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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

20STCV39689

Andrei Lim, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

Tokyo Teriyaki Corporation, a Nevada
corporation, dba Chowking; and DOES 1 to
100, inclusive

Defendant.

CASE NO:

**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 5-2001;
(2) FAILURE TO PROVIDE TIMELY,
DUTY-FREE REST PERIODS AND/OR PAY
REST PERIOD PREMIUMS (LABOR CODE
§ 226.7; IWC WAGE ORDER 5-2001);
(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) UCL VIOLATIONS (BUS. & PROF.
CODE §§ 17200-17204); AND
(7) PAGA AND OTHER PENALTIES
(LABOR CODE §§ 2698 – 2699.5);
DEMAND FOR JURY TRIAL**

1 Plaintiff Andrei Lim, 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 Tokyo Teriyaki Corporation dba Chowking and
8 DOES 1 to 100 (“Defendant”) for their (1) failure to provide timely and duty-free meal periods
9 within the first five hours and to provide lawful second meal periods for shifts worked in excess of
10 ten hours and/or pay meal period premiums for late meal breaks; (2) failure to provide timely, duty-
11 free rest periods for every four hours of work or major fraction thereof and/or pay rest period
12 premiums; (3) failure to provide accurate itemized wage statements within the one year prior to the
13 filing of this Complaint; (4) failure to pay all wages due to former employees based on the foregoing;
14 (5) failure to pay timely wages based on the foregoing; (6) UCL violations based on the foregoing;
15 and (7) PAGA and other penalties based on the foregoing. As a result of the foregoing, Defendant
16 has violated California statutory laws as described below.

17 2. The “Class Period” is designated as the period from four years prior to the filing of
18 this action through the trial date. The “PAGA Period” is designated as the period from one year
19 prior to the sending of the PAGA letter to the LWDA (*i.e.*, on or around July 24, 2020) through the
20 present and on-going. Defendant’s violations of California’s wage and hour laws and unfair
21 competition laws, as described more fully below, have been ongoing throughout the Class Period.

22 VENUE

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

3 **JURISDICTION**

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

13 **THE PARTIES**

14 **A. The Plaintiff**

15 5. Plaintiff is a California resident and was a non-exempt employee of Defendant in
16 California during the relevant time period. From at least four years from the filing of this complaint
17 through the present, and on-going, Defendant's non-exempt employees, including Plaintiff during
18 his employment, were not provided timely and duty-free meal and rest periods and/or provided
19 meal and rest period premiums; were not provided accurate and/or complete wage statements; did
20 not receive all of their wages due upon termination of employment, and did not receive all wages
21 timely.

22 6. Plaintiff represents the state of California and groups of aggrieved employees defined
23 as:

24 All non-exempt individuals who or were employed by Tokyo Teriyaki Corporation in the
25 State of California during the PAGA Period (hereinafter referred to as "Aggrieved
Employees").

- 26 a. All Aggrieved Employees who were issued one or more wage statements from
27 Defendant during the PAGA Period (hereinafter referred to as "Wage Statement
Aggrieved Employees");

- 1 b. All Aggrieved Employees who did not receive their timely ten-minute, duty free
2 rest breaks while working for Defendant during the PAGA Period (hereinafter
3 referred to as “Rest Break Aggrieved Employees”);
- 4 c. All Aggrieved Employees who did not receive their timely thirty-minute meal
5 break on or before the fifth hour of work while working for Defendant on shifts
6 greater than five hours or who received a missed or late meal break premium
7 payment during the PAGA Period (hereinafter referred to as “Meal Break
8 Aggrieved Employees”);
- 9 d. All Aggrieved Employees whose employment with Defendant terminated during
10 the PAGA Period (hereinafter referred to “Waiting Time Penalty Aggrieved
11 Employees”);
- 12 7. By way of this action, Plaintiff also seeks to represent the following Classes:
- 13 a. All non-exempt individuals who or were employed by Tokyo Teriyaki
14 Corporation in the State of California during the Class Period and ending when
15 notice to the Class is sent. (hereinafter referred to as “Class Members” or the
16 “Class”).
- 17 b. 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
20 Members”);
- 21 c. All Class Members who did not receive their timely ten-minute, duty free rest
22 breaks while working for Defendant during the Class Period (hereinafter referred
23 to as “Rest Break Class Members”);
- 24 d. All Class Members 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
26 than five hours during the Class Period (hereinafter referred to as “Meal Break
27 Class Members”); and,
- 28 e. All Class Members whose employment with Defendant terminated during the
period from three years prior to the filing of this Complaint and continuing into
the present (hereinafter referred to “Waiting Time Penalty Class Members”).

