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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

**20STCV35904**

GRECIA ZAMORA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

NAMAR FOODS, INC., a California  
corporation; and DOES 1 to 100, inclusive

Defendant.

CASE NO: **20STCV35904**

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

#### 4 OVERVIEW OF CLAIMS

5 1. Plaintiff bring this action on behalf of herself and all others similarly situated, as a  
6 class action, and as a representative action pursuant to Labor Code § 2699, *et seq.*, and on behalf  
7 of the California general public, against Defendant Namar Foods, Inc. and DOES 1 to 100  
8 (“Defendant”) for their (1) failure to provide timely and duty-free meal periods within the first five  
9 hours and to provide lawful second meal periods for shifts worked in excess of ten hours and/or  
10 pay meal period premiums for late meal breaks; (2) failure to provide timely, duty-free rest periods  
11 for every four hours of work or major fraction thereof; (3) failure to provide accurate itemized  
12 wage statements within the one year prior to the filing of this Complaint; (4) failure to pay all  
13 wages due to former employees based on the foregoing; (5) failure to pay timely wages based on  
14 the foregoing; (6) failure to reimburse employees for their expenses incurred in connection with  
15 work-related usage of their personal cell phones; (7) UCL violations based on the foregoing; and  
16 (8) PAGA and other penalties based on the foregoing. As a result of the foregoing, Defendant has  
17 violated California statutory laws as described below.

18 2. The “Class Period” is designated as the period from four years prior to the filing of  
19 this action through the trial date. The “PAGA Period” is designated as the period from one year  
20 prior to the sending of the PAGA letter to the LWDA (*i.e.*, on or around July 13, 2020) through  
21 the present and on-going. Defendant’s violations of California’s wage and hour laws and unfair  
22 competition laws, as described more fully below, have been ongoing throughout the Class Period.

#### 23 VENUE

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

#### 4 **JURISDICTION**

5 4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of  
6 dollars of business by developing, blending, and packaging a line of dry instant mixes for food  
7 manufacturers, restaurant chains, distributors, and supermarkets throughout the world in the State  
8 of California, including in the County of Los Angeles. Thus, Defendant has have obtained the  
9 benefits of the laws of the State of California. In addition, Plaintiff asserts no claims arising under  
10 federal law. Rather, Plaintiff brings causes of action based solely on, and arising from, California  
11 law. Defendant is a California resident corporation so there is no federal diversity jurisdiction  
12 under CAFA or otherwise. The claims of the Class and the claims of the aggrieved employees are  
13 also based solely on California law described herein. The total amount sought by Plaintiff,  
14 including attorneys' fees, is less than \$5,000,000.

#### 15 **THE PARTIES**

##### 16 **A. The Plaintiff**

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

25 6. Plaintiff represents the state of California and groups of aggrieved employees  
26 defined as:

27 All non-exempt individuals who or were employed by Namar Foods, Inc. in the State of  
28

1 California during the PAGA Period (hereinafter referred to as “Aggrieved Employees”).

- 2 a. All Aggrieved Employees who were issued one or more wage statements from  
3 Defendant during the PAGA Period (hereinafter referred to as “Wage Statement  
4 Aggrieved Employees”);
- 5 b. All Aggrieved Employees who did not receive their timely ten-minute, duty  
6 free rest breaks while working for Defendant during the PAGA Period  
7 (hereinafter referred to as “Rest Break Aggrieved Employees”);
- 8 c. All Aggrieved Employees who did not receive their timely thirty-minute meal  
9 break on or before the fifth hour of work while working for Defendant on shifts  
10 greater than five hours during the PAGA Period (hereinafter referred to as  
11 “Meal Break Aggrieved Employees”);
- 12 d. All Aggrieved Employees whose employment with Defendant terminated  
13 during the PAGA Period (hereinafter referred to “Waiting Time Penalty  
14 Aggrieved Employees”);
- 15 e. All Aggrieved Employees who did not receive reimbursement for work-related  
16 cell-phone expenses from Defendant during the PAGA Period (hereinafter  
17 referred to as “Reimbursement Aggrieved Employees”)

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

19 All non-exempt individuals who or were employed by Namar Foods, Inc. in the State of  
20 California during the Class Period and ending when notice to the Class is sent (hereinafter  
21 referred to as “Class Members” or the “Class”).

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

- 1 e. All Class Members who did not receive reimbursement for work-related cell-  
2 phone expenses from Defendant during the Class Period (hereinafter referred  
to as “Reimbursement Class Members”).

