILURE TO PROVIDE COMPLIANT
REST PERIODS AND/OR PAY REST
PERIOD PREMIUMS (LABOR CODE §
226.7; IWC WAGE ORDER 4-2001);
- (5) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802);
- (6) UCL VIOLATIONS (BUS. & PROF. CODE
§§ 17200-17204); AND
- (7) PAGA AND OTHER PENALTIES
(LABOR CODE §§ 2698 – 2699.5);

DEMAND FOR JURY TRIAL

1 Plaintiff Katrina Keller, on behalf of herself, the State of California, other aggrieved
2 employees, and all others similarly situated (hereinafter “Class Members”) complain and allege as
3 follows:

4 **OVERVIEW OF CLAIMS**

5 1. Plaintiff bring this action on behalf of herself and all others similarly situated, as a
6 class action, and as a representative action pursuant to Labor Code § 2699, *et seq.*, and on behalf
7 of the California general public, against Defendant Select Funding LLC and DOES 1 to 100
8 (“Defendant”) for their (1) failure to provide timely wages; (2) failure to provide accurate, itemized
9 wage statements within the one year prior to the filing of this Complaint; (3) failure to provide
10 timely and duty-free meal periods and/or pay meal period premiums for missed meal periods; (4)
11 failure to provide compliant rest periods and/or pay rest period premiums; (5) failure to reimburse
12 employees for their expenses incurred in connection with work-related usage of their personal cell
13 phones and laptops); (6) UCL violations based on the foregoing; and (7) PAGA and other penalties
14 based on the foregoing. As a result of the foregoing, Defendant has violated California statutory
15 laws as described below.

16 2. The “Class Period” is designated as the period from four years prior to the filing of
17 this action through the trial date. The “PAGA Period” is designated as the period from one year
18 prior to the sending of the PAGA letter to the LWDA (*i.e.*, on or around June 1, 2020) through the
19 present and on-going. Defendant’s violations of California’s wage and hour laws and unfair
20 competition laws, as described more fully below, have been ongoing throughout the Class Period.

21 **VENUE**

22 3. Venue is proper in this county under section 395.5 of the California Code of Civil
23 Procedure. Many, if not all, of the putative Class Members were employed and/or performed work
24 during the Class Period by Defendant in Los Angeles County. Many of the acts alleged herein
25 including Defendant’s failure to provide timely and duty-free meal periods and pay meal period
26 premiums, failure to provide compliant rest periods and pay rest period premiums, failure to
27 provide accurate itemized wage statements, and failure to reimburse business expenses occurred
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1 in Los Angeles County. Venue is therefore proper in Los Angeles County.

2 **JURISDICTION**

3 4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
4 dollars of business by providing small businesses with working capital and equipment financing
5 throughout the State of California, including in the County of Los Angeles. Thus, Defendant has
6 obtained the benefits of the laws of the State of California. In addition, Plaintiff asserts no claims
7 arising under federal law. Rather, Plaintiff brings causes of action based solely on, and arising
8 from, California law. Defendant is a California resident corporation so there is no federal diversity
9 jurisdiction under CAFA or otherwise. The claims of the Class and the claims of the aggrieved
10 employees are also based solely on California law described herein. The total amount sought by
11 Plaintiff, including attorneys' fees, is less than \$5,000,000.

12 **THE PARTIES**

13 **A. The Plaintiff**

14 5. Plaintiff is a California resident and was an employee of Defendant in California
15 during the relevant time period. From at least four years from the filing of this complaint through
16 the present, and on-going, Defendant's employees, including Plaintiff during her employment,
17 did not receive all wages timely, were not provided accurate and/or complete wage statements,
18 were not provided timely and duty-free meal periods and/or provided meal period premiums, were
19 not provided compliant rest periods and/or provided rest period premiums, and were not
20 reimbursed for all expenses incurred in the discharge of their duties.

21 6. Plaintiff represents the state of California and a group of aggrieved employees
22 defined as:

23 All individuals who or were employed by Select Funding LLC in the State of California
24 during the PAGA Period (hereinafter referred to as "Aggrieved Employees").

25 7. By way of this action, Plaintiff also seeks to represent the following Class:

26 All individuals who or were employed by Select Funding LLC in the State of California
27 during the Class Period (hereinafter referred to as "Class Members" or the "Class").
28 ///

1 **B. The Defendant**

2 8. Defendant Select Funding LLC is a California limited liability company
3 headquartered in Calabasas, California. Defendant provides small businesses with working capital
4 and equipment financing. To provides its financial services, Defendant employs employees, such
5 as the Plaintiff, the Class Members, and the Aggrieved Employees.

