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SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF KERN**

Hipolito Hernandez, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

Jakov Dulcich and Sons, LLC, a California
Limited Liability Corporation and DOES 1 to
100, inclusive

Defendant.

CASE NO: BCV-20-102415

**CLASS ACTION AND REPRESENTATIVE
ACTION COMPLAINT FOR**

**(1) FAILURE TO PROVIDE TIMELY,
DUTY-FREE MEAL PERIODS AND/OR
PAY MEAL PERIOD PREMIUMS FOR
LATE MEAL BREAKS (LABOR CODE §§
226.7, 512; IWC WAGE ORDER WAGE
ORDER 8/14-2001;**
**(2) FAILURE TO PROVIDE TIMELY,
DUTY-FREE REST PERIODS AND/OR PAY
REST PERIOD PREMIUMS (LABOR CODE
§ 226.7; IWC WAGE ORDER 8/14-2001);**
**(3) FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS (LABOR
CODE § 226);**
**(4) WAITING TIME PENALTIES (LABOR
CODE § 201 – 203);**
**(5) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210);**
**(6) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802);**
**(7) UCL VIOLATIONS (BUS. & PROF.
CODE §§ 17200-17204); AND**
**(8) PAGA AND OTHER PENALTIES
(LABOR CODE §§ 2698 – 2699.5);**
DEMAND FOR JURY TRIAL

1 Plaintiff Hipolito Hernandez, on behalf of himself, 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 himself 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 of
7 the California general public, against Defendant Jakov Dulcich and Sons LLC, a California Limited
8 Liability Corporation, and DOES 1 to 100 (“Defendant”) for their (1) failure to provide employees
9 with timely and duty-free 30-minute meal periods within the first five hours and to provide lawful
10 second meal periods to employees for shifts worked in excess of ten hours and/or to pay meal period
11 premiums for late, missed or on-duty meal breaks; (2) failure to provide employees with timely,
12 duty-free 10 minute rest periods for every four hours of work or major fraction thereof; (3) failure
13 to provide accurate itemized wage statements to employees within the one year prior to the filing of
14 this Complaint through the present; (4) failure to pay timely wages twice per month based on the
15 foregoing; (5) failure to pay all wages due to former employees upon separation of their employment
16 based on the foregoing; (6) Failure To Reimburse Business Expenses of employees; (7) Unfair
17 Competition Law violations based on the foregoing; and (8) PAGA and other penalties based on the
18 foregoing. As a result of the foregoing, Defendant has violated California statutory laws as described
19 below.

20 2. The “Class Period” is designated as the period from four years prior to the filing of
21 this action through the date of certification. The “PAGA Period” is designated as the period from
22 one year prior to the sending of Plaintiff’s PAGA letter to the LWDA (*i.e.*, from on or around July
23 31, 2019) through the present and on-going. Defendant’s violations of California’s wage and hour
24 laws and unfair competition laws, as described more fully below, have been ongoing throughout the
25 Class Period.

26 VENUE

27 3. Venue is proper in this county under section 395.5 of the California Code of Civil
28

1 Procedure. Many, if not all, of the putative Class Members were employed and/or performed work
2 during the Class Period by Defendant in Kern County. Defendant's headquarters is located in the
3 City of McFarland within Kern County. Many of the acts alleged herein including Defendant's
4 failure to provide timely and duty-free meal and rest periods and pay meal and rest period premiums,
5 and its failure to provide accurate itemized wage statements, all occurred in Kern County. Venue is
6 therefore proper in Kern County.

7 **JURISDICTION**

8 4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
9 dollars of business by managing and operating numerous agricultural fields throughout the State of
10 California, including in the County of Kern. Thus, Defendant has obtained the benefits of the laws
11 of the State of California. In addition, Plaintiff asserts no claims arising under federal law. Rather,
12 Plaintiff brings causes of action based solely on, and arising from, California law. The claims of the
13 Class and the claims of the aggrieved employees are also based solely on California law described
14 herein. Furthermore, the total amount at issue in this case, inclusive of attorneys' fees, is less than
15 \$5 million. Therefore, jurisdiction is appropriate in Kern County Superior Court.

