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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JUAN DAVID RAMIREZ, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

WILLIAM KORNFELD, AN
INDIVIDUAL, DOING BUSINESS AS
CAMELOT MOVING AND STORAGE,
and DOES 1-10, inclusive.

Defendant.

CASE NO: **20STCV45584**

**CLASS ACTION AND REPRESENTATIVE
ACTION PLAINTIFF'S COMPLAINT FOR:**

- (1) FAILURE TO PAY MINIMUM WAGES (LABOR CODE §§ 1194, 1194.2, 218.5);**
 - (2) FAILURE TO PAY OVERTIME (LABOR CODE § 510, 1194);**
 - (3) FAILURE TO PROVIDE REST PERIODS AND PAY MISSED REST BREAK PREMIUMS (LABOR CODE §§ 226.7; SECTION 12 OF IWC WAGE ORDER NO. 9);**
 - (4) FAILURE TO PROVIDE MEAL PERIODS AND PAY MISSED MEAL PERIOD PREMIUMS (LABOR CODE §§ 226.7, 512, SECTION 11 OF IWC WAGE ORDER NO. 9);**
 - (5) FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE § 2802);**
 - (6) FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS (LABOR CODE § 226);**
 - (7) WAITING TIME PENALTIES (LABOR CODE § 201 – 203);**
 - (8) FAILURE TO PAY TIMELY WAGES (LABOR CODE §§ 204, 210)**
 - (9) UCL VIOLATIONS (BUS. & PROF. CODE §§ 17200-17204); AND**
 - (10) PAGA AND OTHER PENALTIES (LABOR CODE §§ 2698 – 2699.5); &**
- DEMAND FOR JURY TRIAL**

1 Plaintiff Juan David Ramirez (“Plaintiff”), on behalf of himself, the State of California,
2 other aggrieved employees, and all others similarly situated (hereinafter “Class Members”),
3 complains and alleges as follows:

4 **OVERVIEW OF CLAIMS**

5 1. Plaintiff brings this action on behalf of himself and all others similarly situated, as a
6 class action, as a representative action pursuant to Labor Code § 2699, *et seq.*, and on behalf of the
7 California general public, against Defendant William Kornfeld dba Camelot Moving and Storage
8 and DOES 1 to 100 (“Defendant”) for (1) its failure to pay minimum wages for all hours worked;
9 (2) its failure to pay overtime wages for all overtime hours worked; (3) its failure to provide
10 compliant rest breaks and pay rest break premiums to its current and former employees in
11 California; (4) its failure to provide meal periods and pay missed meal period premiums to its
12 current and former employees in California; (5) its failure to reimburse business expenses incurred
13 to its current and former employees in California; (6) its failure to provide complete wage
14 statements to its current and former employees in California within the one year prior to the filing
15 of this Complaint; (7) its failure to pay all wages due to former employees based on the foregoing;
16 (8) its failure to pay timely wages to employees based on the foregoing; (9) unfair business
17 practices based on the foregoing; and (10) PAGA and other penalties based on the foregoing. As a
18 result of the foregoing, Defendant has violated California statutory laws as described below.

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

24 **VENUE**

25 3. Venue is proper in this county under section 395.5 of the California Code of Civil
26 Procedure. Many of the putative Class Members were employed and/or performed work during
27 the Class Period by Defendant in Los Angeles County. Defendant provides moving and storage
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1 services in the county of Los Angeles. Many of the acts alleged herein including Defendant's
2 failure to pay minimum wages, failure to pay overtime, its failure to provide Labor Code
3 complaint meal and rest breaks, its failure to pay missed meal and rest break premiums, its failure
4 to issue complete and accurate wage statements, its failure to pay wages on a timely basis, and its
5 failure to reimburse for business expenses, occurred in Los Angeles County. Moreover, the
6 majority of the moving projects handled by Defendant are located in Los Angeles County. Venue
7 is therefore proper in Los Angeles County.

8 **JURISDICTION**

9 4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
10 dollars of business by providing moving and storage services in California. Thus, Defendant has
11 obtained the benefits of the laws of the State of California. In addition, Plaintiff asserts no claims
12 arising under federal law. Rather, Plaintiff brings causes of action based solely on, and arising
13 from, California law. The claims of the class are also based solely on California law described
14 herein. Furthermore, the total amount at issue in this case, inclusive of attorneys' fees, is less than
15 \$5 million. Therefore, jurisdiction is appropriate in Los Angeles County Superior Court.

16 **THE PARTIES**

17 5. Plaintiff Juan David Ramirez is a California resident who worked for Defendant
18 over two decades, from sometime in 2000 to July 2020.

