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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SACRAMENTO**

17 Daniel Davenport and Joshua Eberwein,
18 individually and on behalf of all others
19 similarly situated,

20 Plaintiffs,

21 v.

22 Gary Krezman Electric, Inc., a California
23 Corporation; and DOES 1 to 100, inclusive

24 Defendant.

25 **CASE NO:**

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

28 (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 16-2001;
(2) FAILURE TO PROVIDE TIMELY,
DUTY-FREE REST PERIODS AND/OR PAY
REST PERIOD PREMIUMS (LABOR CODE
§ 226.7; IWC WAGE ORDER 16-2001);
(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 PAY OVERTIME
WAGES (LABOR CODE §§ 510, 1194, 1198);
(7) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802);
(8) UCL VIOLATIONS (BUS. & PROF.
CODE §§ 17200-17204); AND
(9) PAGA AND OTHER PENALTIES
(LABOR CODE §§ 2698 – 2699.5);
DEMAND FOR JURY TRIAL

FILED
Superior Court Of California,
Sacramento
10/20/2020
irmo2
By _____, Deputy
Case Number:
34-2020-00287380

BY FAX

1 Plaintiffs Daniel Davenport and Joshua Eberwein, 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 Gary Krezman Electric, Inc., and DOES 1 to 100
8 (“Defendant”) for its (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 pay
10 meal period premiums for late meal breaks; (2) failure to provide timely, duty-free rest periods for
11 every four hours of work or major fraction thereof and/or pay rest period premiums; (3) failure to
12 provide accurate itemized wage statements within the one year prior to the filing of this Complaint;
13 (4) failure to pay all wages due to former employees based on the foregoing; (5) failure to pay timely
14 wages based on the foregoing; (6) failure to pay overtime wages; (7) failure to reimburse for business
15 expenses; (8) UCL violations based on the foregoing; and (9) PAGA and other penalties based on
16 the foregoing. As a result of the foregoing, Defendant has violated California statutory laws as
17 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 August 6, 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 Sacramento County. Defendant’s headquarters is located in
27 Sacramento within Sacramento County. Many of the acts alleged herein including Defendant’s
28

1 failure to provide timely and duty-free meal and rest periods and pay meal and rest period premiums,
2 failure to provide accurate itemized wage statements, failure to pay all wages due to former
3 employees, failure to pay timely wages, failure to pay overtime, and failure to reimburse for business
4 expenses occurred in Sacramento County. Venue is therefore proper in Sacramento County.

5 JURISDICTION

6 4. Defendant is within the jurisdiction of this Court. Defendant transacts hundreds of
7 thousands of dollars by managing and operating an electrical company throughout the State of
8 California, including in the County of Sacramento. Thus, Defendant has obtained the benefits of the
9 laws of the State of California. In addition, Plaintiffs assert no claims arising under federal law.
10 Rather, Plaintiffs bring causes of action based solely on, and arising from, California law. The
11 claims of the Class and the claims of the aggrieved employees are also based solely on California
12 law described herein.

13 THE PARTIES

14 A. The Plaintiff

15 5. Plaintiffs are California residents and were non-exempt employees of Defendant in
16 California during the relevant time period. From at least four years from the filing of this complaint
17 through the present, and on-going, Defendant's non-exempt employees, including Plaintiffs during
18 their employment, were not provided timely and duty-free meal and rest periods and/or provided
19 meal and rest period premiums; were not paid proper overtime; were not provided accurate and/or
20 complete wage statements; did not receive all of their wages due upon termination of employment,
21 did not receive all wages timely, and did not receive reimbursement for business expenses.

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

24 All non-exempt individuals who or were employed by Gary Krezman Electric, Inc. in the
25 State of California during the PAGA Period (hereinafter referred to as "Aggrieved
26 Employees").