16 **THE PARTIES**

17 **A. The Plaintiff**

18 5. Plaintiff is and at all times relevant hereto was a California resident and was a non-
19 exempt employee of Defendant in California during the relevant PAGA and Class periods. From at
20 least four years from the filing of this complaint through the present, and on-going, Defendant's
21 non-exempt employees, including Plaintiff during his employment, were not provided timely and
22 duty-free meal and rest periods and/or provided meal and rest period premiums were not provided;
23 were not provided accurate and/or complete wage statements; were not reimbursed for all business
24 related expenses; were not paid all wages on a timely basis twice per month; and did not receive all
25 of their wages due upon termination of employment.

26 6. Plaintiff represents the state of California and the following groups of PAGA
27 aggrieved employees defined as:
28

1 All non-exempt individuals who or were employed by Jakov Dulcich and Sons LLC in the
2 State of California during the PAGA Period (hereinafter referred to as “Aggrieved
Employees”).

- 3 a. All Aggrieved Employees who were issued one or more wage statements from
4 Defendant during the PAGA Period (hereinafter referred to as “Wage Statement
Aggrieved Employees”);
- 5 b. All Aggrieved Employees who worked at least one shift of at least 3.51 hours
6 during the PAGA Period and who did not receive their timely ten-minute, duty
7 free rest breaks while working for Defendant during the PAGA Period
(hereinafter referred to as “Rest Break Aggrieved Employees”);
- 8 c. All Aggrieved Employees who worked at least one shift of 5 hours or more during
9 the PAGA Period and who did not receive their timely thirty-minute meal break
10 on or before the fifth hour of work while working for Defendant(hereinafter
referred to as “Meal Break Aggrieved Employees”);
- 11 d. All Aggrieved Employees whose employment with Defendant terminated during
12 the PAGA Period (hereinafter referred to “Waiting Time Penalty Aggrieved
Employees”);

13
14 7. By way of this action, Plaintiff also seeks to represent the following Classes:

15 All non-exempt individuals who or were employed by Jakov Dulcich and Sons, LLC in the
16 State of California during the Class Period and ending when notice to the Class is sent.
(hereinafter referred to as “Class Members” or the “Class”).

- 17 a. All Class Members who were issued one or more wage statements from
18 Defendant during the period from one year prior to the filing of this Complaint
19 and continuing into the present (hereinafter referred to as “Wage Statement Class
Members”);
- 20 b. All Class Members who worked at least one shift of at least 3.51 hours during the
21 PAGA Period and who did not receive their timely ten-minute, duty free rest
22 breaks while working for Defendant during the Class Period (hereinafter referred
to as “Rest Break Class Members”);
- 23 c. All Class Members who worked at least one shift of 5 hours or more during the
24 PAGA Period and who did not receive their timely thirty-minute meal break on
25 or before the fifth hour of work while working for Defendant on shifts greater
than five hours during the Class Period (hereinafter referred to as “Meal Break
Class Members”); and,
- 26 d. All Class Members whose employment with Defendant terminated during the
27 period from three years prior to the filing of this Complaint and continuing into
28 the present (hereinafter referred to “Waiting Time Penalty Class Members”).

1 **B. The Defendant**

2 8. Defendant Jakov Dulcich and Sons LLC is a California Limited Liability Corporation
3 headquartered in City of McFarland, California. According to its website, <http://www.dulcich.com/>,
4 Defendant is in the business of operating of vineyards and harvesting multiple sorts of grapes used
5 for grocery and vinification purposes. To operate its agricultural fields, Defendant employs and has
6 employed hundreds of non-exempt employees during the PAGA and Class Periods, including
7 Plaintiff, the Class Members, and the Aggrieved Employees.

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

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

20 11. Defendant was and is the employer of Plaintiff, the Aggrieved Employees and Class
21 Members for all relevant time periods. At any one time during the Class Period, and the PAGA
22 Covered Period, Defendant employed approximately 500 non-exempt individuals in California. Due
23 to turnover during the Class Period, the total number of Class Members is estimated to be over 1,000.

