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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF SAN DIEGO**

17 Joshua Rhodes and Juan Buenrostro,  
18 individually and on behalf of all others  
19 similarly situated,

20 Plaintiffs,

21 v.

22 Coastal Transport Co. Inc., a Texas  
23 Corporation; and DOES 1 to 100, inclusive ,

24 Defendants.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**03/15/2021** at 12:41:12 PM

Clerk of the Superior Court  
By Richard Day, Deputy Clerk

**CASE NO:** 37-2021-00011509-CU-OE-CTL

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

- (1) **FAILURE TO PAY MINIMUM WAGES (LABOR CODE §§ 1194, 1194.2; IWC WAGE ORDER 9-2001);**
  - (2) **FAILURE TO PROVIDE TIMELY, DUTY-FREE MEAL PERIODS AND/OR PAY MEAL PERIOD PREMIUMS (LABOR CODE §§ 226.7, 510; IWC WAGE ORDER 9-2001);**
  - (3) **FAILURE TO PROVIDE TIMELY, DUTY-FREE REST PERIODS AND/OR PAY REST PERIOD PREMIUMS (LABOR CODE § 226.7; IWC WAGE ORDER 9-2001);**
  - (4) **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (LABOR CODE § 226);**
  - (5) **WAITING TIME PENALTIES (LABOR CODE § 201 – 203);**
  - (6) **FAILURE TO PAY TIMELY WAGES (LABOR CODE §§ 204, 210);**
  - (7) **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES (LABOR CODE § 2802);**
  - (8) **UCL VIOLATIONS (BUS. & PROF. CODE §§ 17200-17204);**
  - (9) **PAGA AND OTHER PENALTIES (LABOR CODE §§ 2698 – 2699.5); AND**
- DEMAND FOR JURY TRIAL**

1 Plaintiffs Joshua Rhodes and Juan Buenrostro, on behalf of themselves, the State of  
2 California, other aggrieved employees, and all others similarly situated (hereinafter “Class  
3 Members”) complain and allege as follows:

#### 4 **OVERVIEW OF CLAIMS**

5 1. Plaintiffs bring this action on behalf of themselves and all others similarly situated,  
6 as a 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 Coastal Transport Co., Inc., and DOES 1 to 100  
8 (“Defendant”) for their (1) failure to pay minimum wages for all times worked; (2) failure to provide  
9 timely, duty-free meal periods and/or pay meal period premiums; (3) failure to provide timely, duty-  
10 free rest periods for every four hours of work or major fraction thereof and/or pay rest period  
11 premiums; (4) failure to provide accurate itemized wage statements containing total hours worked  
12 within the one year prior to the filing of this Complaint; (5) failure to pay all wages due to former  
13 employees based on the foregoing; (6) failure to pay timely wages based on the foregoing; (7) failure  
14 to reimburse for business expenses; (8) UCL violations based on the foregoing; and (9) PAGA and  
15 other penalties based on the foregoing. As a result of the foregoing, Defendant has violated  
16 California statutory laws as described below.

17 2. The “Class Period” is designated as the period from March 2, 2017 through March  
18 31, 2021. The “PAGA Period” is designated as the period from one year prior to the sending of the  
19 PAGA letter to the LWDA (*i.e.*, on or around July 13, 2020) through March 31, 2021 and on-going.  
20 Defendant’s violations of California’s wage and hour laws and unfair competition laws, as described  
21 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 Defendants in San Diego County. One of Defendants’ business locations  
26 is located in the city of San Diego within San Diego County. Many of the acts alleged herein  
27 including Defendants’ failure to pay minimum wages for all hours worked, failure to provide timely,  
28 duty-free meal and rest periods and pay meal and rest period premiums, and failure to provide

1 accurate itemized wage statements, occurred in San Diego County. Venue is therefore proper in San  
2 Diego County.