3 **B. The Defendant**

4 8. Defendant Namar Foods, Inc. is a California corporation headquartered in  
5 Paramount, California. According to its website, <http://www.namar.com/index.htm>, “Namar  
6 Foods develops, blends, and packages an impressive line of dry instant mixes for the food  
7 industry.” To develop its dry instant mixes, Defendant employs non-exempt employees, such as  
8 the Plaintiff, the Class Members, and the Aggrieved Employees.

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

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

21 11. Defendant was and is the employer of Plaintiff, the Aggrieved Employees and Class  
22 Members for all relevant time periods. At any one time during the Class Period, and the PAGA  
23 Covered Period, Defendant employed approximately 50 non-exempt individuals in California.  
24 Due to turnover during the Class Period, the total number of Class Members is estimated to be  
25 over 200. The amount of PAGA aggrieved employees is estimated to be around 75.

26 **FACTUAL ALLEGATIONS**

27 12. Defendant operates and, at all times during the PAGA Period and the Class Period,  
28

1 has done and does business in California serving the food industry in California and throughout  
2 the world. Defendant, in the course of operating its business in California during the Class Period  
3 and the PAGA Period, employed Plaintiff and the Class Members.

4 13. Labor Code § 512 and Section 11 of the applicable IWC Wage Order require  
5 employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period  
6 within the first five (5) hours of an employee's shift. Moreover, an employee who works more  
7 than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and  
8 duty-free meal period. Here, at least prior to January 1, 2010, Defendant failed to provide  
9 employees with or schedule employees for lunch breaks on or before the fifth hour of their shifts.  
10 Instead, employees were provided, if at all, meal breaks only at the end of their 8-hour shifts. At  
11 least prior to January 1, 2020, Defendant failed to affirmatively relieve employees of duty for their  
12 meal periods on the time schedule required by California law.

13 14. Under Labor Code § 512, if an employer maintains a uniform policy that does not  
14 authorize and permit the amount of duty-free mealtime on or before the fifth hour of work as called  
15 for under the law (as specified in the applicable Wage Order), it has violated the wage order and  
16 is liable.

17 15. Here, at least prior to January 1, 2020, Defendant violated and continues to violate  
18 Labor Code § 512 and IWC Wage Order 5-2002 § 11 by, among other things, failing to provide  
19 and schedule duty-free meal breaks on or before the fifth hour of work to Meal Break Aggrieved  
20 Employees and Meal Break Class Members and failing to advise all other Meal Break Aggrieved  
21 Employees and Meal Break Class Members of their meal break rights with respect to the timing  
22 of meal breaks,, and failing to pay meal break premiums for late meal breaks that occurred prior  
23 January 1, 2020. Instead, Defendant encouraged or required employees to take their breaks at the  
24 end of their shifts without paying any late meal break premiums. As a result of Defendant's failure  
25 to authorize or permit lawful and timely meal periods, Plaintiff and the other Meal Period Class  
26 Members and Meal Period Aggrieved Employees frequently did not receive compliant duty-free  
27 meal periods within the first five (5) hours of their work.  
28

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

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

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

14           18. As a matter of fact, Defendant changed their policy regarding the meal and rest  
15 break effective only on January 1<sup>st</sup>, 2020, implicitly acknowledging their prior violation of  
16 California’s wage and hour rules regarding meal and rest breaks, See **Exhibit 1** (memo from  
17 Defendant’s CEO Re “California labor laws taking effect 1/1/2020”, suggesting that such laws  
18 were somehow not in effect previously). As set forth in Exhibit 1, at least prior to January 1<sup>st</sup>,  
19 2020, Plaintiff, the Meal and Rest Break Class Members, and the Meal and Rest Break Aggrieved  
20 Employees were not provided and did not take timely rest (and meal) breaks during their shifts.

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

- 23           (1) gross wages earned;
- 24           (2) total hours worked by the employee;
- 25           (3) the number of piece-rate units earned and any applicable piece rate if the employee  
26 is paid on a piece rate;
- 27           (4) all deductions, provided that all deductions made on written orders of the employee  
28 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...

20. Due to, *inter alia*, Defendant's failure to include the starting date of each pay period and the check pay date (at least prior to January 1, 2020), and due to Defendant's failure to pay 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). Additionally, prior to 2020, Defendant's wage statements issued fail to include the start date of each pay periods in violation of Labor Code § 226(a)(6).

21. 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").

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

226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the gross or net wages earned by the employee during the pay period).