24 **FACTUAL ALLEGATIONS**

25 12. Defendant operates and, at all times during the PAGA Period and the Class Period,
26 has done business in California serving the food industry in California and throughout the world.
27 Defendant, in the course of operating its business in California during the Class Period and the
28

1 PAGA Period, employed Plaintiff, the Aggrieved Employees and the Class Members.

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

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

11 15. Here, Defendant violated and continues to violate Labor Code § 512 and IWC Wage
12 Order 8/14-2001 § 11 by, among other things, failing to provide and schedule duty-free meal breaks
13 on or before the fifth hour of work to the Meal Break Aggrieved Employees and the Meal Break
14 Class Members and failed to advise all Meal Break Aggrieved Employees and Meal Break Class
15 Members of their meal break rights with respect to the timing of meal breaks; failed to provide Meal
16 Break Aggrieved Employees and Meal Break Class Members with thirty-minute, uninterrupted meal
17 periods within the first five (5) hours of their shifts, and failed to pay meal break premiums for late
18 meal breaks. Instead, Defendant often required employees to take their breaks at the end of their
19 shifts without paying any late meal break premiums. As a result of Defendant's failure to authorize
20 or permit lawful and timely meal periods, Plaintiff and the other Meal Period Class Members and
21 Meal Period Aggrieved Employees frequently did not receive compliant duty-free meal periods
22 within the first five (5) hours of their work.

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

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

6 17. Here, Defendant did not authorize Plaintiff, the Rest Break Class Members, and the
7 Rest Break Aggrieved Employees to take their ten-minute rest breaks during each 4 hours of work
8 or major fraction thereof during their shifts.

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

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

24 19. Due to, *inter alia*, Defendant's failure to pay Plaintiff and the other Wage Statement
25 Aggrieved Employees and Wage Statement Class Members for all meal and rest break premiums
26 owed, the wage statements issued by Defendant to Plaintiff, the Wage Statement Class Members,
27 and the Wage Statement Aggrieved Employees do not indicate the correct amount of gross wages
28 earned, net wages earned, or the applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1),
(2), (5) and (9).

20. Defendant's violations of Labor Code § 226 were 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

1 therefore we do not record hours on a wage statement”).

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

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

20 23. Aggrieved Employees do not need to show injury to prevail on their claim for PAGA
21 penalties under Labor Code § 226(a). *See Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D.
22 Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of
23 section 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765
24 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA
25 penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e)
26 injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3,
27 2013) (“Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under
28

1 § 2699(f) of PAGA.”).

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

16 25. Pursuant to Labor Code § 2802(a) “[a]n employer shall indemnify his or her
17 employee for all necessary expenditures or losses incurred by the employee in direct consequence
18 of the discharge of his or her duties, or of his or her obedience to the directions of the employer....”
19 The purpose of this statute is “to prevent employers from passing their operating expenses on to their
20 employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting legislative
21 history from the 2000 amendment to the statute). Labor Code Section 2802(c) also clarifies that “the
22 term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited
23 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

24 26. Specifically, under Labor Code § 2802, employers must reimburse employees for
25 required work-related use of personal cell phones, regardless of whether they incur any additional
26

27 ¹ *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D.Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326,
28 *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.

1 out-of-pocket expense from that work-related use. *See Cochran v. Schwan's Home Service*, 228 Cal.
2 App. 4th 1137 (2014) (reversing denial of class certification in cell phone reimbursement class
3 action). *Cochran* held that “[i]f an employee is required to make work-related calls on a personal
4 cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter
5 whether the phone bill is paid for by a third person, or at all. . . . It is irrelevant whether the employee
6 changed plans to accommodate work-related cell phone usage. . . . *To show liability under section*
7 *2802, an employee need only show that he or she was required to use a personal cell phone to make*
8 *work-related calls, and he or she was not reimbursed.” Id.* at 1144-45 (emphasis added); *see also*
9 *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion
10 for partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue*
11 *Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen)
12 (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

13 27. The employer’s obligation to reimburse business-related expenses arises when the
14 employer “knew or should have known” that its employees have incurred a business-related expense.
15 *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson*
16 *v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan Illston) (adopting
17 the “knew or should have known” standard from *RadioShack*). Notably, these claims are not
18 waivable per Section 2804 of the Labor Code.

19 28. Under Labor Code § 2802, if an employer requires employees to use their cell phone
20 for work, as is the case here for taking pictures of the products at the assembly line, then Defendant
21 must reimburse employees for a reasonable portion of their monthly cell phone bills. Here, the Class
22 Members and Aggrieved Employees were expected to use their cell phones to take pictures of the
23 products at the assembly line and send it to management.