6 9. The true names and capacities, whether individual, corporate, associate, or
7 otherwise, of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to
8 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
9 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
10 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
11 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
12 capacities of the Defendants designated hereinafter as DOES when such identities become known.

13 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
14 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
15 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
16 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
17 employer and/or joint employer of Plaintiff, the Class, and the Aggrieved Employees.

18 11. Defendant was and is the employer of Plaintiff, the Aggrieved Employees and Class
19 Members for all relevant time periods. During the Class Period, the total number of Class Members
20 is estimated to be over 100.

21 **FACTUAL ALLEGATIONS**

22 12. Defendant operates and, at all times during the PAGA Period and the Class Period,
23 has done and does business in California providing financial services to small businesses in
24 California. Defendant, in the course of operating its business in California during the Class Period
25 and the PAGA Period, employed Plaintiff and the Class Members.

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

5 14. At all times relevant hereto, whenever Plaintiff and other employees paid on a
6 commission basis earned commissions, Defendant only paid them their commissions due once per
7 month, in violation of Labor Code section 204. *See Amaral v. Cintas Corp.* No. 2, 163 Cal.App.4th
8 1157, 1209 (2008); *see also Peabody v. Time Warner Cable*, 59 Cal. 4th 662 (2014) (commissions
9 must be paid twice every calendar month).

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

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

- 20 (1) gross wages earned;
- 21 (2) total hours worked by the employee;
- 22 (3) the number of piece-rate units earned and any applicable piece rate if the employee
23 is paid on a piece rate;
- 24 (4) all deductions, provided that all deductions made on written orders of the employee
25 may be aggregated and shown as one item;
- 26 (5) net wages earned;
- 27 (6) the inclusive dates of the period for which the employee is paid;
- 28 (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...

17. Here, Defendant failed to provide Plaintiff, the Class, and the Aggrieved

1 Employees with twice monthly wage statements that included all commissions due, thus violating
2 Labor Code § 226(a). Specifically, the wage statements issued by Defendant to Plaintiff, the Class,
3 and the other aggrieved employees did not and do not include the correct gross and net wages in
4 violation of Labor Code § 226(a), since they did not include all commissions earned on a twice
5 monthly basis

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

11 19. Class Members and Aggrieved Employees need not show "injury" or a "knowing
12 and intentional" as ordinarily required by Labor Code section 226(e) to establish a violation
13 sufficient to trigger PAGA penalties under Labor Code § 226(a). *See Lopez v. Friant & Associates,*
14 *LLC*, 15 Cal. App. 773, 788 (Cal. App. 2017) ("Consistent with the PAGA statutory framework
15 and the plain language and legislative history of section 226(e), we hold a plaintiff seeking civil
16 penalties under PAGA for a violation of section 226(a) does not have to satisfy the "injury" and
17 "knowing and intentional" requirements of section 226(e)(1)"); *Willner v. Manpower Inc.* 35 F.
18 Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all [plaintiff] needs
19 to establish is a violation of section 226(a), which she has done, as discussed above."); *McKenzie*
20 *v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that "for the purposes of
21 recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not
22 establish a Section 226(e) injury."); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815,
23 at *28 (C.D. Cal. July 3, 2013) ("Plaintiffs do not need to establish a Cal. Lab. Code § 226(e)
24 injury to recover penalties under § 2699(f) of PAGA.").

25 20. Further and in addition to the penalties outlined above, Labor Code § 226.3
26 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a
27 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an
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1 initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
2 citation, for which the employer fails to provide the employee a wage deduction statement or fails
3 to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendant
4 failed to provide Plaintiff, the Wage Statement Class Members, and the other Wage Statement
5 Aggrieved Employees with accurate itemized wage statements. Accordingly, Defendant is
6 additionally liable for Labor Code § 226.3 penalties for their violations of Labor Code § 226(a).
7 *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015
8 WL 1137151, at *7 [“the weight of authority counsels that violations of Section 226.3 may be the
9 basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL
10 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3 merely provides that failure to
11 perform actions mandated by § 226(a) may trigger civil penalties.”).¹

12 21. Labor Code § 512 requires employers to provide employees with a thirty (30)
13 minute uninterrupted and duty-free meal period within the first five (5) hours of an employee’s
14 shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a
15 second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512,
16 an employer may not employ an employee for a work period of more than ten (10) hours, without
17 providing the employee with a second meal period of not less than thirty (30) minutes. The second
18 meal period may not be waived if the total hours worked is more than twelve (12) hours.