### 3 JURISDICTION

4 4. Defendants are within the jurisdiction of this Court. Defendants transact hundreds of  
5 thousands of dollars by managing and operating a transportation company throughout the State of  
6 California, including in the County of San Diego. Thus, Defendants have obtained the benefits of  
7 the laws of the State of California. In addition, Plaintiffs assert no claims arising under federal law.  
8 Rather, Plaintiffs bring causes of action based solely on, and arising from, California law. The  
9 claims of the Class and the claims of the aggrieved employees are also based solely on California  
10 law described herein.

### 11 THE PARTIES

#### 12 A. The Plaintiff

13 5. Plaintiffs are California residents and were truck drivers employed by Defendant in  
14 California during the relevant time period. From at least four years from the filing of this complaint  
15 through the present, and on-going, Defendants' truck driver employees, including Plaintiffs during  
16 their employment, were not paid all minimum wages for all hours worked, were not provided timely  
17 and duty-free meal and rest periods and/or provided meal and rest period premiums; were not  
18 provided accurate and/or complete wage statements; did not receive reimbursement for all business  
19 expenses incurred, did not receive all of their wages due upon termination of employment, and did  
20 not receive all wages timely.

21 6. Plaintiffs represent the state of California and groups of aggrieved employees defined  
22 as:

23 All individuals who are or were employed by Coastal Transport Co., Inc. as truck drivers in  
24 the State of California and who worked one or more shifts during the PAGA Period  
(hereinafter referred to as "Aggrieved Employees").

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

26 All individuals who or were employed by Coastal Transport Co. Inc. as truck drivers in the  
27 State of California and who worked one or more shifts during the Class Period (hereinafter  
28 referred to as "Class Members" or the "Class").

///

1 **B. The Defendant**

2 8. Defendant Coastal Transport Co., Inc is a Texas corporation headquartered in San  
3 Antonio, Texas and is doing business in California as CTCO-Coastal Transport Co. Inc. To operate  
4 its transportation fleet, Defendant employs truck driver, such as Plaintiffs, the Class Members, and  
5 the Aggrieved Employees.

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

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

18 11. Defendants were and are the employer of Plaintiffs, the Aggrieved Employees and  
19 Class Members for all relevant time periods. At any one time during the Class Period, and the PAGA  
20 Covered Period, Defendants employed approximately 55 truck drivers in California. Due to turnover  
21 during the Class Period, the total number of Class Members is estimated to be 123.

22 **FACTUAL ALLEGATIONS**

23 12. Defendants operate and, at all times during the PAGA Period and the Class Period,  
24 have done and do business in California serving the transportation industry in California and  
25 throughout the world. Defendants, in the course of operating their business in California during the  
26 Class Period and the PAGA Period, employed Plaintiff, the Aggrieved Employees and the Class  
27 Members.

28 13. Labor Code § 1197 states the California requirement that employees must be paid at

1 least the minimum wage fixed by the Commission, and any payment of less than the minimum wage  
2 is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the legal  
3 minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum  
4 wage.” IWC Wage Order 9-2001 also obligates employers to pay each employee minimum wages  
5 *for all hours worked*. These minimum wage standards apply to each hour employees worked for  
6 which they were not paid. Therefore, an employer’s failure to pay for any particular hour of time  
7 worked by an employee is unlawful, even if averaging an employee’s total pay over all hours  
8 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose,*  
9 *Inc.* (2005) 135 Cal.App.4th 314, 324.

10 14. Furthermore, pursuant to Labor Code § 1198, “[t]he maximum hours of work and the  
11 standard conditions of labor fixed by the commission shall be the maximum hours of work and the  
12 standard conditions of labor for employees. The employment of any employee for longer hours than  
13 those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

14 15. During the relevant time period, Plaintiffs, the Class, and the Aggrieved Employees  
15 were paid on a mixed basis of mileage pay, hourly pay and accessorial pay by the Defendants in the  
16 state of California.

17 16. Despite the fact that Defendants failed to provide the Class and Aggrieved Employees  
18 with timely meal periods of at least thirty (30) minutes in length, Defendants had a policy and  
19 practice of automatically deducting thirty (30) minutes from each shift worked in excess of six (6)  
20 hours, regardless of whether or not the employee received a duty-free meal period and/or the amount  
21 of time spent on the meal period, if any. Therefore, during those regular instances where the Class  
22 and Aggrieved Employees did not receive a full thirty-minute meal period (or did not receive a meal  
23 period at all), they were deprived of minimum wages for all hours worked during that shift.