B. The Defendant

8. Defendant Tokyo Teriyaki Corporation is a Nevada corporation headquartered in City of Industry, California. According to its website, <http://www.chowkingusa.com>, “Chowking USA is a quick service restaurant from the Philippines with a Chinese-influenced menu. Chowking, its mother brand, is one of the most recognized and well-loved fast food chains in the Philippines.

1 The brand opened its first store in the United States of America in 1995. Back then, the chain catered
2 primarily to Filipinos living in the US, bringing them iconic menu items from the original Chowking
3 such as the top-selling Beef Wonton Noodles, Halo-Halo, and Chao Fan. Today, Chowking USA
4 serves not just the Filipino community but the local US market as well by providing a delicious and
5 satisfying Chinese fast food experience. Chowking restaurants are now present at 15 locations in 3
6 states: California, Nevada, and Washington.” To operate its restaurants, Defendant employs non-
7 exempt employees, such as the 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 100 non-exempt individuals in California. Due
23 to turnover during the Class Period, the total number of Class Members is estimated to be over 400.

24 **FACTUAL ALLEGATIONS**

25 12. Defendant operates and, at all times during the PAGA Period and the Class Period,
26 has done and does business in California serving the food industry in California and throughout the
27 world. Defendant, in the course of operating its business in California during the Class Period and
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1 the 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 5-2001 § 11 by, among other things, failing to provide and schedule duty-free meal breaks on
13 or before the fifth hour of work to Meal Break Aggrieved Employees and Meal Break Class
14 Members and failed to advise all other 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 meal breaks at the end of
19 their shifts without paying any late meal break premiums. As a result of Defendant's failure to
20 authorize or permit lawful and timely meal periods, Plaintiff and the other Meal Period Class
21 Members and Meal Period Aggrieved Employees frequently did not receive compliant duty-free
22 meal periods within the first five (5) hours of their work. Furthermore, when Defendant paid missed
23 or late meal break premiums, thereby admitting to 226.7 and 512 violations, Defendant failed to
24 make any PAGA penalty payments associated with these violations.

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

3 An employer is required to authorize and permit the amount of rest break time called for
4 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
5 policy authorizing and permitting only one rest break for employees working a seven-hour
6 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].

7 17. Here, Defendant did not authorize Plaintiff, the Rest Break Class Members, and the
8 Rest Break Aggrieved Employees to take their ten-minute rest breaks during each 4 hours of work
9 or major fraction thereof during their shifts. Moreover, Defendant’s scheduling practices were often
10 rest break preclusive for Rest Break Class Members and Rest Break Aggrieved Employees.

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

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

26 19. Defendant’s wage statements issued fail to include the start date of each pay period
27 in violation of Labor Code § 226(a)(6). Moreover, due to, *inter alia*, Defendant’s failure to pay
28 Plaintiff and the other Aggrieved Employees for all meal and rest break premiums, the wage
statements issued by Defendant to Plaintiff, the Wage Statement Class Members, and the Wage
Statement Aggrieved Employees 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).

20. 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

1 knowingly and intentionally violated Labor Code § 226 because the “[d]efendant knew that it was
2 not providing total hours worked to plaintiff or other employees paid on commission” even though
3 it believed that employees paid solely on commission or commission and salary “are exempt and
4 therefore we do not record hours on a wage statement”).

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

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

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

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

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

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

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27
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.