19 22. Under Labor Code § 512, if an employer maintains a uniform policy that does not
20 authorize and permit the amount of meal time called for under the law (as specified in the
21 applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained
22 in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

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

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

28 ¹ *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D. Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326,
*18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7–9, 2011 WL 2434043; *Willis*
v. Xerox Bus. Servs., LLC (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

23. Following *Brinker*, the Courts of Appeal have confirmed that liability for meal period violations arises when an employer adopts a uniform policy that fails to provide a duty-free meal period as required by Labor Code section 512.²

24. Here, the Plaintiff and the other managers and team leads who are the Class and aggrieved employees for this claim are not relieved of all duties during their meal periods several times per week because they were required to remain on the premises for lunch. As a result, the meal periods taken by Plaintiff, the Class, and the Aggrieved Employees are all on-duty.

25. “An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break.” *Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement must include a provision allowing the employee to revoke it at any time. *Id.* Here, neither Plaintiff, the Class, nor the other aggrieved employees, were ever asked to sign an on-duty meal period agreement. But even if Plaintiff, the Class, and the Aggrieved Employees had been asked to sign on-duty meal period agreements, it is likely that such agreements would violate California law. Generally, the DLSE and courts have “found that the nature of the work exception applies: ‘(1) where the work has some particular external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer.’” *Id.* at p. 945; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the work prevents an employee from being relieved *before* requiring an employee to take an on-duty meal period.” *Lubin*, 5 Cal. App. 5th at p. 946.) Nor may an employer “discharge its duty by arguing that its clients who requested on-duty meal periods determined that the nature of the work prevented officers from being relieved of all duty.” *Id.* at p. 947; *Benton*, 220 Cal. App. 4th at p. 729.)

² For example, in *Faulkinbury*, the Court applied *Brinker*: “In *Faulkinbury I*, we concluded that even if [defendant]’s on-duty meal break policy was unlawful, [defendant] would be liable only when it actually failed to provide a required off-duty meal break. *Brinker* leads us now to conclude [defendant] would be liable upon a determination that [defendant]’s uniform on-duty meal break policy was unlawful.” *Faulkinbury*, 216 Cal.App.4th at p. 235.) The Court went on: “the employer’s liability arises by adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was able to take the required break goes to damages” (*Ibid.* [citations omitted]; see also *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal. App. 4th 701, 728.)

1 26. Here, there is nothing in the job duties of Plaintiff, the Class, or the aggrieved
2 employees that would require them to remain on-duty and on premises while taking a meal period.
3 The California Supreme Court has made it clear that requiring an employee to remain on premises
4 is inconsistent with requiring duty-free breaks. *See Augustus v. ABM Security Services, Inc.*, 2016
5 D.J. 12608 (2016)³; see also *Frlekin v. Apple Inc.*, No. S243805, 2020 WL 727813 (Cal. Feb. 13,
6 2020).⁴ Here, Plaintiff and the other leads or managers were required to remain on premises several
7 times per week. This constitutes a failure to provide duty-free lunches and triggers meal period
8 premiums and PAGA penalties.

9 27. Labor Code § 226.7 provides “an employer shall not require an employee to work
10 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
11 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
12 Order Nos. 7-2001 and 9-2001, an employer must authorize and permit all employees to take ten
13 (10) minute duty free rest periods for every major fraction of four hours worked. *See Augustus v.*
14 *ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods
15 employers must relieve employees of all duties and relinquish control over how employees spend
16 their time.”).

17 28. Pursuant to Labor Code § 226.7 and IWC Wage Order No. 4-2001, Defendant
18 failed to provide Plaintiff, the Class, and all Aggrieved Employees in management and team lead
19 positions with duty-free rest periods of not less than ten (10) minutes for every major fraction of
20 four (4) hours worked. Instead, Defendant regularly and consistently required Plaintiff, the Class,
21 and the other Aggrieved Employees to remain on the premises for rest breaks. This constitutes a
22 failure to provide duty-free rest periods and triggers rest period premiums and PAGA penalties.

23 29. Plaintiff, the Class, and the Aggrieved Employees do not fall under the professional
24 exemption stated in IWC Wage Order 4-2001. The Wage Order states that the Order does not apply

25 _____
26 ³ In *Augustus v. ABM*, the California Supreme Court declared that state law prohibits on-duty and on-call rest
27 periods. It stated that **employers must (1) relieve their employees of all duties during rest periods and (2)**
28 **relinquish any control over how employees spend their break time.**

⁴ *ABM* and *Frelekin* together stand for the proposition that the proposition that on-premises breaks are not labor code
complaint.

1 to all persons employed in professional occupations. To qualify for the exemption a professional
2 must earn a monthly salary equivalent to no less than two (2) times the state minimum wage for
3 full-time employment. Full time employment is defined in Labor Code § 515(c) as 40 hours per
4 week. *See* IWC Wage Order 4-2001, Section 1(A)(3)(d). Here, Plaintiff, the Class, and the other
5 Aggrieved Employees in management and team lead positions earned approximately \$49,000 per
6 year, falling short of the \$54,000 threshold needed to qualify for the professional exemption.
7 Therefore, Plaintiff, the Class, and the Aggrieved Employees are not exempt from meal period and
8 rest period requirements under the professional exemption of IWC Wage Order 4-2001.