24 17. Labor Code § 1194 provides, in part, that any employee receiving less than the legal  
25 minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage,  
26 including interest thereon, reasonable attorney’s fees, and costs of suit.

27 18. Plaintiffs and the other Class Members and Aggrieved Employees suffered and  
28 continue to suffer losses related to the use and enjoyment of compensation due and owing to them

1 as a direct result of Defendants' unlawful acts and Labor Code violations.

2 19. 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 20. 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 *Brinker* Court explained in the context of rest breaks that employer liability attaches  
10 from adopting an unlawful policy.

11 21. Here, Defendants violated and continue to violate Labor Code § 512 and IWC Wage  
12 Order 9-2001 § 11 by, among other things, failing to provide timely, duty-free meal breaks to Class  
13 Members and Aggrieved Employees who could not leave their trucks and by failing to advise all  
14 other Aggrieved Employees of their California meal break rights, failing to provide Class Members  
15 and Aggrieved Employees with thirty-minute, uninterrupted meal periods within the first five (5)  
16 hours of their shifts, and failing to pay meal break premiums for on-duty and/or late or missed meal  
17 breaks. Instead, Defendants often required employees to take their breaks either on-duty or after five  
18 (5) hours from the start time of their shifts. As a result of Defendants' failure to authorize or permit  
19 lawful meal periods, Plaintiffs and the other Class members and Aggrieved Employees frequently  
20 did not receive compliant duty-free meal periods within the first five (5) hours of their work.

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

26 An employer is required to authorize and permit the amount of rest break time called for  
27 under the wage order for its industry. If it does not—if, for example, it adopts a uniform  
28 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.*

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

2           23.     Here, Defendants did not authorize Plaintiffs, the Rest Break Class Members, and the  
3 Rest Break Aggrieved Employees to take their ten-minute rest breaks during each 4 hours of work  
4 or major fraction thereof during their shifts. Moreover, Defendants' scheduling practices were often  
5 rest break preclusive for Rest Break Class Members and Rest Break Aggrieved Employees.

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

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

21           Plaintiff, the Class Members, and the Aggrieved Employees receive a bi-monthly paystub  
22 from Defendants that fails to specify the exact number of hours worked and the rate of pay for each  
23 hour. Plaintiffs, the Class, and the Aggrieved Employees received compensation based on a system  
24 including mileage payment, hourly rates and loading payments. Plaintiffs, the Class, and the  
25 Aggrieved Employees' wage statements do not state the total number of hours and the corresponding  
26 rate that each employee receives on the wage statement itself during the Class and PAGA periods.  
27 Moreover, due to, *inter alia*, Defendants' failure to pay Plaintiffs, the Class, and the other Aggrieved  
28 Employees for all hours worked, and to provide them with lawful and timely meal and rest periods  
(and/or pay meal and rest break premiums), the wage statements issued by Defendants to Plaintiffs,  
the Class, and the other Wage Statement Aggrieved Employees do not indicate the correct amount  
of gross wages earned, total hours worked, 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). Indeed, the wage statements track a form of "fictional  
time" as a result of the automatic lunch deduction; see *Cornn v. UPS*, No. C03-2001 TEH, 2005

1 U.S. Dist. LEXIS 30419 (N.D. Cal. Aug. 26, 2005), at \* 7-8.

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

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

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

26 28. Aggrieved Employees will prevail on their claim for PAGA penalties under Labor  
27 Code § 226(a) without the need to show "injury" or "willfulness." *See Willner v. Manpower Inc.* 35  
28 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.”).

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

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

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

32. Due to Defendants’ failure to pay Plaintiffs, the Class, and the other Aggrieved Employees all minimum wages owed and meal and rest break period premiums owed,<sup>1</sup> Defendant

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<sup>1</sup> Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 \*23 (N.D. Cal. Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5’”); *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

(continued . . .)