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

- 1 b. All Aggrieved Employees who did not receive their timely ten-minute, duty free
2 rest breaks while working for Defendant during the PAGA Period (hereinafter
3 referred to as “Rest Break Aggrieved Employees”);
- 4 c. All Aggrieved Employees who did not receive their timely thirty-minute meal
5 break on or before the fifth hour of work while working for Defendant on shifts
6 greater than five hours or who received a missed or late meal break premium
7 payment during the PAGA Period (hereinafter referred to as “Meal Break
8 Aggrieved Employees”);
- 9 d. All Aggrieved Employees who worked more than 8 hours in a day or more than
10 40 hours in a week and who did not receive overtime pay at the rate of 1.5 times
11 their regular rate of pay for their overtime hours worked during the PAGA Period
12 (“Overtime Aggrieved Employees”)
- 13 e. All Aggrieved Employees whose employment with Defendant terminated during
14 the PAGA Period (hereinafter referred to “Waiting Time Penalty Aggrieved
15 Employees”);

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

- 17 a. All non-exempt individuals who or were employed by Gary Grezman Electric
18 Inc. in the State of California during the Class Period and ending when notice to
19 the Class is sent. (hereinafter referred to as “Class Members” or the “Class”).
- 20 b. All Class Members who were issued one or more wage statements from
21 Defendant during the period from one year prior to the filing of this Complaint
22 and continuing into the present (hereinafter referred to as “Wage Statement Class
23 Members”);
- 24 c. All Class Members who did not receive their timely ten-minute, duty free rest
25 breaks while working for Defendant during the Class Period (hereinafter referred
26 to as “Rest Break Class Members”);
- 27 d. All Class Members who did not receive their timely thirty-minute meal break on
28 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”);
- e. All Aggrieved Employees who worked more than 8 hours in a day or more than
40 hours in a week and who did not receive overtime pay at the rate of 1.5 times
their regular rate of pay for their overtime hours worked during the Class Period
 (“Overtime Class Members”); and
- f. All Class Members whose employment with Defendant terminated during the
period from three years prior to the filing of this Complaint and continuing into
the present (hereinafter referred to “Waiting Time Penalty Class Members”).

1 **B. The Defendant**

2 8. Defendant Gary Krezman Electric, Inc is a California corporation headquartered in
3 Sacramento, California. To operate its construction projects, Defendant employs non-exempt
4 employees, such as Plaintiffs, the Class Members, and the Aggrieved Employees.

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

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

17 11. Defendant was and is the employer of Plaintiffs, the Aggrieved Employees and Class
18 Members for all relevant time periods. At any one time during the Class Period, and the PAGA
19 Covered Period, Defendant employed approximately 100 non-exempt individuals in California. Due
20 to turnover during the Class Period, the total number of Class Members is estimated to be over 400.

21 **FACTUAL ALLEGATIONS**

22 12. Defendant operates and, at all times during the PAGA Period and the Class Period,
23 has done and does business in California managing and operating an electrical company. Defendant,
24 in the course of operating its business in California during the Class Period and the PAGA Period,
25 employed Plaintiff, the Aggrieved Employees and the Class Members.

26 13. Labor Code § 512 requires employers to provide employees with a thirty (30) minute
27 uninterrupted and duty-free meal period within the first five (5) hours of an employee's shift.

Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

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

15. Here, Defendant violated and continues to violate Labor Code § 512 and IWC Wage Order 5-2001 § 16 by, among other things, failing to provide and schedule duty-free 30-minute meal breaks on or before the fifth hour of work to Meal Break Aggrieved Employees and Meal Break Class Members and failed to advise all other Meal Break Aggrieved Employees and Meal Break Class Members of their meal break rights with respect to the timing of meal breaks, failed to provide Meal Break Aggrieved Employees and Meal Break Class Members with thirty-minute, uninterrupted meal periods within the first five (5) hours of their shifts, and failed to pay meal break premiums for late meal breaks. Instead, Defendant often required employees to take their meal breaks at the end of their shifts without paying any late meal break premiums. As a result of Defendant’s failure to authorize or permit lawful and timely meal periods, Plaintiffs and the other Meal Period Class Members and Meal Period Aggrieved Employees frequently did not receive compliant duty-free meal periods within the first five (5) hours of their work. Furthermore, when Defendant paid missed or late meal break premiums, thereby admitting to 226.7 and 512 violations, Defendant failed to make any PAGA penalty payments associated with these violations.

16. Under Labor Code § 226.7, if an employer maintains a uniform policy or practice 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

1 policy authorizing and permitting only one rest break for employees working a seven-hour
2 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].