9 30. Pursuant to section 2802(a) of the California Labor Code, “[a]n employer shall
10 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
11 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
12 directions of the employer....” Labor Code 2802(c) defines necessary to include all “reasonable”
13 expenses. The purpose of this statute is “to prevent employers from passing their operating
14 expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562
15 (2007) (quoting legislative history from the 2000 amendment to the statute and holding that outside
16 salespersons are entitled to gas mileage reimbursement in addition to their commission pay).
17 Labor Code section 2804 also makes it crystal clear that claims under section 2802 are not
18 waivable.

19 31. Furthermore, under Labor Code section 2802, employers must reimburse
20 employees for reasonable work-related use of their personal cell phones – regardless of whether
21 or not aggrieved employees incurred any additional out-of-pocket expense from that work-related
22 use. *See, Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014)
23 (“We hold that when employees must use their personal cell phones for work-related calls, Labor
24 Code section 2802 requires the employer to reimburse them. Whether the employees have cell
25 phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable
26 percentage of their cell phone bills.”); see also *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17
27 (N.D.Cal. Aug. 27, 2014) (granting plaintiffs’ motion for partial summary judgment on the
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1 plaintiffs' cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL
2 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (adopting the logic of *Cochran*)

3 32. The employer's obligation to reimburse all reasonably-incurred business-related
4 expenses, including personal cell phone and laptop-related expenses for work-related usage, arises
5 when the employer "knew or should have known" that its employees incurred a business-related
6 expense. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward
7 Chen); *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan
8 Illston) (adopting the "knew or should have known" standard). In such cases, including this one,
9 where employees have incurred reasonable work-related cell phone or laptop expenses that the
10 employer is or should have been aware of, an employer in California thus has an affirmative
11 obligation to reimburse expenses and cannot hide behind a policy advising employees to put in for
12 their expenses if they want to be reimbursed for them. *Id.*; see also Labor Code section 2804.

13 33. Here, Plaintiff, the Class, and the other aggrieved employees are and were
14 employees in making hard money loans to business owners in California. Defendant has no policy
15 or practice of affirmatively reimbursing employees for their out of pocket cell phone or laptop
16 expenses incurred for work-related purposes. Additionally, Defendant had no policy or practice of
17 affirmatively reimbursing employees for their home offices expenses, including among other
18 things home internet expenses, during the time Plaintiff, the Class, and the Aggrieved Employees
19 were required to work from home during the COVID-19 pandemic in 2020. Plaintiff, the Class,
20 and other employees used their personal cell phone and laptops and home offices for work without
21 any reimbursement in violation of Labor Code section 2802.

22 34. The administrative prerequisites of PAGA will be satisfied after 65 days have
23 elapsed from June 1, 2020 (i.e. 65 days since Plaintiff's mailing of the PAGA notice with no further
24 communication from the LWDA to Plaintiff's counsel). Plaintiff has paid the \$75.00 fee and has
25 otherwise satisfied the administrative prerequisites of PAGA, as amended.

26 35. Plaintiff by this action seeks to recover, on behalf of themselves and all other
27 current and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as
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1 specified in Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a
2 representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior*
3 *Court*, 46 Cal. 4th 969 (2009). Class certification of the PAGA claims is not required.

4 **CLASS ACTION ALLEGATIONS**

5 36. Plaintiff brings this action, on behalf of herself and all others similarly situated, as
6 a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
7 composed of and defined as:

8 All individuals who or were employed by Select Funding LLC in the State of California
9 during the Class Period (hereinafter referred to as “Class Members” or the “Class”).

10 37. This action has been brought and may properly be maintained as a class action
11 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
12 litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the
13 Class:

14 a. Numerosity: The potential members of the Class as defined are so
15 numerous that joinder of all the members of the Class is impracticable. According to Defendant,
16 the total number of Class Members is estimated to be more than 100. The Class Members are
17 dispersed throughout California. Joinder of all members of the proposed classes is therefore not
18 practicable.