19 6. From at least four years from the filing of this complaint through the present, and
20 on-going, Defendant's moving and storage crew, including Plaintiff during his employment, were
21 not paid by Defendant for their on-duty time they spent under Defendant's control while present at
22 the employer's job site and waiting for the trucks to commute to the moving sites. Moreover,
23 Plaintiff, the Class Members and the Aggrieved Employees were not paid overtime; did not receive
24 premium payments for non-compliant rest periods; were not provided timely duty free meal breaks
25 or paid missed meal break premiums; were not provided accurate and/or complete wage
26 statements; were not reimbursed for all business expenses including cell phone and the use of
27 personal equipment; did not receive timely wages; and did not receive all of their wages due upon
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1 termination of employment.

2 7. Plaintiff represents the state of California and the following group of aggrieved
3 employees defined as:

4 All individuals who hold or held the title of moving worker, or in any other similar
5 capacity, and who worked for Defendant in California during the PAGA Period
(hereinafter referred to as “Aggrieved Employees”).

6 8. Defendant is an individual doing business in Valencia, CA. Defendant is a moving
7 and storage company that transacts millions of dollars of business by providing moving services
8 throughout California.

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

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

21 11. Defendant employed Plaintiff, the Class, and the Aggrieved Employees as moving
22 crew in California at various times during the Class Period and PAGA Period. On information and
23 belief, Defendant employed approximately 80 current and former moving workers in California
24 during the Class Period.

25 **FACTUAL ALLEGATIONS**

26 12. Defendant operates and, at all times during the Class Period and PAGA Period, has
27 done and does business in California providing moving services in California. Defendant, in the
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1 course of operating its business in California during the Class Period and PAGA Period, employed
2 Plaintiff, the Class, and the Aggrieved Employees as moving workers. Plaintiff, the Class, and the
3 Aggrieved Employees were paid by Defendant on an hourly wage basis.

4 13. During the Class Period, Plaintiff, like the other members of the Class and
5 Aggrieved Employees, typically worked twelve to fourteen hours per day and five to six days per
6 week. Class Members' and Aggrieved Employees' job duties included, among other things,
7 performing moving duties, including packing and storing boxes, and transporting them from one
8 location to another.

9 14. Labor Code § 1197 states the California requirement that employees must be paid at
10 least the minimum wage fixed by the Commission for all hours worked and/or under the control of
11 Defendant, and any payment of less than the minimum wage for such hours is unlawful. Similarly,
12 Labor Code § 1194 entitles "any employee receiving less than the legal minimum wage...to
13 recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage
14 Order No. 9 also obligates employers to pay each employee minimum wages for all hours worked
15 and/or under the control of Defendant.

16 15. These minimum wage standards apply to each hour employees worked for which
17 they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked
18 by an employee is unlawful, *even if averaging an employee's total pay over all hours worked,*
19 *paid or not, results in an average hourly wage above minimum wage.* *Armenta v. Osmose,*
20 *Inc.*, 135 Cal.App.4th 314, 324 (2005).

21 16. Labor Code § 1194.2 authorizes employees to recover liquidated damages in any
22 action under Labor Code § 1194 to recover unpaid minimum wages. Where an employee, such as
23 Plaintiff, the Class and the Aggrieved Employees, were not paid for all hours worked and/or under
24 the control of Defendant under Labor Code § 1194, the employee may recover minimum wages for
25 the time worked for which they received no compensation. *See Sillah v. Command Int'l Sec.*
26 *Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay
27 overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less
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1 than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 2016 U.S. Dist. LEXIS 172319,
2 at *20-21 (N.D. Cal. Dec. 12, 2016). Like section 1194, the IWC Wage Orders all require
3 California employers pay employees no less than minimum wage for all hours worked. *See e.g.*,
4 IWC Wage Order No. 9, section 4(B). The phrase “hours worked” is defined as “the time during
5 which an employee is subject to the control of an employer and includes all the time the employee
6 is suffered or permitted to work, whether or not required to do so.” *Id.*, section 2(G).

7 17. Due to Defendant’s policy of failing to pay Plaintiff, the Class, and the Aggrieved
8 Employees and the Class for all of their hours worked and/or under Defendant’s control, including
9 their time spent at Defendant’s facility spent waiting for their assignments, Plaintiff, the
10 Aggrieved Employees and the Class have not been paid all minimum and overtime wages owed.
11 Notably, Defendant asked Plaintiff, the Aggrieved Employees and the Class Members to report to
12 work at 7:30 am on a daily basis, but the moving and transportation work itself did not begin until
13 9:00 am. During this time, Plaintiff, the Aggrieved Employees and the Class Members had to
14 prepare and get ready for the moving vehicles to arrive and he and they were not compensated for
15 that time. During that time, however, Plaintiff, the Class and the Aggrieved Employees were all
16 under the control of Defendant during this time.