3 17. Here, in addition to the meal break violations, Defendant did not authorize Plaintiffs,
4 the Rest Break Class Members, and the Rest Break Aggrieved Employees to take their ten-minute
5 rest breaks during each 4 hours of work or major fraction thereof during their shifts. Moreover,
6 Defendant's scheduling practices were often rest break preclusive for Rest Break Class Members
7 and Rest Break Aggrieved Employees.

8 18. Labor Code § 510 provides that any work in excess of eight hours on any day, as well
9 as all hours worked on the seventh consecutive day of a workweek, shall be compensated at the rate
10 of no less than 1.5 times the regular rate of pay. See also Section 3(A) of IWC Wage Order No. 16.

11 19. Here, Defendant hired Plaintiffs, Class Members, and the Overtime Aggrieved
12 Employees to work as electricians in California and to work on Defendant's various projects.
13 Plaintiffs, the Class, and the Overtime Aggrieved Employees often worked more than 8 hours and
14 over 40 hours per week. In fact, Plaintiffs, the Class, and the Aggrieved Employees submitted daily
15 and weekly time logs showing that, approximately 3 times per week, they worked 2 to 3 hours of
16 daily overtime. The same time records also show that Plaintiffs, the Class, and the Overtime
17 Aggrieved Employees routinely worked over 8 hours per day and/or over 40 hours per week without
18 receiving overtime pay at the appropriate overtime rate for their overtime hours.

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

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

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

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

15 22. Defendant's failure to furnish accurate itemized wage statements has caused
16 Plaintiffs, the Wage Statement Class Members, and the other Wage Statement Aggrieved Employees
17 to incur economic damages in that they were not aware that they were owed overtime wages and
18 that they were not paid appropriate premiums for their non-compliant statutory rest breaks and meal
19 periods. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee
20 to add up the daily hours shown on the time cards or other records so that the employee must perform
21 arithmetic computations to determine the total hours worked during the pay period, the requirements
22 of section 226 would not be met"); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D.
23 Cal. 2011) (wage statements violated California Labor Code by not including, *inter alia*, total hours
24 worked giving rise to claims under both Section 226 and for PAGA penalties); Labor Code §
25 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section
26 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the
27 gross or net wages earned by the employee during the pay period).

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

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

15 25. Further and in addition to the penalties outlined above, Labor Code § 226.3 provides
16 that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty
17 in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation
18 and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which
19 the employer fails to provide the employee a wage deduction statement or fails to keep the required
20 in subdivision (a) of Section 226." As explained in detail above, Defendant failed to provide
21 Plaintiff, the Wage Statement Class Members, and the other Wage Statement Aggrieved Employees
22 with accurate itemized wage statements. Accordingly, Defendant is additionally liable for Labor
23 Code § 226.3 penalties for their violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.*
24 (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 ["the weight of
25 authority counsels that violations of Section 226.3 may be the basis of a PAGA claim."]; *Pedroza v.*
26 *PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012)
27 ("Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may
28

1 trigger civil penalties.”).¹

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

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

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

16 29. Due to Defendant’s failure to pay Plaintiffs, the Class, and the other Aggrieved
17 Employees all overtime wages due and all meal and rest break period premiums owed,² Defendant
18 violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the
19

20 ¹ *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D.Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326,
21 *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7–9, 2011 WL 2434043; *Willis v.*
Xerox Bus. Servs., LLC (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

22 ² Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting
23 time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal.
24 Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties
25 based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling*
vs. P.F. Chang’s China Bistro, Inc. (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time
26 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)
27 (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
28 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 payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S.
2 Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a
3 failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

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

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

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

1 2802, an employee need only show that he or she was required to use a personal cell phone to make
2 work-related calls, and he or she was not reimbursed.” *Id.* at 1144-45 (emphasis added); *see also*
3 *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion
4 for partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue*
5 *Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen)
6 (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

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

13 34. Under Labor Code § 2802, if an employer requires employees to use their cell phone
14 for work, as is the case here for taking pictures of the products at the assembly line, then Defendant
15 must reimburse employees for a reasonable portion of their monthly cell phone bills. Here, since
16 Plaintiffs, the Class, and the and the Aggrieved Employees were expected to use their cell phone for
17 work, their vehicle mileage, and to buy or use other items such as electrical tools for making phone
18 calls, and fixing and engaging in construction projects, then Defendant must reimburse employees.