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

24. Aggrieved Employees need not show “injury” or a “knowing and intentional” as ordinarily required by Labor Code section 226(e) to establish a violation sufficient to trigger PAGA penalties under Labor Code § 226(a). *See Lopez v. Friant & Associates, LLC*, 15 Cal. App. 773, 788 (Cal. App. 2017) (“Consistent with the PAGA statutory framework and the plain language and legislative history of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)”; *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) (“Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

25. Further and in addition to the penalties outlined above, Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendant

1 failed to provide Plaintiff, the Wage Statement Class Members, and the other Wage Statement  
2 Aggrieved Employees with accurate itemized wage statements. Accordingly, Defendant is  
3 additionally liable for Labor Code § 226.3 penalties for their violations of Labor Code § 226(a).  
4 *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015  
5 WL 1137151, at \*7 [“the weight of authority counsels that violations of Section 226.3 may be the  
6 basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL  
7 9506073, at \*6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3 merely provides that failure to  
8 perform actions mandated by § 226(a) may trigger civil penalties.”).<sup>1</sup>

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

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

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

23         29. Due to Defendant’s failure to pay Plaintiff, the Class, and the other Aggrieved  
24  
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26 <sup>1</sup> *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D.Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326,  
27 \*18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, \*7–9, 2011 WL 2434043; *Willis*  
28 *v. Xerox Bus. Servs., LLC* (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at \*7.

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

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

15 31. Pursuant to Labor Code § 2802(a) “[a]n employer shall indemnify his or her  
16 employee for all necessary expenditures or losses incurred by the employee in direct consequence  
17 of the discharge of his or her duties, or of his or her obedience to the directions of the employer....”  
18 The purpose of this statute is “to prevent employers from passing their operating expenses on to  
19 their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting  
20

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21 <sup>2</sup> Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting  
22 time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 \*23 (N.D. Cal.  
23 Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time  
24 penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals  
25 decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section  
26 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under  
27 section 218.5’”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at \*3-5 (N.D.  
28 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 legislative history from the 2000 amendment to the statute). Labor Code Section 2802(c) also  
2 clarifies that “the term ‘necessary expenditures or losses’ shall include all reasonable costs,  
3 including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted  
4 by this section.”

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

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

26         34. Under Labor Code § 2802, if an employer requires employees to use their cell  
27 phone for work, as is the case here for taking pictures of the products at the assembly line, then  
28

1 Defendant must reimburse employees for a reasonable portion of their monthly cell phone bills.  
2 Here, the Reimbursement Class Members and Reimbursement Aggrieved Employees were  
3 expected to use their cell phones to take pictures of the products at the assembly line and send it  
4 to management.

5 35. Accordingly, Defendant violated Labor Code § 2802 and continue to do so by  
6 failing to reimburse the Reimbursement Class Members and Reimbursement Aggrieved  
7 Employees for all work-related cell phone charges they incurred in connection with their job  
8 duties.

9 36. The administrative prerequisites of PAGA will be satisfied after 65 days have  
10 elapsed from July 13, 2020 (i.e. 65 days since Plaintiff's mailing of the PAGA notice with no  
11 further communication from the LWDA to Plaintiff's counsel). Plaintiff has paid the \$75.00 fee  
12 and has otherwise satisfied the administrative prerequisites of PAGA, as amended. Plaintiff  
13 submitted an amended PAGA notice to the LWDA on September 2, 2020

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

### 19 CLASS ACTION ALLEGATIONS

20 38. Plaintiff brings this action, on behalf of herself and all others similarly situated, as  
21 a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent Classes  
22 composed of and defined as:

23 All non-exempt individuals who or were employed by Namar Foods, Inc. in the State of  
24 California during the Class Period and ending when notice to the Class is sent (hereinafter  
25 referred to as "Class Members" or the "Class").

- 26 a. All Class Members who were issued one or more wage statements from  
27 Defendant during the period from one year prior to the filing of this Complaint  
28 and continuing into the present (hereinafter referred to as "Wage Statement  
Class Members");

- b. All Class Members who did not receive their timely ten-minute, duty free rest breaks while working for Defendant during the Class Period (hereinafter referred to as “Rest Break Class Members”);
- c. All Class Members who did not receive their timely thirty-minute meal break on 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”);
- 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 as “Waiting Time Penalty Class Members”);
- e. All Class Members who did not receive reimbursement for work-related cell-phone expenses from Defendant during the Class Period (hereinafter referred to as “Reimbursement Class Members”).