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

22 i. Whether Defendant violated Sections 204 and 210 of the Labor Code by
23 failing to pay member of the Class all wages due on a timely basis;

24 ii. Whether Defendant failed to provide Plaintiff and the members of the Wage
25 Statement Class complete wage statements in violation of Labor Code Section 226(a);

26 iii. Whether Defendant violated Labor Code sections 226.7 and 512 and
27 Section 11 of IWC Wage Order No. 5 by failing to provide timely, duty-free meal periods to
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1 Plaintiff and the members of the Class in California during the Class Period;

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

5 v. Whether Defendant violated Labor Code sections 226.7 and Section 12 of
6 IWC Wage Order No. 5 by failing to provide compliant rest periods to Plaintiff and the members
7 of the Class in California during the Class Period;

8 vi. Whether Defendant violated Labor Code section 226.7 by failing to provide
9 one hour of premium pay to each member of the Class for each day that a compliant rest period was
10 not provided in California during the Class Period;

11 vii. Whether Defendant violated 2802 of the Labor Code and section 17203 of
12 the California Business and Professions Code during the Class Period by failing to reimburse
13 Plaintiff and the Class Members for their work-related expenses including personal cell phone and
14 laptop and home office expenses;

15 viii. Whether Defendant engaged in an unfair practice and violated section
16 17200 of the California Business and Professions Code by failing to provide Plaintiff and the
17 members of the Class with timely, duty-free meal breaks during the Class Period;

18 ix. Whether Defendant engaged in an unfair practice and violated section
19 17200 of the California Business and Professions Code by failing to provide Plaintiff and members
20 of the Class with meal period premiums for each day they were not provided a compliant meal
21 break;

22 x. Whether Defendant engaged in an unfair practice and violated section
23 17200 of the California Business and Professions Code by failing to provide Plaintiff and the
24 members of the Class with compliant breaks during the Class Period;

25 xi. Whether Defendant engaged in an unfair practice and violated section
26 17200 of the California Business and Professions Code by failing to provide Plaintiff and members
27 of the Class with rest period premiums for each day they were not provided a compliant rest break;
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xii. Whether Defendant engaged in an unfair practice and violated section 17200 of the California Business and Professions Code by failing to reimburse Plaintiff and the Class for their business-related expenses including phone and laptop expenses and home office expenses during the Class Period;

xiii. Whether Plaintiff and the Class are entitled to restitution under Business and Professions Code § 17200;

xiv. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff and the Class Members;

xv. The nature and extent of class-wide damages.

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

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

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or practices. Certification of this case as a class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the

1 judicial system. Certifying this case as a class action is superior because it allows for efficient and
2 full disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining its unlawful break,
3 compensation, and non-reimbursement policies and will thereby effectuate California's strong
4 public policy of protecting employees from deprivation or offsetting of compensation earned in
5 their employment. If this action is not certified as a Class Action, it will be impossible as a practical
6 matter, for many or most Class Members to bring individual actions to recover monies unlawfully
7 withheld from their lawful compensation due from Defendant, due to the relatively small amounts
8 of such individual recoveries relative to the costs and burdens of litigation.

9 **FIRST CAUSE OF ACTION**
10 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
11 **[Cal. Labor Code §§ 204, 210]**
12 **On Behalf of Plaintiff and the Class Against Defendant**

13 38. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
14 in the preceding paragraph.

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

21 40. At all times relevant hereto, whenever Plaintiff and other employees paid on a
22 commission basis earned commissions, Defendant only paid them their commissions due once per
23 month, in violation of Labor Code section 204. *See Amaral v. Cintas Corp.* No. 2, 163 Cal.App.4th
24 1157, 1209 (2008); *see also Peabody v. Time Warner Cable*, 59 Cal. 4th 662 (2014) (commissions
25 must be paid twice every calendar month).

26 41. Labor Code § 210 provides that “in addition to, an entirely independent and apart
27 from, any other penalty provided in this article, every person who fails to pay the wages of each
28 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

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
3 faulty compensation policies and practices described in detail above, Plaintiff and the Class are
4 entitled to recover penalties under Labor Code § 210.

5 **SECOND CAUSE OF ACTION**
6 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
7 **[Cal. Labor Code § 226(a)]**

8 **On behalf of Plaintiff and the Wage Statement Class Members Against Defendant**

9 42. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
10 in the preceding paragraphs.

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

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

25 44. Here, Defendant failed to provide Plaintiff and the Class with twice monthly wage
26 statements that included all commissions due, thus violating Labor Code § 226(a). Specifically,
27 the wage statements issued by Defendant to Plaintiff and the Class did not and do not include the
28 correct gross and net wages in violation of Labor Code § 226(a), since they did not include all
commissions earned on a twice monthly basis.

45. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial
pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period,
not to exceed \$4,000, as well as an award of 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.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE TIMELY AND DUTY-FREE MEAL BREAKS AND PAY
MISSED MEAL BREAK PREMIUMS
[Cal. Labor Code §§ 226.7, 512; IWC Wage Order 4-2001 Section 11]
On behalf of Plaintiff and the Class Against Defendant

46. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

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

48. Labor Code § 512 requires employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of an employee’s shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a second meal period of not less than thirty (30) minutes. The second meal period may not be waived if the total hours worked is more than twelve (12) hours.

49. Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for 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.***

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

50. Following *Brinker*, the Courts of Appeal have confirmed that liability for meal period violations arises when an employer adopts a uniform policy that fails to provide a duty-free meal period as required by Labor Code section 512.⁵

⁵ For example, in *Faulkinbury*, the Court applied *Brinker*: “In *Faulkinbury I*, we concluded that even if [defendant]’s on-duty meal break policy was unlawful, [defendant] would be liable only when it actually failed to provide a required
(continued . . .)

1 51. Here, the Plaintiff and the other managers and team leads who are the Class for this
2 claim are not relieved of all duties during their meal periods several times per week because they
3 were required to remain on the premises for lunch. As a result, the meal periods taken by Plaintiff.
4 The Class, and the Aggrieved Employees are all on-duty.

5 52. “An on-duty meal period is permitted only when the nature of the work prevents an
6 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
7 break.” *Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement
8 must include a provision allowing the employee to revoke it at any time. *Id.* Here, neither Plaintiff,
9 the Class, nor the other aggrieved employees, were ever asked to sign an on-duty meal period
10 agreement. But even if Plaintiff, the Class, and the Aggrieved Employees had been asked to sign
11 on-duty meal period agreements, it is likely that such agreements would violate California law.
12 Generally, the DLSE and courts have “found that the nature of the work exception applies: ‘(1)
13 where the work has some particular external force that requires the employee to be on duty at all
14 times, and (2) where the employee is the sole employee of a particular employer.” *Id.* at p. 945;
15 *Abdullah v. U.S. Security Associates, Ifenc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the
16 employer’s obligation to determine whether the nature of the work prevents an employee from
17 being relieved *before* requiring an employee to take an on-duty meal period.” *Lubin*, 5 Cal. App.
18 5th at p. 946.) Nor may an employer “discharge its duty by arguing that its clients who requested
19 on-duty meal periods determined that the nature of the work prevented officers from being relieved
20 of all duty.” *Id.* at p. 947; *Benton*, 220 Cal. App. 4th at p. 729.)

21 53. Here, there is nothing in the job duties of Plaintiff, the Class, or the aggrieved
22 employees that would require them to remain on-duty and on premises while taking a meal period.
23 The California Supreme Court has made it clear that requiring an employee to remain on premises
24 is inconsistent with requiring duty-free breaks. *See Augustus v. ABM Security Services, Inc.*, 2016

25 _____
26 off-duty meal break. *Brinker* leads us now to conclude [defendant] would be liable upon a determination that
27 [defendant]’s uniform on-duty meal break policy was unlawful.” *Faulkinbury*, 216 Cal.App.4th at p. 235.) The Court
28 went on: “the employer’s liability arises by adopting a uniform policy that violates the wage and hour laws. Whether
or not the employee was able to take the required break goes to damages” (*Ibid.* [citations omitted]; *see also*
Benton v. Telecom Network Specialists, Inc. (2013) 220 Cal. App. 4th 701, 728.)

1 D.J. 12608 (2016)⁶; see also *Frlekin v. Apple Inc.*, No. S243805, 2020 WL 727813 (Cal. Feb. 13,
2 2020).⁷ Here, Plaintiff and the other leads or managers were required to remain on premises several
3 times per week. This constitutes a failure to provide duty-free lunches and triggers meal period
4 premiums and PAGA penalties.

5 54. As a result, for each day on which Plaintiff and other Class members were not
6 provided a timely meal break, Plaintiff and the Class Members are entitled to recover one hour of
7 premium pay pursuant to Labor Code section 226.7 and Section 11 of the IWC Wage Order.

8 **FOURTH CAUSE OF ACTION**
9 **FAILURE TO PROVIDE COMPLIANT REST BREAKS AND PAY REST BREAK**
10 **PREMIUMS**

11 **[Cal. Labor Code § 226.7; IWC Wage Order 4-2001 Section 12]**

12 **On behalf of Plaintiff and the Class Against Defendant**

13 55. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
14 in the preceding paragraph.

15 56. Labor Code § 226.7 provides “an employer shall not require an employee to work
16 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
17 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
18 Order Nos. 7-2001 and 9-2001, an employer must authorize and permit all employees to take ten
19 (10) minute duty free rest periods for every major fraction of four hours worked. *See Augustus v.*
20 *ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods
21 employers must relieve employees of all duties and relinquish control over how employees spend
22 their time.”).