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

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

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

21 35. Specifically, under Labor Code §2802, employers must reimburse employees for  
22 required work-related use of personal cell phones, regardless of whether they incur any additional  
23 out-of-pocket expense from that work-related use. *See Cochran v. Schwan’s Home Service*, 228 Cal.  
24 App. 4th 1137 (2014) (reversing denial of class certification in cell phone reimbursement class  
25 action). *Cochran* held that “[i]f an employee is required to make work-related calls on a personal  
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27 [distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay wages...can be based on amounts  
28 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 cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter  
2 whether the phone bill is paid for by a third person, or at all. . . . It is irrelevant whether the employee  
3 changed plans to accommodate work-related cell phone usage. . . . *To show liability under section*  
4 *2802, an employee need only show that he or she was required to use a personal cell phone to make*  
5 *work-related calls, and he or she was not reimbursed.” Id.* at 1144-45 (emphasis added); *see also*  
6 *Aguilar v. Zep, Inc.*, 2014 WL 4245988 \*17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion  
7 for partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue*  
8 *Shield of California*, 2014 WL 6982943, at \*21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen)  
9 (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

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

16 37. Under Labor Code § 2802, if an employer requires employees to use their cell phone  
17 for work, as is the case here for taking pictures of the products at the assembly line, then Defendants  
18 must reimburse employees for a reasonable portion of their monthly cell phone bills. Here, since  
19 Plaintiffs and the Reimbursement Aggrieved Employees were expected to use their cell phone for  
20 work during their work hours and be in touch with the dispatchers and other drivers, then Defendant  
21 must reimburse employees.

22 38. The administrative prerequisites of PAGA were satisfied after 65 days have elapsed  
23 from July 13, 2020 (i.e., 65 days since Plaintiff Joshua Rhodes’ mailing of the PAGA notice).  
24 Plaintiff Joshua Rhodes has paid the \$75.00 fee and has otherwise satisfied the administrative  
25 prerequisites of PAGA, as amended. The parties also agreed to a tolling agreement tolling applicable  
26 claims from September 30, 2020 to January 31, 2021.

27 39. Plaintiffs by this action seeks to recover, on behalf of themselves and all other current  
28 and former Aggrieved Employees of Defendants, the civil penalties provided by PAGA, as specified

1 in Labor Code § 2699(f). Plaintiffs seek to recover the PAGA civil penalties through a representative  
2 action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal.  
3 4th 969 (2009). Class certification of the PAGA claims is not required.

#### 4 **CLASS ACTION ALLEGATIONS**

5 40. Plaintiffs bring this action, on behalf of themselves and all others similarly situated,  
6 as a class action pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent Classes  
7 composed of and defined as:

8 All individuals who are or were employed by Coastal Transport Co. Inc. as truck drivers in  
9 the State of California and who worked one or more shifts during the Class Period.  
10 (hereinafter referred to as “Class Members” or the “Class”).

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

14 a. Numerosity: The potential members of the Class as defined are so numerous  
15 that joinder of all the members of the Class is impracticable. While the precise number of Class  
16 Members has not been determined at this time, Plaintiff is informed and believes that Defendant has,  
17 on average, at any one time during the Class Period employed over 100 Class Members as non-  
18 exempt employees who were subject to Defendants’ unlawful policies. Due to turnover, the total  
19 number of Class Members is estimated to be 123. The Class Members are dispersed throughout  
20 California. Joinder of all members of the proposed classes is therefore not practicable.

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

24 i. Whether Defendants violated Labor Code sections 1194, 1197, 1197 and  
25 section 4 of IWC Wage Order No. 9 by failing to pay all minimum wages owed to Plaintiffs and the  
26 Class in the California during the Class Period;

27 ii. Whether Defendants violated Labor Code sections 226.7 and 512 and Section  
28 11 of IWC Wage Order No. 9 by failing to provide timely, duty-free meal periods to Plaintiffs and

1 the members of the Class in California during the Class Period;

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

5           iv. Whether Defendants violated Labor Code section 226.7 and Section 12 of  
6 IWC Wage Order No. 9 by failing to provide timely, duty-free rest periods to Plaintiffs and the  
7 members of the Rest Break Class in California during the Class Period;