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

a. Numerosity: The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that Defendant has, on average, at any one time during the Class Period employed over 50 Class Members as non-exempt employees who were subject to Defendant’s unlawful policies. Due to turnover, the total number of Class Members is estimated to be more than 200. The Class Members are dispersed throughout California. Joinder of all members of the proposed classes is therefore not practicable.

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

- i. Whether Defendant violated Labor Code sections 226.7 and 512 and Section 11 of IWC Wage Order No. 5 by failing to provide timely, duty-free meal periods to

1 Plaintiff and the members of the Meal Break Class in California during the Class Period;

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

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

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

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

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

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

18 viii. Whether Defendant violated 2802 of the Labor Code and section 17203 of  
19 the California Business and Professions Code during the Class Period by failing to reimburse  
20 Plaintiff and the Class Members for their work-related expenses including personal cell phone  
21 expenses;

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

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

1 compliant meal break;

2 xi. Whether Defendant engaged in an unfair practice and violated section  
3 17200 of the California Business and Professions Code by failing to provide Plaintiff and the  
4 members of the Rest Break Class with timely, duty-free rest breaks during the Class Period;

5 xii. Whether Defendant engaged in an unfair practice and violated section  
6 17200 of the California Business and Professions Code by failing to provide Plaintiff and members  
7 of the Rest Break Class with rest period premiums for each day they were not provided a compliant  
8 meal break;

9 xiii. Whether Defendant engaged in an unfair practice and violated section  
10 17200 of the California Business and Professions Code by failing to reimburse Plaintiff and the  
11 Reimbursement Class for fair business-related expenses including phone expenses during the Class  
12 Period;

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

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

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

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

22 d. Adequacy of Representation: Plaintiff is a member of the Class and will  
23 fairly and adequately represent and protect the interests of the Class and Class Members.  
24 Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represent  
25 Plaintiff are competent and experienced in litigating large wage and hour class actions, including  
26 numerous cases virtually identical to this one (i.e., wage and hour class action cases), and other  
27 employment class actions, and will devote sufficient time and resources to the case and otherwise  
28

adequately represent the Class and Class Members.

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

**FIRST CAUSE OF ACTION**  
**FAILURE TO PROVIDE TIMELY AND DUTY-FREE MEAL BREAKS AND PAY**  
**MISSED MEAL BREAK PREMIUMS**  
**[Cal. Labor Code §§ 226.7, 512; IWC Wage Order 5-2001 Section 11]**  
**On behalf of Plaintiff and the Meal Break Class Against Defendant**

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

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

42. Section 512(a) of the California Labor Code provides, in relevant part, that: An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30-minutes, except that if the total

1 work period per day of the employee is no more than six hours, the meal period may be waived by  
2 mutual consent of both the employer and employee. An employer may not employ an employee  
3 for a work period of more than 10 hours per day without providing the employee with a second  
4 meal period of not less than 30-minutes, except that if the total hours worked is no more than 12  
5 hours, the second meal period may be waived by mutual consent of the employer and the employee  
6 only if the first meal period was not waived

7 43. Here, at least prior to January 1, 2020, Defendant violated and continues to violate  
8 Labor Code § 512 and IWC Wage Order 5-2001 § 11 by, among other things, failing to provide  
9 and schedule duty-free meal breaks on or before the fifth hour of work to Meal Break Class  
10 Member and failed to advise all other Meal Break Class Members of their meal break rights with  
11 respect to the timing of meal breaks, failed to provide Meal Break Class Members with thirty-  
12 minute, uninterrupted meal periods within the first five (5) hours of their shifts, and failed to pay  
13 meal break premiums for late meal breaks that occurred prior January 1, 2020. Instead, Defendant  
14 often required employees to take their breaks at the end of their shifts without paying any late meal  
15 break premiums.

16 44. As a result of Defendant's failure to authorize or permit lawful and timely meal  
17 periods, Plaintiff and the other Class members and Meal Period Class Members frequently did not  
18 receive compliant duty-free meal periods within the first five (5) hours of their work. As a matter  
19 of fact, Defendant changed their policy regarding the meal break effective only on January 1<sup>st</sup>,  
20 2020, implicitly acknowledging their prior violation of California's wage and hour rules regarding  
21 meal breaks, See **Exhibit 1**. As set forth in Exhibit 1, at least prior to January 1<sup>st</sup>, 2020, Plaintiff  
22 and the Meal Break Class Members did not receive timely rest (and meal) breaks during their shifts

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

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27 ///

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

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

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

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

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

48. Here, Defendant did not authorize Plaintiff and the Rest Break Class Members to take their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their shifts. As a matter of fact, Defendant changed their policy regarding the rest break effective only on January 1<sup>st</sup>, 2020, implicitly acknowledging their prior violation of California’s wage and hour rules regarding rest breaks, See **Exhibit 1**. As set forth in Exhibit 1, at least prior to January 1<sup>st</sup>, 2020, Plaintiff and the Rest Break Class Members did not receive timely rest breaks during their shifts.