19 35. The administrative prerequisites of PAGA will be satisfied after 65 days have elapsed
20 from August 6, 2020 (i.e. 65 days since Plaintiff Daniel Davenport’s mailing of the PAGA notice
21 with no further communication from the LWDA to Plaintiffs’ counsel). Plaintiff Daniel Davenport
22 has paid the \$75.00 fee and has otherwise satisfied the administrative prerequisites of PAGA, as
23 amended.

24 36. Plaintiffs by this action seeks to recover, on behalf of themselves and all other current
25 and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as specified
26 in Labor Code § 2699(f). Plaintiffs seek to recover the PAGA civil penalties through a representative
27 action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal.
28

1 4th 969 (2009). Class certification of the PAGA claims is not required. *Id.*

2 **CLASS ACTION ALLEGATIONS**

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

6 All non-exempt individuals who or were employed by Gary Krezman Electric Inc. in the
7 State of California during the Class Period and ending when notice to the Class is sent
8 (hereinafter referred to as “Class Members” or the “Class”).

- 9 a. All Class Members who were issued one or more wage statements from
10 Defendant during the period from one year prior to the filing of this Complaint
11 and continuing into the present (hereinafter referred to as “Wage Statement Class
12 Members”);
- 13 b. All Class Members who did not receive their timely ten-minute, duty free rest
14 breaks while working for Defendant during the Class Period (hereinafter referred
15 to as “Rest Break Class Members”);
- 16 c. All Class Members who did not receive their timely thirty-minute meal break on
17 or before the fifth hour of work while working for Defendant on shifts greater
18 than five hours during the Class Period (hereinafter referred to as “Meal Break
19 Class Members”);
- 20 d. All Aggrieved Employees who worked more than 8 hours in a day or more than
21 40 hours in a week and who did not receive overtime pay at the rate of 1.5 times
22 their regular rate of pay for their overtime hours worked during the Class Period
23 (“Overtime Class Members”); and
- 24 e. All Class Members whose employment with Defendant terminated during the
25 period from three years prior to the filing of this Complaint and continuing into
26 the present (hereinafter referred to “Waiting Time Penalty Class Members”).

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

- 29 a. Numerosity: The potential members of the Class as defined are so numerous
30 that joinder of all the members of the Class is impracticable. While the precise number of Class
31 Members has not been determined at this time, Plaintiffs are informed and believe that Defendant
32 has, on average, at any one time during the Class Period employed over 100 Class Members as non-

1 exempt employees who were subject to Defendant's unlawful policies. Due to turnover, the total
2 number of Class Members is estimated to be more than 400. The Class Members are dispersed
3 throughout California. Joinder of all members of the proposed classes is therefore not practicable.

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

7 i. Whether Defendant violated Labor Code sections 226.7 and 512 and Section
8 11 of IWC Wage Order No. 16 by failing to provide timely, duty-free meal periods to Plaintiffs and
9 the members of the Meal Break Class in California during the Class Period;

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

13 iii. Whether Defendant violated Labor Code section 226.7 and Section 12 of IWC
14 Wage Order No. 16 by failing to provide timely, duty-free rest periods to Plaintiffs and the members
15 of the Rest Break Class in California during the Class Period;

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

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

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

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

26 viii. Whether Defendant violated Section 510 of the Labor Code by failing to pay
27 Plaintiffs and members of the Class all overtime wages due for daily and weekly overtime hours
28

1 worked;

2 ix. Whether Defendant violated Section 2802 of the Labor Code by failing to
3 reimburse Plaintiffs and members of the Class for necessarily incurred work-related expenses;

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

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

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

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

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

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

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

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

27 d. Adequacy of Representation: Plaintiffs are members of the Class and will fairly and
28

adequately represent and protect the interests of the Class and Class Members. Plaintiffs' interests do not conflict with those of Class and Class Members. Counsel who represent Plaintiffs are competent and experienced in litigating large wage and hour class actions, including numerous cases virtually identical to this one (i.e., wage and hour class action cases), and other employment class actions, and will devote sufficient time and resources to the case and otherwise adequately represent the Class and Class Members. e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or practices. Certification of this case as a class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the 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 and compensation 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 16-2001 Section 11]

On behalf of Plaintiffs and the Meal Break Class Against Defendant

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

40. 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.”