17 18. Thus, Plaintiff, the Class, and the Aggrieved Employees were not paid minimum
18 wages for all time associated with tasks performed during their workday and/or for all time
19 controlled by Defendant. As a result, Plaintiff, the Class, and the Aggrieved Employees have been
20 denied compensation for all hours worked or under Defendant’s control, in violation of Cal. Labor
21 Code §1194, and have been denied compensation at the minimum wage in violation of Cal. Labor
22 Code §§ 1197 and 1199.

23 19. Labor Code § 510 requires an employer to compensate an employee who works
24 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
25 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
26 rate of pay for an employee. In accordance with Labor Code § 1194, Plaintiff, the Class, and the
27 Aggrieved Employees could not then agree to work for a lesser wage than the amount of overtime
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1 wages proscribed by Labor Code §§ 510 and 1194.

2 20. Further, because Plaintiff, the Class, and the Aggrieved Employees did not receive
3 the overtime premium pay rates applicable to employees under California law for working in
4 excess of eight hours in a day, or more than forty hours in a workweek, in violation of IWC Wage
5 Order 9-2001, and Labor Code §§ 1194 and 510. On multiple occasions, Plaintiff, the Class, and
6 the Aggrieved Employees worked shifts that were longer than 8 hours in length but not receive
7 overtime pay for all overtime hours worked.

8 21. Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to
9 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
10 applicable regulation, standard, or order of the Industrial Welfare Commission. . . .”

11 22. Section 12 of IWC Wage Order No. 9 states in pertinent part: “Every employer
12 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be
13 in the middle of each work period. The authorized rest period time shall be based on the total
14 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
15 thereof.”

16 23. The California Supreme Court explained in the context of rest breaks that employer
17 liability attaches from adopting an unlawful policy: “An employer is required to authorize and
18 permit the amount of rest break time called for under the wage order for its industry. If it does
19 not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for
20 employees working a seven-hour shift when two are required—***it has violated the wage order and***
21 ***is liable.***” *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1033 (2012) (emphasis added).

22 24. Following *Brinker*, the Courts of Appeal have confirmed that liability for on-duty
23 breaks arises when an employer adopts a uniform policy that fails to provide off-duty breaks. For
24 example, in *Faulkinbury v. Boyd & Associates, Inc.*, the California Court of Appeals
25 applied *Brinker*: “In *Faulkinbury I*, we concluded that even if [defendant]’s on-duty meal break
26 policy was unlawful, [defendant] would be liable only when it actually failed to provide a required
27 off-duty meal break. *Brinker* leads us now to conclude [defendant] would be liable upon a
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determination that [defendant]’s uniform on-duty meal break policy was unlawful.” *Faulkinbury*, 216 Cal. App. 4th 220, 235 (2013). The Court further explained: “the employer’s liability arises by adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was able to take the required break goes to damages...” *Id.* (citations omitted); *see also Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 728 (2013).

25. Here, not only did Defendant fail to implement a compliant rest period policy, but Defendant in fact has a policy that effectively penalized and subjected Plaintiff, the Class, and the Aggrieved Employees by subjecting them potential reprimands and/or discipline if Plaintiff, the Class, and the Aggrieved Employees took timely, duty-free rest breaks, which often caused Plaintiff, the Class, and the Aggrieved Employees to be late in completing projects for Defendant. Further, because of the time-pressured nature of Plaintiff, the Class, and the Aggrieved Employees’ work schedules, Plaintiff, the Class, and the Aggrieved Employees were never relieved of all duties for rest periods while working for Defendant.

26. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the Class, and the Aggrieved Employees were not compensated with one (1) hour’s worth of pay at their regular rate of compensation when they were not provided with a compliant rest period in accordance with Labor Code § 226.7(b).

27. Under California Labor Code Section 512 and IWC Wage Order No. 9, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer’s control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

28. Under California Labor Code Section 226.7, if the employer does not provide an employee a meal period in accordance with these requirements, the employer shall pay the

1 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
2 that the meal period is not provided. Plaintiff, the Class, and the Aggrieved Employees worked
3 shifts that were longer than 5 hours in length. Here, despite the fact that Plaintiff, the Class, and the
4 Aggrieved Employees were never authorized to take their timely 30-minute duty-free meal breaks,
5 on or before the fifth and tenth hours of shifts, Defendant never paid any missed meal break
6 premiums to Plaintiff, the Class, and the Aggrieved Employees.

7 29. Furthermore, Defendant violated Labor Code § 512 by failing to advise Plaintiff,
8 the Class, and the Aggrieved Employees of their right to receive thirty (30) minute uninterrupted
9 meal periods within the first five hours of his shift.

10 30. Defendant also failed to pay Plaintiff, the Class, and the Aggrieved Employees meal
11 period premiums for each workday that they did not receive all compliant meal periods.