23 57. Pursuant to Labor Code § 226.7 and IWC Wage Order No. 4-2001, Defendant
24 failed to provide Plaintiff and all Class Members in management and team lead positions with
25 duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours
26 worked. Instead, Defendant regularly and consistently required Plaintiff and the other Class

27 ⁶ In *Augustus v. ABM*, the California Supreme Court declared that state law prohibits on-duty and on-call rest
28 periods. It stated that **employers must (1) relieve their employees of all duties during rest periods and (2)**
relinquish any control over how employees spend their break time.

⁷ *ABM* and *Frelekin* together stand for the proposition that the proposition that on-premises breaks are not labor code
complaint.

Members to remain on the premises for rest breaks. This constitutes a failure to provide duty-free rest periods and triggers rest period premiums and PAGA penalties.

58. As a result, for each day on which Plaintiff and other Class members were not provided a compliant rest break, Plaintiff and the Class Members are entitled to recover one hour of premium pay pursuant to Labor Code section 226.7 and Section 12 of the IWC Wage Order.

FIFTH CAUSE OF ACTION
FAILURE TO REIMBURSE BUSINESS EXPENSES
[Cal. Labor Code § 2802]
On Behalf of Plaintiff and the Class Against Defendant

59. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraph.

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

61. Furthermore, under Labor Code section 2802, employers must reimburse employees 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*)

62. The employer’s obligation to reimburse all reasonably-incurred business-related expenses, including personal cell phone and laptop-related 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 employees have incurred reasonable work-related cell phone or laptop 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.

63. Here, Plaintiff and the Class are and were employees in making hard money loans to business owners in California. Defendant has no policy or practice of affirmatively reimbursing employees for their out of pocket cell phone or laptop expenses incurred for work-related purposes. Additionally, Defendant had no policy or practice of affirmatively reimbursing employees for their home offices expenses, including among other things home internet expenses, during the time Plaintiff and the Aggrieved Employees were required to work from home during the COVID-19 pandemic in 2020. Plaintiff and the Class used their personal cell phone and laptops and home offices for work without any reimbursement in violation of Labor Code section 2802.

64. Accordingly, Defendant violated Labor Code § 2802 and continues to do so by failing to reimburse the Class Members for all work-related cell phone and laptop expenses they incurred in connection with their job duties.

SIXTH CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
(BUS. & PROF. CODE § 17200, ET SEQ.)
On Behalf of Plaintiff and the Class Against Defendant

65. Plaintiff re-alleges and incorporates by reference each and every allegation set forth

1 in the preceding paragraphs.

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

7 67. Under section 17208 of the California Business and Professions Code, the statute
8 of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period
9 for this cause of action is four years prior to the filing of this Complaint through the present, and
10 on-going until the violations are corrected, or the Class is certified.

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

16 69. As a direct and proximate result of Defendant’s unlawful business practices,
17 Plaintiff and the Class Members have suffered economic injuries. Defendant has profited from its
18 unlawful, unfair, and/or fraudulent acts and practices.

19 70. Plaintiff and similarly situated Class Members are entitled to monetary relief
20 pursuant to Business & Professions Code §§ 17203 and 17208 for unpaid meal and rest period
21 premiums and unreimbursed business expenses due and interest thereon, from at least four years
22 prior to the filing of this complaint through to the date of such restitution, at rates specified by law.
23 Defendant should be required to disgorge all the profits and gains it has reaped and restore such
24 profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

25 71. Through its actions alleged herein, Defendant has engaged in unfair competition
26 within the meaning of section 17200 of the California Business & Professions Code, because
27 Defendant’s conduct, as herein alleged has damaged Plaintiff and the Class Members by
28

1 wrongfully denying them reimbursement for business expenses, and wrongfully denying them
2 meal and rest period premiums, and therefore was substantially injurious to Plaintiff and the Class
3 Members.

4 72. Defendant engaged in unfair competition in violation of sections 17200 et seq. of
5 the California Business & Professions Code by violating Sections 226.7 and 512 of the California
6 Labor Code, and Sections 11 and 12 of the IWC Wage Order 4-2001.

7 73. Defendant's course of conduct, act and practice in violation of the California laws
8 mentioned above constitute independent violations of sections 17200 et seq. of the California
9 Business and Professions Code.

10 74. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
11 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

12 75. Plaintiff has assumed the responsibility of enforcement of the laws and public
13 policies specified herein by suing on behalf of themselves and other similarly situated Class
14 Members previously or presently employed by Defendant in California. Plaintiff's success in this
15 action will enforce important rights affecting the public interest. Plaintiff will incur a financial
16 burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'
17 fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5, and Labor Code §
18 2802.