8           v. Whether Defendants 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-free  
10 rest period was not provided in California during the Class Period;

11           vi. Whether Defendants failed to provide Plaintiff and the members of the Wage  
12 Statement Class complete wage statements containing all hours worked in violation of Labor Code  
13 Section 226(a);

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

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

19           ix. Whether Defendants violated section 2802 of the Labor Code by failing to  
20 reimburse Plaintiffs and the Class for all business expenses incurred during the Class Period;

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

24           xi. Whether Defendants engaged in an unfair practice and violated section 17200  
25 of the California Business and Professions Code by failing to provide Plaintiff and members of the  
26 Class with meal period premiums for each day they were not provided a compliant meal break;

27           xii. Whether Defendants engaged in an unfair practice and violated section 17200  
28 of the California Business and Professions Code by failing to provide Plaintiff and the members of

1 the Rest Break Class with timely, duty-free rest breaks during the Class Period;

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

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

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

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

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

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

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

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

9  
10 **FIRST CAUSE OF ACTION**  
**FAILURE TO PAY MINIMUM WAGES**  
11 **[Cal. Labor Code §§ 1194, 1194.2; Section 4 of IWC Wage Order (9-2001)]**  
**On behalf of Plaintiffs and the Class Against Defendants**

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

14 43. The actionable period for this cause of action is three years prior to the filing of this  
15 Complaint through the present, and on-going until the violations are corrected or the Class is  
16 certified.

17 44. Section 1194 of the Labor Code provides, in relevant part:  
18 Notwithstanding any agreement to work for a lesser wage, any employee  
19 receiving less than minimum wage...applicable to the employee is entitled to  
20 recover in a civil action the unpaid balance of the full amount of this minimum  
21 wage ..., including interest thereon, reasonable attorney's fees, and costs of suit.

22 45. Section 1194.2 of the Labor Code provides, in relevant part:  
23 In any action under...Section 1194 to recover wages because of the payment of  
24 a wage less than the minimum wage fixed by an order of the commission, an  
25 employee shall be entitled to recover liquidated damages in an amount equal to  
26 the wages unlawfully unpaid and interest thereon.

27 46. During the Class Period, Plaintiffs and Class Members were not paid minimum wages  
28 owed for all hours worked under Labor Code § 1194.

47. In failing to pay for all time worked, Plaintiffs and the Class are entitled to recover,  
either their unpaid hourly wages due, or minimum wage plus interest and/or liquidated damages in  
an additional amount equal to the total amount of wages unlawfully withheld during the Class Period

1 for rest period time.

2 48. Pursuant to section 1194.2 of the Labor Code, Plaintiffs and the Class are also entitled  
3 to recover interest, costs, and attorneys' fees associated with this cause of action.

4 **SECOND CAUSE OF ACTION**  
5 **FAILURE TO PROVIDE TIMELY, DUTY-FREE MEAL BREAKS AND FAILURE**  
6 **TO PAY MISSED MEAL BREAK PREMIUMS**  
7 **[Cal. Labor Code §§ 226.7, 512; Section 11 of IWC Wage Order No. 9]**  
8 **On behalf of Plaintiff and the Class**

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

11 50. The actionable period for this cause of action is three years prior to the filing of this  
12 action through the present.

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

16 52. Section 11(A) and (B) of IWC Wage Order No. 9 provide that:

17 "No employer shall employ any person for a work period of more than five (5)  
18 hours without a meal period of not less than 30 minutes, except that when a  
19 work period of not more than six (6) hours will complete the day's work the  
20 meal period may be waived by mutual consent of the employer and the  
21 employee...An employer may not employ an employee for a work period of  
22 more than ten (10) hours per day without providing the employee with a second  
23 meal period of not less than 30 minutes, except that if the total hours worked is  
24 no more than 12 hours, the second meal period may be waived by mutual  
25 consent of the employer and the employee only if the first meal period was not  
26 waived.