12 31. Pursuant to Labor Code 226.7(c), if an employer failed to provide an employee with
13 a meal or rest period, "the employer shall pay the employee one additional hour of pay at the
14 employee's regular rate of compensation for each workday that the meal or rest or recovery period
15 is not provided."

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

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

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

19 35. Under Labor Code § 2802, where, as here, an employer expects Plaintiff, the Class,
20 and the Aggrieved Employees to use their cell phones for work-related tasks, then Defendant must
21 reimburse employees for a reasonable percentage of their monthly cell phone bills. Defendant
22 never reimbursed Plaintiff, the Class, and the Aggrieved Employees for any of the cost of their
23 work-related cell-phone expenses. Additionally, Defendant did not reimburse Plaintiff, the Class,
24 and the Aggrieved Employees for all of their expensive tools that they were required to use to
25 perform their job duties.

26 36. Accordingly, Defendant violated Labor Code § 2802 and continue to do so by
27 failing to reimburse Plaintiff, the Class, and the Aggrieved Employees for all work-related charges
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1 they incurred in connection with their job duties. By failing to reimburse Plaintiff, the Class, and
2 the Aggrieved Employees for their personal expenses incurred for work-related purposes,
3 Defendant violated Labor Code § 2802.

4 37. Furthermore, Defendant did not and does not issue adequate wage statements to
5 Plaintiff, the Class, and the Aggrieved Employees, under Labor Code Sections 226(a).

6 38. Due to, *inter alia*, Defendant's failure to pay Plaintiff, the Class, and the Aggrieved
7 Employees all minimum wages due for all time under Defendant's control, overtime payments for
8 all overtime hours worked, and meal and rest break premiums, the wage statements issued by
9 Defendants to Plaintiff, the Class, and the Aggrieved Employees do not and did not indicate the
10 correct amount of gross wages earned, the total hours worked, the net wages earned, or the
11 applicable hourly rates in effect during the pay period and the corresponding number of hours
12 worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

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

19 40. Defendant's failure to furnish accurate itemized wage statements has caused
20 Plaintiff, the Class, and the Aggrieved Employees to incur economic damages in that they were not
21 aware that they were owed and not paid additional compensation. *See Cicairos v. Summit*
22 *Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee to add up the daily hours shown
23 on the time cards or other records so that the employee must perform arithmetic computations to
24 determine the total hours worked during the pay period, the requirements of section 226 would not
25 be met"); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage
26 statements violated California Labor Code by not including, *inter alia*, total hours worked giving
27 rise to claims under both Section 226 and for PAGA penalties); *Cicairos v. Summit Logistics, Inc.*,
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1 133 Cal.App.4th 949, 960-961 (2005) (reversing summary judgment for defendants where wage
2 statements did not “give an accurate report of the hours plaintiff worked, at least not on its face”);
3 Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated
4 Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily
5 determine the gross or net wages earned by the employee during the pay period).

6 41. The Aggrieved Employees do not need to show intent or injury to prevail on their
7 claim for PAGA penalties based on underlying violations of Labor Code § 226(a). *See Lopez v.*
8 *Friant & Assoc.*, 15 Cal.App.5th 773 (Cal. App. 2017); *Willner v. Manpower Inc.* 35 F. Supp. 3d
9 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to
10 establish is a violation of section 226(a), which she has done, as discussed above.”); *McKenzie v.*
11 *Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of
12 recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not
13 establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815,
14 at *28 (C.D. Cal. July 3, 2013) (“Plaintiffs do not need to establish a Cal. Lab. Code § 226(e)
15 injury to recover penalties under § 2699(f) of PAGA.”).

16 42. Labor Code § 201(a) provides in pertinent part: “If an employer discharges an
17 employee, the wages earned and unpaid at the time of discharge are due and payable
18 immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written
19 contract for a definite period quits his or her employment, his or her wages shall become due and
20 payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice
21 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
22 of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement
23 or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of
24 an employee who is discharged or who quits, the wages of the employee shall continue as a
25 penalty from the due date thereof at the same rate until paid or until an action therefor is
26 commenced; but the wages shall not continue for more than 30 days.”

27 43. Following Plaintiff’s separation of employment from Defendant, they, like other
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1 members of the Class and Aggrieved Employees who are former employees of Defendant, did not
2 receive all wages due, including all minimum wages, overtime wages, and his and their meal and
3 rest break premiums during the Class Period, in violation of Labor Code Sections 201-203,
4 triggering waiting time penalties under those provisions.

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

10 45. Due to Defendant’s failure to pay Plaintiff, the Class, and the Aggrieved Employees
11 all minimum wages, meal and rest period premiums, and all overtime wages, Defendant failed to
12 timely pay Plaintiff, the Class, and the Aggrieved Employees within seven (7) days of the close of
13 the payroll period in accordance with Labor Code § 204 on a regular and consistent basis. *See*
14 *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D.
15 Cal. May 2, 2016) (finding that a failure to pay rest period premiums can support claims under
16 Labor Code §§ 203 and 204).