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

42. Here, Defendant violated and continues to violate Labor Code § 512 and IWC Wage Order 16-2001 § 11 by, among other things, failing to provide and schedule duty-free meal breaks on or before the fifth hour of work for Meal Break Class Member and failed to advise all other Meal Break Class Members of their meal break rights with respect to the timing of meal breaks, failed to provide Meal Break Class Members with thirty-minute, uninterrupted meal periods within the first five (5) hours of their shifts, and failed to pay meal break premiums for late meal breaks. Instead, Defendant often required employees to take their breaks at the end of their shifts without paying any late meal break premiums.

43. As a result of Defendant’s failure to authorize or permit lawful and timely meal periods, Plaintiffs and the other Class members and Meal Period Class Members frequently did not receive compliant duty-free meal periods within the first five (5) hours of their work.

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 16-2001]
On behalf of Plaintiffs and the Rest Break Class Against Defendant

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

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

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

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

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

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

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

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

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

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

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

1 49. As set forth above, Defendant's wage statements issued fail to include the start date
2 of each pay periods in violation of Labor Code § 226(a)(6). Additionally, due to Defendant's failure
3 to pay Plaintiff and the other Wage Statement Class Members all overtime wages dur for overtime
4 hours and for all meal and rest break premiums, the wage statements issued by Defendant to
5 Plaintiffs and the other Wage Statement Class Members do not indicate the correct amount of gross
6 wages earned, net wages earned, or the applicable hourly rates in effect during the pay period and
7 the corresponding number of hours worked at each hourly rate in violation of Labor Code §
8 226(a)(1), (2), (5) and (9).

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

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

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

6 **FOURTH CAUSE OF ACTION**
7 **WAITING TIME PENALTIES FOR**
8 **FAILURE TO PAY WAGES DUE ON TERMINATION**
9 **[Cal. Labor Code §§ 201-203]**
10 **On Behalf of Plaintiffs and the Waiting Time Class Against Defendant**

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

13 54. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an
14 employee who is discharged or who quits, the wages of the employee shall continue as a penalty. .
15 .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.
16 Due to Defendant’s faulty policies described above, including its failure to pay for overtime and for
17 meal and rest break premiums, Defendant violated Labor Code § 203, for those employees whose
18 employment ended within the last three years and ongoing (i.e., the Waiting Time Class Members)
19 by willfully failing to pay them all wages due upon the termination of their employment.

20 **FIFTH CAUSE OF ACTION**
21 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
22 **[Cal. Labor Code §§ 204, 210]**
23 **On Behalf of Plaintiffs and the Wage Statement Class Against Defendant**

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

26 56. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
27 employment are due and payable twice during each calendar month, on days designated in advance
28 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.

57. Due to Defendant's failure to pay Plaintiff and the Wage Statement Class all overtime and all meal and rest break period premiums owed,³ Defendant violated Labor Code § 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).

58. 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.

SIXTH CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
[Labor Code §§ 510, 1194, 1194.2, 1197; IWC Wage Order No. 16]
On Behalf of Plaintiffs and the Wage Statement Class Against Defendant

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

60. Labor Code § 510 requires an employer to compensate an employee who works more

3 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 [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 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
2 worked on the seventh consecutive day no less than one and one-half times the regular rate of pay
3 for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no
4 less than twice the regular rate of pay when an employee works more than twelve (12) hours in a
5 day or more than eight (8) hours on the seventh consecutive day of work.

6 61. Labor Code § 1194 provides that any employee receiving less than the legal overtime
7 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
8 of the full amount of this overtime compensation, including interest thereon, reasonable attorney's
9 fees, and costs of suit..

10 62. Furthermore, pursuant to Labor Code § 1198, "[t]he maximum hours of work and
11 the standard conditions of labor fixed by the commission shall be the maximum hours of work and
12 the standard conditions of labor for employees. The employment of any employee for longer hours
13 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."
14 Section 3 of the applicable IWC Wage order provides for daily and weekly overtime wages.