27 53. Section 11(C) of IWC Wage Order No. 9 provides that:

28 Unless the employee is relieved of all duty during a 30 minute meal period, the  
meal period shall be considered an —on duty‖ meal period and counted as time  
worked. An —on duty‖ meal period shall be permitted only when the nature of  
the work prevents an employee from being relieved of all duty and when by  
written agreement between the parties an on-the-job paid meal period is agreed  
to. The written agreement shall state that the employee may, in writing, revoke  
the agreement at any time.

54. Finally, Section 11(D) of IWC Wage Order No. 9 provides that:

If an employer fails to provide an employee a meal period in accordance with

the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

55. Here, by failing to provide them with duty-free timely 30-minute meal breaks, on their shifts greater than 5 hours in length, Defendants have violated California Labor Code § 226.7 and IWC Wage Order No. 9, and are liable to Plaintiffs and the Class.

56. As a result of the unlawful acts of Defendants, Plaintiffs and the Class were not provided timely duty-free meal breaks, and are entitled to recovery under Cal. Labor Code §226.7 in the amount of one additional hour of pay at the employee's regular rate of compensation for each work period greater than 5 hours in California during each day in which Defendants failed to provide timely duty-free meal periods as required by California law.

**THIRD 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 9-2001]**  
**On behalf of Plaintiffs and the Rest Break Class Against Defendants**

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

58. 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].

59. Here, Defendants did not authorize Plaintiffs 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. Plaintiffs and the Rest Break Class Members did not receive timely rest breaks during their shifts. Accordingly, Defendants are liable to Plaintiffs and the Rest Break Class Members for rest

1 break premiums for all such shifts on which they were not able to take compliant rest breaks.

2 **FOURTH CAUSE OF ACTION**  
3 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**  
4 **[Cal. Labor Code § 226(a)]**

5 **On behalf of Plaintiffs and the Wage Statement Class Members Against Defendants**

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

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

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

24 62. As set forth above, Defendant's wage statements issued fail to specify the exact  
25 number of hours worked and the rate of pay for each hour. Plaintiffs and the Wage Statement Class  
26 Members received compensation based on a system including mileage payment, hourly rates and  
27 loading payments. Plaintiffs and the Wage Statement Class Members' wage statements do not state  
28 the total number of hours and the corresponding rate that each employee receives on the wage  
statement itself during the statutory period. Moreover, due to, *inter alia*, Defendants' failure to pay  
Plaintiffs and the other Wage Statement Class Members for all hours worked (as a result of  
Defendant's automatic lunch deductions), and to provide them with lawful and timely meal periods  
(and/or pay late meal break premiums), the wage statements issued by Defendants to Plaintiffs and  
the other Wage Statement Class Members do not indicate the correct amount of gross wages earned,  
total hours worked, 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 §

1 226(a)(1), (2), (5) and (9). Indeed, the wage statements track a form of “fictional time” as a result  
2 of the automatic lunch deduction; see *Cornn v. UPS*, No. C03-2001 TEH, 2005 U.S. Dist. LEXIS  
3 30419 (N.D. Cal. Aug. 26, 2005), at \* 7-8.

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

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

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

28 ///

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

**On Behalf of Plaintiffs and the Waiting Time Class Against Defendants**

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

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

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

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

**On Behalf of Plaintiffs and the Wage Statement Class Against Defendants**

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

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

71. Due to Defendants’ failure to pay Plaintiffs and the Wage Statement Class all minimum wages and meal and rest break period premiums owed,<sup>2</sup> Defendant violated Labor Code

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<sup>2</sup> Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 \*23 (N.D. Cal. Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling*

(continued . . .)

§ 204 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis. *See 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).

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

**SEVENTH CAUSE OF ACTION**  
**FAILURE TO REIMBURSE BUSINESS EXPENSES**  
**[Cal. Labor Code § 2802]**

**On Behalf of Plaintiffs and the Reimbursement Class Against Defendants**

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

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

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*vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5’”); *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 history from the 2000 amendment to the statute). Labor Code Section 2802(c) also clarifies that “the  
2 term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited  
3 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

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

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

24 77. Under Labor Code § 2802, if an employer requires employees to use their cell phone  
25 for work, as is the case, then Defendants must reimburse employees for a reasonable portion of their  
26 monthly cell phone bills. Here, the Class Members were expected to use their cell phones while  
27 driving at all relevant times.