24 29. Accordingly, Defendant violated Labor Code § 2802 and continues to do so by failing
25 to reimburse the Class Members and Aggrieved Employees for all work-related cell phone charges
26 they incurred in connection with their job duties.

27 30. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
28

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

5 31. Due to Defendant’s failure to pay Plaintiff, the Class, and the other Aggrieved
6 Employees all meal and rest break period premiums owed,² Defendant violated Labor Code § 204
7 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular
8 and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL
9 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period
10 premiums can support claims under Labor Code §§ 203 and 204).

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

19 33. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an
20 employee who is discharged or who quits, the wages of the employee shall continue as a penalty. .

21
22 ² Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting
23 time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal.
24 Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties
25 based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling*
26 *vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time
27 claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5’”);
28 *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016)
(finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204);
Brewer v. Gen. Nutrition Corp. (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant’s motion for
summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes
of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7, 2013) 2013 WL 4038617, at *3–4
[distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay wages...can be based on amounts
owed under section 226.7.”). The issue is currently before the California Supreme Court in the *Naranjo* case. *See*
Naranjo v. Spectrum Security Services, Inc., Cal. Supreme Court Case No. S258966.

1 .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

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

7 35. The administrative prerequisites of PAGA have been satisfied. First, 65 days have
8 elapsed from July 24, 2020 (i.e. 65 days since Plaintiff’s mailing of the PAGA notice with no further
9 communication from the LWDA to Plaintiff’s counsel). On September 15, 2020, Plaintiff also
10 amended his PAGA letter. Plaintiff has also paid the \$75.00 fee and has otherwise satisfied the
11 administrative prerequisites of PAGA, as amended. Plaintiff by this action seeks to recover, on
12 behalf of themselves and all other current and former Aggrieved Employees of Defendant, the civil
13 penalties provided by PAGA, as specified in Labor Code § 2699(f). Plaintiff seeks to recover the
14 PAGA civil penalties through a representative action as permitted by PAGA and the California
15 Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Class certification of the PAGA
16 claims is not required. *Id.*

17 CLASS ACTION ALLEGATIONS

18 36. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a
19 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent Classes
20 composed of and defined as:

21 All non-exempt individuals who or were employed by Jakov Dulcich and Sons LLC in the
22 State of California during the Class Period and ending when notice to the Class is sent
23 following certification (hereinafter referred to as “Class Members” or the “Class”).

- 24 a. All Class Members who were issued one or more wage statements from
25 Defendant during the period from one year prior to the filing of this Complaint
26 and continuing into the present (hereinafter referred to as “Wage Statement Class
27 Members”);
28 b. All Class Members who worked at least one shift of 3.51 hours during the Class
Period and who did not receive their timely ten-minute, duty free rest breaks

1 while working for Defendant during the Class Period (hereinafter referred to as
2 “Rest Break Class Members”);

3 c. All Class Members who worked at least one shift of 5 hours during the Class
4 Period and who did not receive their timely thirty-minute meal break on or before
5 the fifth hour of work while working for Defendant on shifts greater than five
6 hours during the Class Period (hereinafter referred to as “Meal Break Class
7 Members”);

8 d. All Class Members whose employment with Defendant terminated during the
9 period from three years prior to the filing of this Complaint and continuing into
10 the present (hereinafter referred to “Waiting Time Penalty Class Members”).

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

14 a. Numerosity: The potential members of the Class as defined are so numerous
15 that joinder of all the members of the Class is impracticable. While the precise number of Class
16 Members has not been determined at this time, Plaintiff is informed and believes that Defendant has,
17 on average, at any one time during the Class Period employed over 500 Class Members as non-
18 exempt employees who were subject to Defendant’s unlawful policies. Due to turnover, the total
19 number of Class Members is estimated to be more than 1000. The Class Members are dispersed
20 throughout California. Joinder of all members of the proposed classes is therefore not practicable.