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

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

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

20 30. The administrative prerequisites of PAGA will be satisfied after 65 days have elapsed

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 from July 24, 2020 (i.e. 65 days since Plaintiff's mailing of the PAGA notice with no further
2 communication from the LWDA to Plaintiff's counsel). On September 15, 2020, Plaintiff amended
3 his PAGA letter. Plaintiff has paid the \$75.00 fee and has otherwise satisfied the administrative
4 prerequisites of PAGA, as amended.

5 31. Plaintiff by this action seeks to recover, on behalf of themselves and all other current
6 and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as specified
7 in Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a representative
8 action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal.
9 4th 969 (2009). Class certification of the PAGA claims is not required.

10 **CLASS ACTION ALLEGATIONS**

11 32. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a
12 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent Classes
13 composed of and defined as:

14 All non-exempt individuals who or were employed by Tokyo Teriyaki Corporation in the
15 State of California during the Class Period and ending when notice to the Class is sent
16 (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
20 Members");
- 21 b. All Class Members who did not receive their timely ten-minute, duty free rest
22 breaks while working for Defendant during the Class Period (hereinafter referred
23 to as "Rest Break Class Members");
- 24 c. All Class Members 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
26 than five hours during the Class Period (hereinafter referred to as "Meal Break
27 Class Members");
- 28 d. All Class Members whose employment with Defendant terminated during the
period from three years prior to the filing of this Complaint and continuing into
the present (hereinafter referred to "Waiting Time Penalty Class Members").

33. This action has been brought and may properly be maintained as a class action under
Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation,

1 the proposed class is easily ascertainable, and Plaintiff is a proper representative of the Class:

2 a. Numerosity: The potential members of the Class as defined are so numerous
3 that joinder of all the members of the Class is impracticable. While the precise number of Class
4 Members has not been determined at this time, Plaintiff is informed and believes that Defendant has,
5 on average, at any one time during the Class Period employed over 100 Class Members as non-
6 exempt employees who were subject to Defendant's unlawful policies. Due to turnover, the total
7 number of Class Members is estimated to be more than 400. The Class Members are dispersed
8 throughout California. Joinder of all members of the proposed classes is therefore not practicable.

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

12 i. Whether Defendant violated Labor Code sections 226.7 and 512 and Section
13 11 of IWC Wage Order No. 5 by failing to provide timely, duty-free meal periods to Plaintiff and
14 the members of the Meal Break Class in California during the Class Period;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PROVIDE TIMELY AND DUTY-FREE MEAL BREAKS AND PAY
24 MISSED MEAL BREAK PREMIUMS**

25 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order 5-2001 Section 11]
26 On behalf of Plaintiff and the Meal Break Class Against Defendant**

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

35. California Labor Code § 226.7(a) provides, "No employer shall require any employee

1 to work during any meal or rest period mandated by an applicable order of the Industrial Welfare
2 Commission.”

3 36. Section 512(a) of the California Labor Code provides, in relevant part, that: An
4 employer may not employ an employee for a work period of more than five hours per day without
5 providing the employee with a meal period of not less than 30-minutes, except that if the total work
6 period per day of the employee is no more than six hours, the meal period may be waived by mutual
7 consent of both the employer and employee. An employer may not employ an employee for a work
8 period of more than 10 hours per day without providing the employee with a second meal period of
9 not less than 30-minutes, except that if the total hours worked is no more than 12 hours, the second
10 meal period may be waived by mutual consent of the employer and the employee only if the first
11 meal period was not waived

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

22 **SECOND CAUSE OF ACTION**
23 **FAILURE TO PROVIDE TIMELY AND DUTY-FREE REST BREAKS**
24 **AND PAY MISSED REST BREAK PREMIUMS**
25 **[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order 5-2001]**
26 **On behalf of Plaintiff and the Rest Break Class Against Defendant**

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

39. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not

1 authorize and permit the amount of rest time on the schedule called for under the law (as specified
2 in Section 12 of the applicable Wage Order), “it has violated the wage order and is liable.” The
3 *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting
4 an unlawful policy:

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

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

10 40. Here, Defendant did not authorize Plaintiff and the Rest Break Class Members to take
11 their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their shifts.
12 Plaintiff and the Rest Break Class Members did not receive timely rest breaks during their shifts.
13 Accordingly, Defendant is liable to Plaintiff and the Rest Break Class Members for rest break
14 premiums for all such shifts on which they were not able to take compliant rest

15 **THIRD CAUSE OF ACTION**
16 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
17 **[Cal. Labor Code § 226(a)]**

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

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

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

22 Every employer shall...furnish each of his or her employees...an accurate
23 itemized statement in writing showing (1) gross wages earned, (2) total hours
24 worked by the employee, except for any employee whose compensation is
25 solely based on a salary and who is exempt from payment of overtime under
26 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
27 Commission, (3) the number of piece-rate units earned and any applicable piece
28 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...