28 78. Accordingly, Defendants violated Labor Code § 2802 and continues to do so by

1 failing to reimburse the Class Members for all work-related cell phone charges they incurred in  
2 connection with their job duties to perform their job duties.

3 **EIGHTH CAUSE OF ACTION**  
4 **UNFAIR COMPETITION LAW VIOLATIONS**  
5 **(BUS. & PROF. CODE § 17200, ET SEQ.)**  
6 **On Behalf of Plaintiffs and the Class Against Defendants**

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

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

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

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

23 83. As a direct and proximate result of Defendants’ unlawful business practices, Plaintiff  
24 and the Class Members have suffered economic injuries. Defendants have profited from their  
25 unlawful, unfair, and/or fraudulent acts and practices.

26 84. Plaintiffs and similarly situated Class Members are entitled to monetary relief  
27 pursuant to Business & Professions Code §§ 17203 and 17208 for unpaid minimum wages, unpaid  
28 meal and rest period premiums and unreimbursed business expenses due and interest thereon, from  
at least four years prior to the filing of this complaint through to the date of such restitution, at rates

1 specified by law. Defendants should be required to disgorge all the profits and gains they have  
2 reaped and restore such profits and gains to Plaintiffs and Class Members, from whom they were  
3 unlawfully taken.

4 85. Through its actions alleged herein, Defendants have engaged in unfair competition  
5 within the meaning of section 17200 of the California Business & Professions Code, because  
6 Defendants' conduct, as herein alleged has damaged Plaintiffs and the Class Members by wrongfully  
7 denying them all minimum wages owed, all meal and rest period premiums due, and therefore was  
8 substantially injurious to Plaintiffs and the Class Members.

9 86. Defendants engaged in unfair competition in violation of sections 17200 et seq. of  
10 the California Business & Professions Code by violating Sections 226.7 and 512 of the California  
11 Labor Code, and Sections 11 and 12 of the IWC Wage Order 9-2001.

12 87. Defendants' course of conduct, act and practice in violation of the California laws  
13 mentioned above constitute independent violations of sections 17200 et seq. of the California  
14 Business and Professions Code.

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

17 89. Plaintiffs have assumed the responsibility of enforcement of the laws and public  
18 policies specified herein by suing on behalf of themselves and other similarly situated Class  
19 Members previously or presently employed by Defendants in California. Plaintiffs' success in this  
20 action will enforce important rights affecting the public interest. Plaintiff will incur a financial  
21 burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'  
22 fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5.

23 **NINTH CAUSE OF ACTION**  
24 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**  
25 **PAGA PENALTIES FOR VIOLATIONS OF**  
26 **LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, 1194, 1194.2, 1197, 1198,**  
27 **AND 2802**  
28 **(Labor Code §§ 2698-2699.5)**  
**On Behalf of Plaintiffs and the Aggrieved Employees Against Defendants**

90. Plaintiffs, on behalf of themselves and all aggrieved employees, reallege and

1 incorporate by reference all previous paragraphs.

2 91. Based on the above allegations incorporated by reference, Defendants violated Labor  
3 Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, 1194, 1194.2, 1197. 1197, and 2802; as  
4 well as IWC Wage Order 9-2001.

5 92. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiffs and  
6 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial  
7 subject to the following formula:

8 \$100 for the initial violation per employee per pay period; and

9 \$200 for each subsequent violation per employee per pay period.

10 These penalties will be allocated 75% to the Labor Workforce Development Agency and  
11 25% to the affected employees.