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

24 i. Whether Defendant violated Labor Code sections 226.7 and 512 and Section
25 11 of IWC Wage Order No. 8 and 14 by failing to provide timely, duty-free meal periods to Plaintiff
26 and the members of the Meal Break Class in California during the Class Period;

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

iii. Whether Defendant violated Labor Code section 226.7 and Section 12 of IWC

1 Wage Order No. 8 and 14 by failing to provide timely, duty-free rest periods to Plaintiff and the
2 members of the Rest Break Class in California during the Class Period;

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

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

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

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

13 viii. Whether Defendant violated Sections 2802 of the Labor Code by failing to
14 reimburse member of the Class for all of their business expenses;

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

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

22 xi. Whether Defendant engaged in an unfair practice and violated section 17200
23 of the California Business and Professions Code by failing to provide Plaintiff and the members of
24 the Rest Break Class with timely, duty-free rest breaks during the Class Period;

25 xii. Whether Defendant engaged in an unfair practice and violated section 17200
26 of the California Business and Professions Code by failing to provide Plaintiff and members of the
27 Rest Break Class with rest period premiums for each day they were not provided a compliant meal
28

1 break;

2 xiii. Whether Defendant engaged in an unfair practice and violated section 17200
3 of the California Business and Professions Code by failing to reimburse Plaintiff and the
4 Reimbursement Class for fair business-related expenses including phone expenses during the Class
5 Period;

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

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

10 xvi. The nature and extent of class-wide damages.

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

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

22 e. Superiority of Class Action: A class action is superior to other available
23 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
24 Members is not practicable, and questions of law and fact common to the Class predominate over
25 any questions affecting only individual members of the Class. Each Class Member has been
26 damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or
27 practices. Certification of this case as a class action will allow those similarly situated persons to
28

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

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PROVIDE TIMELY AND DUTY-FREE MEAL BREAKS AND PAY
12 MISSED MEAL BREAK PREMIUMS**

13 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order 8/14-2001 Section 11]**

14 **On behalf of Plaintiff and the Meal Break Class Against Defendant**

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

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

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

41. Here, Defendant violated and continues to violate Labor Code § 512 and IWC Wage
Order 8/14-2001 § 11 by, among other things, failing to provide and schedule duty-free meal breaks

1 on or before the fifth hour of work to Meal Break Class Members and failed to advise all other Meal
2 Break Class Members of their meal break rights with respect to the timing of meal breaks, failed to
3 provide Meal Break Class Members with thirty-minute, uninterrupted meal periods within the first
4 five (5) hours of their shifts, and failed to pay meal break premiums for late meal breaks. Instead,
5 Defendant often required employees to take their breaks at the end of their shifts without paying any
6 late meal break premiums. As a result of Defendant's failure to authorize or permit lawful and timely
7 meal periods, Plaintiff and the other Class members and Meal Period Class Members frequently did
8 not receive compliant duty-free meal periods within the first five (5) hours of their work.

9
10 **SECOND CAUSE OF ACTION**
11 **FAILURE TO PROVIDE TIMELY AND DUTY-FREE REST BREAKS**
12 **AND PAY MISSED REST BREAK PREMIUMS**
13 **[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order 8/14-2001]**
14 **On behalf of Plaintiff and the Rest Break Class Against Defendant**

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

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

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

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

27 44. Here, Defendant did not authorize Plaintiff and the Rest Break Class Members to take
28 their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their shifts.
Plaintiff and the Rest Break Class Members did not receive timely rest breaks during their shifts.

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THIRD CAUSE OF ACTION
FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS
[Cal. Labor Code § 226(a)]
On behalf of Plaintiff and the Wage Statement Class Members Against Defendant

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

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

Every employer shall...furnish each of his or her employees...an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (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 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...

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

48. Defendant's 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").

1 49. Defendant's failure to furnish accurate itemized wage statements has caused Plaintiff
2 and the other Wage Statement Class Members to incur economic damages in that they were not
3 aware that they were owed and not paid appropriate premiums for their non-compliant statutory rest
4 breaks and meal periods. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left
5 to the employee to add up the daily hours shown on the time cards or other records so that the
6 employee must perform arithmetic computations to determine the total hours worked during the pay
7 period, the requirements of section 226 would not be met"); *McKenzie v. Federal Express Corp.*,
8 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by not
9 including, inter alia, total hours worked giving rise to claims under both Section 226 and for PAGA
10 penalties); Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement
11 violated Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily
12 determine the gross or net wages earned by the employee during the pay period).