17 46. Pursuant to Labor Code Section 210, as amended,

18 (a) In addition to, and entirely independent and apart from, any other penalty
19 provided in this article, every person who fails to pay the wages of each employee as
20 provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5,
shall be subject to a penalty as follows:

21 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
22 employee.

23 (2) For each subsequent violation, or any willful or intentional violation, two hundred
24 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
unlawfully withheld.

25 (b) The penalty shall either be recovered by the employee as a statutory penalty
26 pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the
27 issuance of a citation or pursuant to Section 98.3. The procedures for issuing,
28 contesting, and enforcing judgments for citations issued by the Labor Commissioner
under this section shall be the same as those set forth in subdivisions (b) through (k),
inclusive, of Section 1197.1.

1 (c) An employee is only entitled to either recover the statutory penalty provided for in
2 this section or to enforce a civil penalty as set forth in subdivision (a) of Section
2699, but not both, for the same violation.

3 47. Here, Plaintiff seeks to recover all penalties available under Labor Code Section
4 210 for Defendant's violations of Labor Code Section 204.

5 48. The administrative prerequisites of PAGA have been satisfied for 65 days have
6 elapsed from September 23, 2020, when Plaintiff mailed the PAGA notice with no further
7 communication from the LWDA to Plaintiff's counsel. Plaintiff has also paid the \$75.00 fee and
8 has otherwise satisfied the administrative prerequisites of PAGA.

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

14 CLASS ACTION ALLEGATIONS

15 50. Plaintiff brings this action, on behalf of himself and all others similarly situated, as
16 a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
17 composed of and defined as: All individuals who hold or held the title of moving worker, or in any
18 other similar capacity, and who worked for Defendant in California during the Class Period
19 (hereinafter "Class Members"). All such Class Members were subject to Defendant's unlawful
20 policies including, Defendant's failure to pay for all hours worked, Defendant's failure to pay
21 overtime, Defendant's failure to provide code-compliant meal or rest breaks, and Defendant's
22 failure to reimburse for out-of-pocket business expenses.

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

27 a. Numerosity: The potential members of the Class as defined are so
28

1 numerous that joinder of all the members of the Class is impracticable. While the precise number
2 of Class Members has not been determined at this time, Plaintiff is informed and believes that
3 Defendant has employed approximately 80 Class Members as moving workers in California who
4 were subject to Defendant's unlawful compensation, meal and rest break, and reimbursement
5 policies. The Class Members are dispersed throughout California. Joinder of all members of the
6 proposed classes is therefore not practicable.

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

10 i. Whether Defendant violated sections 1194 and 1194.2 of the Labor Code by
11 failing to pay Plaintiff and the members of the Class all minimum wages owed during the Class
12 Period;

13 ii. Whether Defendant violated section 510 of the Labor Code by failing to pay
14 Plaintiff and the Class all overtime wages owed for all overtime hours worked during the Class
15 Period;

16 iii. Whether Defendant violated Section 12 of IWC Wage Order No. 9 by
17 failing to provide compliant rest periods to Plaintiff and the members of the Class in California
18 during the Class Period;

19 iv. Whether Defendant violated Labor Code section 226.7 and section 12 of
20 IWC Wage Order No. 9 by failing to pay one hour of premium pay to each member of the Class for
21 each day that a compliant rest break was not provided during the Class Period;

22 v. Whether Defendant violated Labor Code section 226.7 by failing to provide
23 timely, off-duty meal periods to Plaintiff and the Class Members in California during the Class Period;

24 vi. Whether Defendant violated Labor Code sections 512 and 226.7, and
25 section 11 of IWC Wage Order No. 9 by failing to pay one hour of premium pay to each member of
26 the Class for each day that a paid meal break was not provided during the Class Period;

27 vii. Whether Defendant violated Labor Code section 2802 by failing to reimburse
28

1 Plaintiff and the Class for their business expenses incurred during the Class Period;

2 viii. Whether Defendant failed to provide Plaintiff and the members of the Class
3 complete wage statements in violation of Labor Code Section 226(a);

4 ix. Whether Defendant violated Section 203 of the Labor Code by failing to pay
5 members of the Waiting Time Penalty Subclass for all wages due to them (including all minimum
6 wages due, overtime, and meal and rest break premiums) upon their separation of employment
7 from Defendant;

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

10 xi. Whether Defendant engaged in an unfair practice and violated section 17200
11 of the California Business and Professions Code by failing to pay Plaintiff and the members of the
12 Class all minimum wages and overtime wages owed and by failing to reimburse them for their
13 business-related expenses during the Class Period;

14 xii. Whether Defendant engaged in an unfair practice and violated section 17200
15 of the California Business and Professions Code by failing to provide compliant rest breaks to
16 members of the Class in violation of Section 12 of IWC Wage Order No. 9;

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

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

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

26 xvi. Whether Plaintiff and the Class are entitled to restitution under Business and
27 Professions Code § 17200;

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

xviii. The nature and extent of class-wide damages.