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

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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**

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

51. 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...

52. As set forth above, Defendant's failure to include the start date of pay periods (prior to 2020) and its 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, prior to 2020, Defendant's wage statements issued fail to include the start date of each pay periods in violation of Labor Code § 226(a)(6).

53. 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

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

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

15       55. In addition, Defendant’s failure to furnish accurate itemized wage statements has  
16 caused Plaintiff and the other Aggrieved Employees to incur economic injuries in that they were  
17 not aware of the specific inclusive dates for which their wages were being paid, so that that needed  
18 to resort to other documents and to make various calculations to understand their wage and pay  
19 history and to assess its accuracy. This violates Section 226 of the Labor Code. *See e.g., Cicairos*  
20 *v. Summit Logistics*, 133 Cal.App.4th 949, 954 (“If it is left to the employee to add up the daily  
21 hours shown on the time cards or other records so that the employee must perform arithmetic  
22 computations to determine the total hours worked during the pay period, the requirements of  
23 section 226 would not be met”).

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

1 employee to suffer injury.

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

6 **On Behalf of Plaintiff and the Waiting Time Subclass Against Defendant**

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

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

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

16 60. As a result, Plaintiff and those members of the Class who are former employees of  
17 Defendant are entitled to collect 30 days each of wages due as waiting time penalties.

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 Subclass Against Defendant**

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

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

63. Due to Defendant’s failure to pay Plaintiff and the Class all meal and rest break

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

6 64. 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  
12 faulty compensation policies and practices described in detail above, Plaintiff and the Class are  
13 entitled to recover penalties under Labor Code § 210.

14 **SIXTH CAUSE OF ACTION**  
15 **FAILURE TO REIMBURSE BUSINESS EXPENSES**  
16 **[Cal. Labor Code § 2802]**

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

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

20 66. Pursuant to Labor Code § 2802(a) “[a]n employer shall indemnify his or her

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

1 employee for all necessary expenditures or losses incurred by the employee in direct consequence  
2 of the discharge of his or her duties, or of his or her obedience to the directions of the employer....”  
3 The purpose of this statute is “to prevent employers from passing their operating expenses on to  
4 their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting  
5 legislative history from the 2000 amendment to the statute). Labor Code Section 2802(c) also  
6 clarifies that “the term ‘necessary expenditures or losses’ shall include all reasonable costs,  
7 including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted  
8 by this section.”

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

24         68. The employer’s obligation to reimburse business-related expenses arises when the  
25 employer “knew or should have known” that its employees have incurred a business-related  
26 expense. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward  
27 Chen); *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan  
28

1 Illston) (adopting the “knew or should have known” standard from *RadioShack*). Notably, these  
2 claims are not waivable per Section 2804 of the Labor Code.

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

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

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

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

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

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

26 74. Section 90.5(a) of the Labor Code states that it is the public policy of California to  
27 enforce vigorously minimum labor standards in order to ensure employees are not required to work  
28 under substandard and unlawful conditions, and to protect employers who comply with the law

1 from those who attempt to gain competitive advantage at the expense of their workers by failing  
2 to comply with minimum labor standards.

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

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

12 77. Through its actions alleged herein, Defendant has engaged in unfair competition  
13 within the meaning of section 17200 of the California Business & Professions Code, because  
14 Defendant's conduct, as herein alleged has damaged Plaintiff and the Class Members by  
15 wrongfully denying them reimbursement for business expenses, and wrongfully denying them  
16 meal and rest period premiums, and therefore was substantially injurious to Plaintiff and the Class  
17 Members.

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

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

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

26 81. Plaintiff has assumed the responsibility of enforcement of the laws and public  
27 policies specified herein by suing on behalf of themselves and other similarly situated Class  
28

1 Members previously or presently employed by Defendant in California. Plaintiff's success in this  
2 action will enforce important rights affecting the public interest. Plaintiff will incur a financial  
3 burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'  
4 fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5, and Labor Code §§  
5 1194 and 2802.