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

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

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

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

4 **FOURTH CAUSE OF ACTION**
5 **WAITING TIME PENALTIES FOR**
6 **FAILURE TO PAY WAGES DUE ON TERMINATION**
7 **[Cal. Labor Code §§ 201-203]**

8 **On Behalf of Plaintiff and the Waiting Time Class Against Defendant**

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

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

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

18 **FIFTH CAUSE OF ACTION**
19 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
20 **[Cal. Labor Code §§ 204, 210]**

21 **On Behalf of Plaintiff and the Wage Statement Class Against Defendant**

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

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

52. Due to Defendant’s failure to pay Plaintiff and the Wage Statement Class all meal

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

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

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

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

20 55. Section 17200 of the California Business & Professions Code prohibits any unlawful,
21 unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person

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 who has suffered injury in fact and has lost money or property” to prosecute a civil action for
2 violation of the UCL. Such a person may bring such an action on behalf of himself and others
3 similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

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

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

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

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

22 60. Through its actions alleged herein, Defendant has engaged in unfair competition
23 within the meaning of section 17200 of the California Business & Professions Code, because
24 Defendant’s conduct, as herein alleged has damaged Plaintiff and the Class Members by wrongfully
25 denying them all meal and rest period premiums due, and therefore was substantially injurious to
26 Plaintiff and the Class Members.

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

3 62. Defendant's course of conduct, act and practice in violation of the California laws
4 mentioned above constitute independent violations of sections 17200 et seq. of the California
5 Business and Professions Code.

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

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

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

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

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

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

25 \$100 for the initial violation per employee per pay period; and

26 \$200 for each subsequent violation per employee per pay period.

27 These penalties will be allocated 75% to the Labor Workforce Development Agency and
28 25% to the affected employees.

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

17 69. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that
18 Defendant’s conduct in refusing to provide accurate and itemized wage statements was knowing,
19 intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above; *see also Willner v. Manpower*
20 *Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all
21 [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed
22 above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that
23 “for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a),
24 and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist.
25 LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do not need to establish a Cal. Lab. Code
26 § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

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

JURY DEMAND

71. 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;

2. On the First Cause of Action:

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

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

3. On the Second Cause of Action:

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

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

4. On the Third Cause of Action:

a. A declaratory judgment that Defendant violated California Labor Code § 226 by issuing inaccurate and/or incomplete wage statements that failed to include the start date for each pay period, 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 to Plaintiff and the wage statement Class Members;

1 b. An award to Plaintiff and Class Members of \$50 for each initial pay period,
2 one year prior to the filing of this Complaint through the date of trial, in which a violation of Section
3 226 occurred and \$100 for each subsequent pay period, one year prior to the filing of this Complaint
4 through the date of trial, in which a violation of Section 226 occurred, not to exceed \$4,000 for each
5 member of the Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor
6 Code § 226(e).

7 5. On the Fourth Cause of Action:

8 a. A declaratory judgment that Defendant violated California Labor Code §§
9 201 through 203;

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

13 6. On the Fifth Cause of Action:

14 a. A declaratory judgment that Defendant violated California Labor Code §§
15 204 and 210;

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

18 7. On the Sixth Cause of Action:

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

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

24 8. On the Seventh Cause of Action:

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

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

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

9 9. All other relief as this Court deems proper.

10
11 Dated: October 14, 2020

Respectfully,

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

14 By: 

15 Craig Ackermann, Esq.

16 Amir Seyedfarshi, Esq.

17 Counsel for Plaintiff, the Class, and the
18 Aggrieved Employees
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