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

d. Adequacy of Representation: Plaintiff are members of the Class and will fairly and adequately represent and protect the interests of the Class and Class Members. Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represent Plaintiff are competent and experienced in litigating large wage and hour class actions, including numerous cases virtually identical to this one (i.e., trucker or construction crew 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 compensation, failure to pay all minimum wages and overtime wages due, meal and rest break premiums, and non-reimbursement of all work-related expenses, 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

1 be impossible as a practical matter, for many or most Class Members to bring individual actions to
2 recover monies unlawfully withheld from their lawful compensation due from Defendant's, due to
3 the relatively small amounts of such individual recoveries relative to the costs and burdens of
4 litigation.

5 **FIRST CAUSE OF ACTION**
6 **FAILURE TO PAY MINIMUM WAGES**
7 **[Cal. Labor Code §§ 1194 and 1194.2]**
8 **On behalf of Plaintiff and the Class**

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

11 53. The actionable period for this cause of action is three years prior to the filing of this
12 Complaint through the present, and on-going until the violations are corrected or the Class is
13 certified.

14 54. Section 1194 of the Labor Code provides, in relevant part:

15 Notwithstanding any agreement to work for a lesser wage, any employee
16 receiving less than minimum wage...applicable to the employee is entitle to
17 recover in a civil action the unpaid balance of the full amount of this
18 minimum wage ..., including interest thereon, reasonable attorney's fees, and
19 costs of suit.

20 55. Section 1194.2 of the Labor Code provides, in relevant part:

21 In any action under...Section 1194 to recover wages because of the payment
22 of a wage less than the minimum wage fixed by an order of the commission,
23 an employee shall be entitled to recover liquidated damages in an amount
24 equal to the wages unlawfully unpaid and interest thereon.

25 56. During the Class Period, Plaintiff and Class Members were not paid minimum
26 wages for all time spent under Defendant's control in violation of Labor Code § 1194.
27 Accordingly, during the Class Period, Plaintiff and the members of the Class did not receive
28 minimum wages for all work time.

57. In failing to pay for all time worked and/or under Defendant's control, Plaintiff 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

1 unlawfully withheld during the Class Period for rest period time.

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

4 **SECOND CAUSE OF ACTION**
5 **FAILURE TO PAY OVERTIME WAGES**
6 **[Cal. Labor Code § 510 and 1194]**
7 **On behalf of Plaintiff and the Class**

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

10 60. The actionable period for this cause of action is three years prior to the filing of the
11 Complaint through the present, and on-going until the violations are corrected or the Class is
12 certified.

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

17 62. Here, Defendant hired Plaintiff and the Class to work as moving workers in
18 California and to work on various of Defendant's moving assignments. Plaintiff and the Class
19 often worked in excess of 8 hours and over 40 hours per week. On average, Plaintiff and the Class
20 worked between 12 to 14 hours on a daily basis. Defendant only paid Plaintiff and the Class the
21 regular hourly rate per each project. Plaintiff and the Class did not receive compensation for the
22 time that they showed up until the transportation vehicles started to leave the facility. Plaintiff and
23 the Class did not receive any overtime compensation for the hours that they worked beyond eight
24 hours per day.

25 63. Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order No. 9,
26 Defendant did not pay Plaintiff and the Class overtime wages corresponding to one and a half time
27 of Plaintiff and the Class' hourly rates of pay for all overtime hours worked. Plaintiff and the Class
28 often worked eight hours per day and often worked over 40 hours per week. Defendant violated
Labor Code § 510 by failing to pay Plaintiff and the Class their overtime wages at the applicable

1 overtime rates, including daily overtime and weekly overtime, and instead merely paid Plaintiff
2 and the Class straight time wages for all hours worked.

3 **THIRD CAUSE OF ACTION**
4 **FAILURE TO PROVIDE COMPLIANT REST PERIODS**
5 **AND PAY MISSED REST BREAK PREMIUMS**
6 **[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order No. 9]**
7 **On behalf of Plaintiff and the Class**

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

10 65. The actionable period for this cause of action is three years prior to the filing of the
11 Complaint through the present, and on-going until the violations are corrected or the Class is
12 certified.

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

16 67. Section 12 of IWC Wage Order No. 9 provides: “(A) Every employer shall
17 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
18 middle of each work period. The authorized rest period time shall be based on the total hours
19 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
20 thereof. However, a rest period need not be authorized for employees whose total daily work time
21 is less than three and one-half (3 1/2) hours. *Authorized rest period time shall be counted as hours
22 worked for which there shall be no deduction from wages.*” (emphasis added).