6  
7 **EIGHTH CAUSE OF ACTION**  
8 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**  
9 **PAGA PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204, 210,**  
10 **226, 226.3, 226.7, 512, AND 2802**  
11 **(Labor Code §§ 2698-2699.5)**  
12 **On Behalf of Plaintiff and the Aggrieved Employees Against Defendant**

13 82. Plaintiff, on behalf of herself and all aggrieved employees, realleges and  
14 incorporates by reference all previous paragraphs.

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

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

21 \$100 for the initial violation per employee per pay period; and

22 \$200 for each subsequent violation per employee per pay period.

23 These penalties will be allocated 75% to the Labor Workforce Development Agency and  
24 25% to the affected employees.

25 85. In addition, as set forth above, Defendant failed to provide Plaintiff and all  
26 aggrieved employees with accurate itemized wage statements in compliance with Labor Code §  
27 226(a). Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section  
28 226 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

1 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

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

12 87. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code  
13 § 2699, et seq. because of Defendant’s violation of Labor Code §§ Labor Code §§ 201, 202, 203,  
14 204, 210, 226, 226.3, 226.7, 512, and 2802, as well as IWC Wage Order 5-2001.

### 15 JURY DEMAND

16 88. Plaintiff hereby demands trial by jury of her and the Class’s claims against  
17 Defendant, and of all claims except for the PAGA claims which are subject to a bench trial.

### 18 PRAYER FOR RELIEF

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

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

22 2. On the First Cause of Action:

23 a. A declaratory judgment that Defendant violated California Labor Code §§  
24 226.7, 512 and Section 11 of IWC Wage Order 5-2001;

25 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Meal  
26 Break Class Members for an hour of pay for each day that a timely, duty-free meal period was not  
27 provided during the Class Period.  
28

1           3.     On the Second Cause of Action:

2           a.     A declaratory judgment that Defendant violated California Labor Code §  
3 226.7, and Section 12 of IWC Wage Order 5-2001;

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

7           4.     On the Third Cause of Action:

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

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

19           5.     On the Fourth Cause of Action:

20           a.     A declaratory judgment that Defendant violated California Labor Code §§  
21 201 through 203;

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

25           6.     On the Fifth Cause of Action:

26           a.     A declaratory judgment that Defendant violated California Labor Code §§  
27 204 and 210;

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

3           7. On the Sixth Cause of Action:

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

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

7           8. On the Seventh Cause of Action:

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

11           b. Restitution, including, but not limited to, the relief permitted by sections  
12 226.7, and 2802 of the California Labor Code (i.e., pay as specified for meal and rest period  
13 premiums and reimbursement of all business-related expenses by Plaintiff and the members of the  
14 Class during the Class Period.

15           9. On the Eighth Cause of Action:

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

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

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

26 ///

27 ///

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

2  
3     Dated: September 18, 2020

Respectfully,

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

6           By:

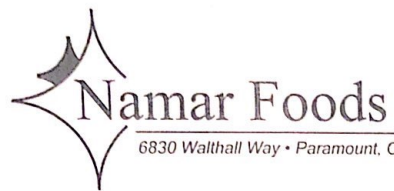


7           Craig Ackermann, Esq.

8           Amir Seyedfarshi, Esq.

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

# EXHIBIT 1



Namar Foods

CUSTOM DRY BLENDING & PACKAGING

6830 Walthall Way • Paramount, CA 90723 • (562) 531-2744 • FAX (562) 531-6255 • [www.namar.com](http://www.namar.com)

November 27, 2019

To all Namar Foods employees

Re: California labor laws taking effect 1/1/2020

Dear Namar employees:

In accordance with California Labor laws, we will be changing our break and lunch periods effective 1/1/2020. In the past, at employee's request, Namar has allowed employees to forgo their breaks, and leave ½ hr early at the end of their shifts. Unfortunately, we no longer can accommodate this request. We will now be forced to

comply with an 8.5 hr shift, with two breaks, and ½ lunch for those that take

½ hr lunches. For those employees that take an hour lunch, their shift would be a 9hr shift with two breaks, and a 1 hr lunch. Times for the new schedules are to be determined by the end of the year, and will be put together with what is best for Namar and production.

We appreciate your cooperation during this transition.

Sincerely,

Renee Rivera

CEO

Namar Foods

12/27/19

Namar Employee:

Your work schedule will change to the following starting Jan 6<sup>th</sup>, 2020

2pm start time

4:30pm break

6:30pm lunch

9pm break

10:30pm clock out