15 63. Defendant only paid Plaintiffs and the Class the regular hourly rate, and failed to pay
16 overtime wages for all overtime hours worked. To make matters worse, Defendant's wage
17 statements issued to Plaintiffs and the Class intentionally misstated and under-reported hours
18 worked in a misguided attempt to cover up this failure to pay overtime. The wage statements were
19 demonstrably inconsistent with Class members' daily time sheets of actual hours worked, which
20 routinely included daily and weekly overtime hours.

21 64. Plaintiffs and the Class often worked eight hours per day and often worked over 40
22 hours per week. Defendant violated Labor Code § 510 by failing to pay Plaintiffs and the Class their
23 overtime wages at the applicable overtime rates, including daily overtime and weekly overtime, and
24 instead merely paid Plaintiffs and the Class straight time wages for all hours worked.

25 **SEVENTH CAUSE OF ACTION**
26 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
27 **[Cal. Labor Code § 2802]**
28 **On Behalf of Plaintiffs and the Reimbursement Class Against Defendant**

65. Plaintiffs re-allege and incorporate by reference each and every allegation set forth

1 in the preceding paragraph.

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

10 67. Specifically, under Labor Code § 2802, employers must reimburse employees for
11 required work-related use of personal cell phones, regardless of whether they incur any additional
12 out-of-pocket expense from that work-related use. *See Cochran v. Schwan’s Home Service*, 228 Cal.
13 App. 4th 1137 (2014) (reversing denial of class certification in cell phone reimbursement class
14 action). *Cochran* held that “[i]f an employee is required to make work-related calls on a personal
15 cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter
16 whether the phone bill is paid for by a third person, or at all. . . . It is irrelevant whether the employee
17 changed plans to accommodate work-related cell phone usage. . . . *To show liability under section*
18 *2802, an employee need only show that he or she was required to use a personal cell phone to make*
19 *work-related calls, and he or she was not reimbursed.” Id.* at 1144-45 (emphasis added); *see also*
20 *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion
21 for partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue*
22 *Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen)
23 (certifying class of cell phone reimbursement claim and 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 expense.
26 *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson*
27 *v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan Illston) (adopting
28

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

3 69. Under Labor Code § 2802, if an employer requires employees to use their cell phone
4 for work, their construction tools and their vehicle, as is the case, then Defendant must reimburse
5 employees for a reasonable portion of their monthly cell phone bills, their construction tools and
6 their mileage. Here, the Class Members were expected to use their cell phones, construction tools
7 and vehicles at all relevant times.

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

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

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

17 72. Section 17200 of the California Business & Professions Code prohibits any unlawful,
18 unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person
19 who has suffered injury in fact and has lost money or property” to prosecute a civil action for
20 violation of the UCL. Such a person may bring such an action on behalf of himself and others
21 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 of
23 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this
24 cause of action is four years prior to the filing of this Complaint through the present, and on-going
25 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 from
those who attempt to gain competitive advantage at the expense of their workers by failing to comply

1 with minimum labor standards.

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

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

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

16 78. Defendant engaged in unfair competition in violation of sections 17200 et seq. of the
17 California Business & Professions Code by violating Sections 226.7 and 512 of the California Labor
18 Code, and Sections 11 and 12 of the IWC Wage Order 16-2001.

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

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

24 81. Plaintiff has assumed the responsibility of enforcement of the laws and public policies
25 specified herein by suing on behalf of themselves and other similarly situated Class Members
26 previously or presently employed by Defendant in California. Plaintiffs' success in this action will
27 enforce important rights affecting the public interest. Plaintiffs will incur a financial burden in
28

1 pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to
2 Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5.

3 **NINTH CAUSE OF ACTION**
4 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
5 **PAGA PENALTIES FOR VIOLATIONS OF**
6 **LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, AND 2802**
7 **(Labor Code §§ 2698-2699.5)**
8 **On Behalf of Plaintiff and the Aggrieved Employees Against Defendant**

9 82. Plaintiffs, on behalf of themselves and all aggrieved employees, reallege and
10 incorporate by reference all previous paragraphs.