23 68. By failing to provide its construction workers compliant rest periods of 10 minutes
24 for each 4 hours of work, Defendant has violated California Labor Code § 226.7, and is liable to
25 Plaintiff and the Class.

26 69. As a result of the unlawful acts of Defendant, Plaintiff and the Class were not
27 provided compliant rest breaks, and are entitled to recovery under Cal. Labor Code §226.7 in the
28 amount of one additional hour of pay at the employee’s regular rate of compensation for each work
period during each day in which Defendant failed to provide compliant rest periods as required by
California law.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE OFF-DUTY MEAL BREAKS AND FAILURE
TO PAY MISSED MEAL BREAK PREMIUMS
[Cal. Labor Code §§ 226.7, 512; Section 11 of IWC Wage Order No. 9]
On behalf of Plaintiff and the Class

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

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

72. 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.

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

“No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee...An employer may not employ an employee for a work period of more than ten (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.

74. Section 11(C) of IWC Wage Order No. 9 provides that

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.

75. 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.

1 76. Here, by failing to provide them with duty-free timely 30-minute meal breaks, on
2 their shifts greater than 5 hours in length, Defendant has violated California Labor Code § 226.7
3 and IWC Wage Order No. 9, and is liable to Plaintiff and the Class.

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

9 **FIFTH CAUSE OF ACTION**
10 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
11 **[Cal. Labor Code § 2802(a) and (c)]**
 On Behalf of Plaintiff and the Class

12 78. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
13 in the preceding paragraph.

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

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

26 81. Specifically, under Labor Code § 2802, employers must reimburse employees for
27 required work-related use of personal cell phones, regardless of whether they incur any additional
28 out-of-pocket expense from that work-related use. *See Cochran v. Schwan’s Home Service*, 228

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

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

19 83. Under Labor Code § 2802, where, as here, an employer expects Plaintiff and the
20 Class to use their personal cell phones for work-related activities, Defendant must reimburse
21 employees for their necessary and/or reasonable business-related expenses. Defendant did not
22 reimburse Plaintiff and the Class for all their work-related expenses.

23 84. Accordingly, Defendant violated Labor Code § 2802 and continue to do so by
24 failing to reimburse Plaintiff and all other Class Members for all work-related charges they
25 incurred in connection with their job duties. By failing to reimburse Plaintiff and the Class for their
26 personal expenses incurred for work-related purposes, Defendant violated Labor Code § 2802.

27 ///

SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS
[Cal. Labor Code § 226(a) and (e)]
On behalf of Plaintiff and the Wage Statement and Penalty Subclass

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

86. The actionable period for this cause of action is one year prior to the filing of this Complaint through the present, and on-going until the violations are corrected or the subclass is certified. The members of the Class who worked for Defendant during the actionable period for this cause of action constitute the Wage Statement and Penalty Subclass.

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

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

88. As set forth above, during the Class Period, Defendant failed to issue accurate and complete wage statements to its workers in California, including Plaintiff, the Aggrieved Employees and the Wage Statement and Penalty Subclass, that complied with Labor Code Section 226(a). Defendant's "wage statements" were inadequate. Defendant's "wage statements" did not include total hours worked, the correct total amount of wages due, and all 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 Sections 226(a).

89. Defendant's violation of Labor Code § 226 was knowing and intentional. *See*

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

6 90. As a result of Defendant’s issuance of inaccurate itemized wage statements to
7 Plaintiff and members of the wage statement and penalty subclass (i.e., those members of the class
8 who were employed by Defendant during the actionable period for this cause of action) in
9 violation of section 226(a) of the California Labor Code, Plaintiff and the wage statement subclass
10 members are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100,
11 up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every member
12 of the wage statement subclass from Defendant pursuant to section 226(e) of the Labor Code, costs
13 and reasonable attorneys’ fees.

14 **SEVENTH CAUSE OF ACTION**
15 **WAITING TIME PENALTIES FOR**
16 **FAILURE TO PAY WAGES DUE ON TERMINATION**
17 **[Cal. Labor Code §§ 201-203]**
18 **On Behalf of Plaintiff and the Waiting Time Penalty Subclass**

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

21 92. The actionable period for this cause of action is three years prior to the filing of the
22 Complaint through the present, and on-going until the violations are corrected or the subclass is
23 certified. The members of the Class who worked for Defendant during the actionable period for
24 this cause of action constitute the Waiting Time Penalty Subclass.

25 93. Sections 201 and 202 of the California Labor Code require Defendant to pay all
26 compensation due and owing to former maintenance workers and electrical contractors in the Class
27 during the actionable period for this cause of action, at or around the time that their employment is
28 terminated.