12 93. As set forth above, Defendants failed to provide Plaintiffs and all aggrieved  
13 employees with accurate itemized wage statements in compliance with Labor Code § 226(a). Labor  
14 Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be  
15 subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation  
16 in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a  
17 subsequent citation, for which the employer fails to provide the employee a wage deduction  
18 statement or fails to keep the required in subdivision (a) of Section 226.” Also, with respect to all  
19 pay periods in which a missed or late meal break premium was paid, Defendants failed to make any  
20 associated PAGA penalties that were triggered by same. In these instances, when Defendants paid  
21 late or missed meal break premiums to Plaintiff and the Aggrieved Employees, pursuant to Labor  
22 Code section 226.7, these late or missed meal break premiums demonstrated violations of Labor  
23 Code section 226.7, as well as Section 512 of the Labor Code, that give rise to independent PAGA  
24 penalty claims. *See Kim v. Reins International California, Inc.*, 9 Cal.5<sup>th</sup> 73 (Mar. 12, 2020) (“For  
25 example, employers can pay an additional hour of wages as a remedy for failing to provide meal and  
26 rest breaks. (section 226.7(c)) But we have held that payment of this statutory remedy “does  
27 not excuse a section 226.7 violation.” (*Kirby v. Immoos Fire Protection, Inc.* (2012), 53 Cal.4<sup>th</sup>  
28 1244, 1256”).

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

95. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code § 2699, et seq. because of Defendants' violation of Labor Code §§ Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, 1194, 1194.2, 1197, 1198, and 2802; as well as IWC Wage Order 9-2001.

## JURY DEMAND

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

## PRAYER FOR RELIEF

Wherefore, Plaintiffs, on behalf of themselves and the members of the Class, pray for judgment against Defendants 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 Defendants violated California Labor Code sections 1194, 1194.2, and section 4 of IWC Wage Order 9-2001;
  - b. An award to Plaintiffs and other members of the Class in the amount of their unpaid wages owed to them, plus interest and/or liquidated damages during the class period;
  - c. An award to Plaintiffs and the Class Members of their attorneys' fees and

costs of suit to the extent permitted by law, including, but not limited to, section 1194 of the California Labor Code and section 1021.5 of the California Code of Civil Procedure;

3. On the Second Cause of Action:

a. A declaratory judgment that Defendants violated California Labor Code § 226.7, and Section 11 of IWC Wage Order 9-2001;

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

4. On the Third Cause of Action:

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

b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiffs 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.

5. On the Fourth Cause of Action:

a. A declaratory judgment that Defendants violated California Labor Code § 226 by issuing inaccurate and/or incomplete wage statements to Plaintiffs and the wage statement Class Members;

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

5. On the Fifth Cause of Action:

a. A declaratory judgment that Defendants violated California Labor Code §§ 201 through 203;

b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiffs and

1 the Waiting Time Class members for waiting time penalties in the amount of 30 days' wages per  
2 waiting time Class Member.

3 6. On the Sixth Cause of Action:

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

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

8 7. On the Seventh Cause of Action:

9 a. A declaratory judgment that Defendants violated California Labor Code §  
10 2802;

11 b. Pursuant to Labor Code § 2802, an award to Plaintiffs and the Class for  
12 penalties pursuant to Labor Code § 2802.

13 8. On the Eighth Cause of Action:

14 a. That the Court find and declare that Defendants have violated the UCL and  
15 committed unfair and unlawful business practices by failing to pay minimum wages and meal and  
16 rest break premiums;

17 b. Restitution, including, but not limited to, the relief permitted by section 226.7,  
18 1194, and 2802 of the California Labor Code (i.e., pay as specified for minimum wages owed, meal  
19 and rest period premiums, and reimbursement of all business-related expenses to Plaintiffs and the  
20 members of the Class during the Class Period.

21 9. On the Ninth Cause of Action:

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

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

1 the PAGA claims;

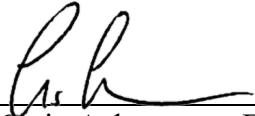
2 c. An award of all costs incurred by the undersigned counsel for Plaintiff in  
3 connection with Plaintiff's and Aggrieved Employees' PAGA claim against Defendants, as provided  
4 for in Labor Code § 2699(g)(1); and

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

6  
7 Dated: March 12, 2021

Respectfully,

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

10 By: 

11 Craig Ackermann, Esq.

12 Amir Seyedfarshi, Esq.

13 *Counsel for Plaintiffs, the Class, and the*  
14 *Aggrieved Employees*