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

18 **FOURTH CAUSE OF ACTION**
19 **WAITING TIME PENALTIES FOR**
20 **FAILURE TO PAY WAGES DUE ON TERMINATION**
21 **[Cal. Labor Code §§ 201-203]**
22 **On Behalf of Plaintiff and the Waiting Time Class Against Defendant**

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

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

28 53. Due to Defendant's faulty policies described above, including its failure to pay for
meal and rest break premiums, Defendant violated Labor Code § 203, for those employees whose
employment ended within the last three years and ongoing (i.e., the Waiting Time Class Members)

1 by willfully failing to pay them all wages due upon the termination of their employment.

2 **FIFTH CAUSE OF ACTION**
3 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
4 **[Cal. Labor Code §§ 204, 210]**
5 **On Behalf of Plaintiff and the Class Against Defendant**

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

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

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

19 57. Labor Code § 210 provides that “in addition to, an entirely independent and apart
20 from, any other penalty provided in this article, every person who fails to pay the wages of each
21 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any

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

1 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
2 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
3 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
4 compensation policies and practices described in detail above, Plaintiff and the Class are entitled to
5 recover penalties under Labor Code § 210.

6 **SIXTH CAUSE OF ACTION**
7 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
8 **[Cal. Labor Code § 2802]**

9 **On Behalf of Plaintiff and the Reimbursement Class Against Defendant**

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

12 59. Pursuant to Labor Code § 2802(a) “[a]n employer shall indemnify his or her
13 employee for all necessary expenditures or losses incurred by the employee in direct consequence
14 of the discharge of his or her duties, or of his or her obedience to the directions of the employer....”
15 The purpose of this statute is “to prevent employers from passing their operating expenses on to their
16 employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting legislative
17 history from the 2000 amendment to the statute). Labor Code Section 2802(c) also clarifies that “the
18 term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited
19 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

20 60. Specifically, under Labor Code § 2802, employers must reimburse employees for
21 required work-related use of personal cell phones, regardless of whether they incur any additional
22 out-of-pocket expense from that work-related use. *See Cochran v. Schwan’s Home Service*, 228 Cal.
23 App. 4th 1137 (2014) (reversing denial of class certification in cell phone reimbursement class
24 action). *Cochran* held that “[i]f an employee is required to make work-related calls on a personal
25 cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter
26 whether the phone bill is paid for by a third person, or at all. . . . It is irrelevant whether the employee
27 changed plans to accommodate work-related cell phone usage. . . . *To show liability under section*
28 *2802, an employee need only show that he or she was required to use a personal cell phone to make*
work-related calls, and he or she was not reimbursed.” Id. at 1144-45 (emphasis added); *see also*

1 *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion
2 for partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue*
3 *Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen)
4 (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

5 61. The employer’s obligation to reimburse business-related expenses arises when the
6 employer “knew or should have known” that its employees have incurred a business-related expense.
7 *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson*
8 *v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan Illston) (adopting
9 the “knew or should have known” standard from *RadioShack*). Notably, these claims are not
10 waivable per Section 2804 of the Labor Code.

11 62. Under Labor Code § 2802, if an employer requires employees to use their cell phone
12 for work, as is the case here for taking pictures of the products at the assembly line, then Defendant
13 must reimburse employees for a reasonable portion of their monthly cell phone bills. Here, the
14 Reimbursement Class Members were expected to use their cell phones to take pictures of the
15 products at the assembly line and send it to management.

16 63. Accordingly, Defendant violated Labor Code § 2802 and continues to do so by failing
17 to reimburse the Reimbursement Class Members for all work-related cell phone charges they
18 incurred in connection with their job duties.

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

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

25 65. Section 17200 of the California Business & Professions Code prohibits any unlawful,
26 unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person
27 who has suffered injury in fact and has lost money or property” to prosecute a civil action for
28 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.

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

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

10 68. As a direct and proximate result of Defendant's unlawful business practices, Plaintiff
11 and the Class Members have suffered economic injuries. Defendant has profited from its unlawful,
12 unfair, and/or fraudulent acts and practices.