19 **SEVENTH CAUSE OF ACTION**
20 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
21 **PAGA PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 204, 210, 226, 226.3,**
22 **226.7, 512, AND 2802**
23 **(Labor Code §§ 2698-2699.5)**
24 **On Behalf of Plaintiff and the Aggrieved Employees Against Defendant**

25 76. Plaintiff, on behalf of herself and all aggrieved employees, realleges and
26 incorporates by reference all previous paragraphs.

27 77. Based on the above allegations incorporated by reference, Defendant violated
28 Labor Code §§ 204, 210, 226(a), 226.3, 226.7, 512, and 2802, as well as IWC Wage Order 4-2001.

78. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial

1 subject to the following formula:

2 \$100 for the initial violation per employee per pay period; and

3 \$200 for each subsequent violation per employee per pay period.

4 These penalties will be allocated 75% to the Labor Workforce Development Agency and
5 25% to the affected employees.

6 79. In addition, as set forth above, Defendant failed to provide Plaintiff and all
7 aggrieved employees with accurate itemized wage statements in compliance with Labor Code §
8 226(a). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section
9 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
10 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
11 each violation in a subsequent citation, for which the employer fails to provide the employee a
12 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

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

23 81. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
24 § 2699, et seq. because of Defendant’s violation of Labor Code §§ Labor Code §§ 201, 202, 203,
25 204, 210, 226, 226.3, 226.7, 512, and 2802, as well as IWC Wage Order 4-2001.

26 JURY DEMAND

27 82. Plaintiff hereby demands trial by jury of her and the Class’s claims against
28

1 Defendant, and of all claims except for the PAGA claims which are subject to a bench trial.

2 **PRAYER FOR RELIEF**

3 Wherefore, Plaintiff, on behalf of herself and the members of the Class, pray for
4 judgment against Defendant as follows:

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

6 2. On the First Cause of Action:

7 a. A declaratory judgment that Defendant violated California Labor Code §§
8 204 and 210;

9 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiff and the Class
10 for penalties pursuant to Labor Code § 210.

11 3. On the Second Cause of Action:

12 a. A declaratory judgment that Defendant violated California Labor Code
13 §226 by issuing inaccurate and/or incomplete wage statements to Plaintiff and the wage statement
14 Class Members;

15 b. An award to Plaintiff and Class Members of \$50 for each initial pay period,
16 one year prior to the filing of this Complaint through the date of trial, in which a violation of
17 Section 226 occurred and \$100 for each subsequent pay period, one year prior to the filing of this
18 Complaint through the date of trial, in which a violation of Section 226 occurred, not to exceed
19 \$4,000 for each member of the Class, as well as an award of costs and reasonable attorney's fees,
20 pursuant to Labor Code § 226(e).

21 4. On the Third Cause of Action:

22 a. A declaratory judgment that Defendant violated California Labor Code §§
23 226.7, 512 and Section 11 of IWC Wage Order 4-2001;

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

27 5. On the Fourth Cause of Action:

1 a. A declaratory judgment that Defendant violated California Labor Code §
2 226.7 and Section 12 of IWC Wage Order 4-2001;

3 b. Pursuant to Labor Code § 226.7, an award to Plaintiff and the Class
4 Members for an hour of pay for each day that a compliant rest period was not provided during the
5 Class Period.

6 6. On the Fifth Cause of Action:

7 a. A declaratory judgement that Defendant violated Labor Code § 2802;

8 a. Pursuant to 2802 (a)-(c), reimbursement for all the unreimbursed business-
9 related expenses including cell phones and laptop expenses, plus interest and attorney's fees.

10 7. On the Sixth Cause of Action:

11 a. That the Court find and declare that Defendant have violated the UCL and
12 committed unfair and unlawful business practices by failing to pay meal break premiums, and by
13 failing to reimburse Plaintiff and the Class for all their personal cell phone and laptop expenses;

14 b. Restitution, including, but not limited to, the relief permitted by sections
15 226.7, and 2802 of the California Labor Code (i.e., pay as specified for meal and rest period
16 premiums and reimbursement of all business-related expenses by Plaintiff and the members of the
17 Class during the Class Period.

18 8. On the Seventh Cause of Action:

19 a. A civil penalty against Defendant in the amount of \$100 for the initial
20 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California
21 Labor Code for Plaintiff and the Aggrieved Employees during all of the pay periods in the PAGA
22 Period and on-going until the violations are corrected, or this subclass is certified;

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

26 c. An award of all costs incurred by the undersigned counsel for Plaintiff in
27 connection with Plaintiff's and Aggrieved Employees' PAGA claim against Defendant, as
28

provided for in Labor Code § 2699(g)(1).

9. All other relief as this Court deems proper.

Dated: October 8, 2020

Respectfully,

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

By:



Craig Ackermann, Esq.

Amir Seyedfarshi, Esq.

*Counsel for Plaintiff, the Class, and the
Aggrieved Employees*