11 83. Based on the above allegations incorporated by reference, Defendant violated Labor
12 Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1194, 1198, 2802, as well as IWC
13 Wage Order 16-2001.

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

17 \$100 for the initial violation per employee per pay period; and

18 \$200 for each subsequent violation per employee per pay period.

19 These penalties will be allocated 75% to the Labor Workforce Development Agency and
20 25% to the affected employees.

21 85. As set forth above, Defendant failed to provide Plaintiffs and all aggrieved employees
22 with accurate itemized wage statements in compliance with Labor Code § 226(a). Labor Code §
23 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to
24 a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an
25 initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
26 citation, for which the employer fails to provide the employee a wage deduction statement or fails
27 to keep the required in subdivision (a) of Section 226."

28 86. Also, with respect to all pay periods in which a missed or late meal break premium
was paid, if any, Defendant failed to make any associated PAGA penalties that were triggered by

1 same. In these instances, when Defendant paid late or missed meal break premiums to Plaintiff and
2 the Meal Break Aggrieved Employees, pursuant to Labor Code section 226.7, these late or missed
3 meal break premiums demonstrated violations of Labor Code section 226.7, as well as Section 512
4 of the Labor Code, that give rise to independent PAGA penalty claims. *See Kim v. Reins*
5 *International California, Inc.*, 9 Cal.5th 73 (Mar. 12, 2020) (“For example, employers can pay an
6 additional hour of wages as a remedy for failing to provide meal and rest breaks. (section 226.7(c))
7 But we have held that payment of this statutory remedy “does not excuse a section 226.7 violation.”
8 (*Kirby v. Immoos Fire Protection, Inc.* (2012), 53 Cal.4th 1244, 1256”).

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

19 88. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code
20 § 2699, et seq. because of Defendant’s violation of Labor Code §§ Labor Code §§ 201, 202, 203,
21 204, 210, 226, 226.3, 226.7, 510, 512, and 2802, as well as IWC Wage Order 16-2001.

22 JURY DEMAND

23 89. Plaintiffs hereby demand trial by jury of their and the Class’s claims against
24 Defendant, and of all claims except for the PAGA and UCL, claims which are subject to a bench
25 trial.

26 PRAYER FOR RELIEF

27 Wherefore, Plaintiffs, on behalf of themselves and the members of the Class, pray for
28

judgment against Defendant as follows:

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

2. On the First Cause of Action:

a. A declaratory judgment that Defendant violated California Labor Code §§ 226.7, 512 and Section 11 of IWC Wage Order 16-2001;

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

3. On the Second Cause of Action:

a. A declaratory judgment that Defendant violated California Labor Code § 226.7, and Section 12 of IWC Wage Order 16-2001;

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.

4. On the Third Cause of Action:

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

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1 5. On the Fourth Cause of Action:

2 a. A declaratory judgment that Defendant violated California Labor Code §§
3 201 through 203;

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

7 6. On the Fifth Cause of Action:

8 a. A declaratory judgment that Defendant violated California Labor Code §§
9 204 and 210;

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

12 7. On the Sixth Cause of Action:

13 a. A declaratory judgment that Defendant violated California Labor Code §§
14 1194 and 510;

15 b. Pursuant to Labor Code §§ 510 and 1194, an award to Plaintiffs and the Class
16 for penalties pursuant to Labor Code § 210.

17 8. On the Seventh Cause of Action:

18 a. A declaratory judgment that Defendant violated California Labor Code §
19 2802;

20 b. Pursuant to Labor Code § 2802, reimbursement to Plaintiffs and the Class for
21 necessarily incurred business expenses incurred in the course of their work for Defendant.

22 9. On the Eighth Cause of Action:

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

26 b. Restitution, including, but not limited to, the relief permitted by section 226.7
27 of the California Labor Code (i.e., pay as specified for meal and rest period premiums to Plaintiffs
28

1 and the members of the Class during the Class Period.

2 10. On the Ninth Cause of Action:

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

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

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

14 11. All other relief as this Court deems proper.

15
16 Dated: October 20, 2020

Respectfully,

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

19 By: 

20 Craig Ackermann, Esq.

21 Amir Seyedfarshi, Esq.

22 Counsel for Plaintiffs, the Class, and the
23 Aggrieved Employees
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