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

19 70. Through its actions alleged herein, Defendant has engaged in unfair competition
20 within the meaning of section 17200 of the California Business & Professions Code, because
21 Defendant's conduct, as herein alleged has damaged Plaintiff and the Class Members by wrongfully
22 denying them reimbursement for business expenses, and wrongfully denying them meal and rest
23 period premiums, and therefore was substantially injurious to Plaintiff and the Class Members.

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

27 72. Defendant's course of conduct, act and practice in violation of the California laws
28

mentioned above constitute independent violations of sections 17200 et seq. of the California Business and Professions Code.

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

74. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of themselves and other similarly situated Class Members previously or presently employed by Defendant in California. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5, and Labor Code §§ 1194 and 2802.

EIGHTH CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEY GENERAL ACT
PAGA PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204, 210, 226,
226.3, 226.7, 512, AND 2802
(Labor Code §§ 2698-2699.5)
On Behalf of Plaintiff and the Aggrieved Employees Against Defendant

75. Plaintiff, on behalf of himself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

76. Based on the above allegations incorporated by reference, Defendant violated Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, and 2802, as well as IWC Wage Order 5-2001.

77. 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 subject to the following formula:

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

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

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

78. In addition, as set forth above, Defendant failed to provide Plaintiff and all aggrieved employees with accurate itemized wage statements in compliance with Labor Code § 226(a). 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.”

79. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that Defendant's conduct in refusing to provide accurate and itemized wage statements was knowing, intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above; *see also 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.").

80. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, et seq. because of Defendant's violation of Labor Code §§ Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, and 2802, as well as IWC Wage Order 5-2001.

JURY DEMAND

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

PRAYER FOR RELIEF

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

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

1 2. On the First Cause of Action:

2 a. A declaratory judgment that Defendant violated California Labor Code §§
3 226.7, 512 and Section 11 of IWC Wage Order 8/14-2001;

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

7 3. On the Second Cause of Action:

8 a. A declaratory judgment that Defendant violated California Labor Code §
9 226.7, and Section 12 of IWC Wage Order 8/14-2001;

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

13 4. On the Third Cause of Action:

14 a. A declaratory judgment that Defendant violated California Labor Code §226
15 by issuing inaccurate and/or incomplete wage statements that failed to include the start date for each
16 pay period, the correct amount of gross wages earned, net wages earned, or the applicable hourly
17 rates in effect during the pay period and the corresponding number of hours worked at each hourly
18 rate to Plaintiff and the wage statement Class Members;

19 b. An award to Plaintiff and Class Members of \$50 for each initial pay period,
20 one year prior to the filing of this Complaint through the date of trial, in which a violation of Section
21 226 occurred and \$100 for each subsequent pay period, one year prior to the filing of this Complaint
22 through the date of trial, in which a violation of Section 226 occurred, not to exceed \$4,000 for each
23 member of the Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor
24 Code § 226(e).

25 5. On the Fourth Cause of Action:

26 a. A declaratory judgment that Defendant violated California Labor Code §§
27 201 through 203;

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

4 6. On the Fifth Cause of Action:

5 a. A declaratory judgment that Defendant violated California Labor Code §§
6 204 and 210;

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

9 7. On the Sixth Cause of Action:

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

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

13 8. On the Seventh Cause of Action

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

17 b. Restitution, including, but not limited to, the relief permitted by sections
18 226.7, and 2802 of the California Labor Code (i.e., pay as specified for meal and rest period
19 premiums and reimbursement of all business-related expenses by Plaintiff and the members of the
20 Class during the Class Period.

21 9. On the Eighth Cause of Action:

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

26 b. An award of reasonable attorney's fees against Defendant as specified in
27 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with
28

1 the PAGA claims;

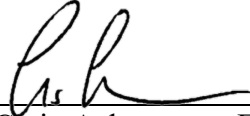
2 c. An award of all costs incurred by the undersigned counsel for Plaintiff in
3 connection with Plaintiff's and Aggrieved Employees' PAGA claim against Defendant, as provided
4 for in Labor Code § 2699(g)(1).

5 10. All other relief as this Court deems proper.

6
7 Dated: October 14, 2020

Respectfully,

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

10 By: 

11 Craig Ackermann, Esq.

12 Amir Seyedfarshi, Esq.

13 Counsel for Plaintiff, the Class, and the
14 Aggrieved Employees
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