94. Section 203 of the California Labor Code provides that if an employer willfully

1 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and
2 202, then the employer is liable for penalties in the form of continued compensation up to thirty
3 (30) work days.

4 95. Defendant willfully failed to pay Plaintiff and other members of the waiting time
5 penalty Class (i.e., those members of the Class whose employment with Defendant ended the
6 actionable period for this cause of action) who are no longer employed by Defendant all minimum
7 wages owed prior to or upon termination or separation from employment with Defendant as
8 required by California Labor Code §§ 201 and 202, as well as overtime wages and meal and rest
9 break premiums.

10 96. As a result, Defendant is liable to Plaintiff and other members of the waiting time
11 penalty subclass who are no longer employed by Defendant for waiting time penalties amounting
12 to thirty (30) days wages for Plaintiff and each such subclass member pursuant to California Labor
13 Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination
14 entitles an employee to recover waiting time penalties).

15 **EIGHTH CAUSE OF ACTION**
16 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
17 **[Cal. Labor Code §§ 204, 210]**
On behalf of Plaintiff and the Late Wages Subclass

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

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

26 99. Due to Defendant’s failure to pay Plaintiff and the other Late Wages Subclass
27
28

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

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

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

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

21 ¹ Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting
22 time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal.
23 Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time
24 penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals
25 decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a
26 section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages
27 under section 218.5’”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5
28 (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.

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

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

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

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

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

25 107. Through its actions alleged herein, Defendant has engaged in unfair competition
26 within the meaning of section 17200 of the California Business & Professions Code, because
27 Defendant’s conduct, as herein alleged has damaged Plaintiff and the Class Members by
28

1 wrongfully denying them minimum wages, wrongfully denying them overtime, wrongfully
2 denying them reimbursement for business expenses, and wrongfully denying them missed meal
3 and rest period premiums, and therefore was substantially injurious to Plaintiff and the Class
4 Members.

5 108. Defendant engaged in unfair competition in violation of sections 17200 et seq. of
6 the California Business & Professions Code by violating Section 1194 of the California Labor
7 Code, and Sections 11 and 12 of the IWC Wage Order No. 9.

8 109. Defendant's course of conduct, act and practice in violation of the California laws
9 mentioned above constitute independent violations of sections 17200 et seq. of the California
10 Business and Professions Code.

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

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

19 **TENTH CAUSE OF ACTION**
20 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
21 **PAGA PENALTIES FOR LABOR CODE VIOLATIONS**
(Labor Code §§ 2698-2699.5)
On Behalf of Plaintiff and the PAGA Subclass

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

24 113. Plaintiff and the "Aggrieved Employees" under PAGA, i.e., those employees who,
25 during the PAGA Period, suffered the Labor Code violations alleged herein; specifically,
26 violations of §§ 1194, 1194.2, 226, 226.7, 510, 512, 201-203, 204, 210 and 2802 of the Labor
27 Code bring claims under PAGA. Plaintiff was employed by Defendant during the one year
28

1 preceding the submission of a PAGA letter to the LDWA on or around September 23, 2020. As
2 such, they seek to recover, on behalf of himself and all other current and former aggrieved
3 employees of Defendant, the civil penalties provided by PAGA.

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

7 \$100 for the initial violation per employee per pay period; and

8 \$200 for each subsequent violation per employee per pay period.

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

11 115. The aggrieved employees are all individuals who hold or held the title of moving
12 worker, movers, or those in any other similar capacity, and who worked for Defendant in
13 California during the PAGA Period. These employees were subject to the aforementioned Labor
14 Code violations, during the period of time from one year prior to the submission of Plaintiff's letter
15 to the LDWA on September 23, 2020 through the present and on-going.

16 116. In addition, as set forth above, Defendant failed to provide Plaintiff and all
17 aggrieved employees with accurate itemized wage statements in compliance with Labor Code §
18 226(a). Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section
19 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
20 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
21 each violation in a subsequent citation, for which the employer fails to provide the employee a
22 wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

23 117. Further, Plaintiff, as Aggrieved Employees, need not demonstrate or prove that
24 Defendant's conduct in refusing to provide accurate and itemized wage statements was knowing,
25 intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above; *see also Willner v. Manpower*
26 *Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all
27 [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed
28

1 above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that
2 “for the purposes of recovering PAGA penalties, one need only prove a violation of Section
3 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S.
4 Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do not need to establish a Cal. Lab.
5 Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

6 118. Plaintiff seeks to recover the PAGA civil penalties through a representative action
7 as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46
8 Cal.4th 969. Therefore, class certification hereby of the PAGA claims is not required. *Id.*,

9 119. Pursuant to Labor Code § 2699.3 (a), on September 23, 2020, Plaintiff gave written
10 notice by certified mail to Defendant, and to the Labor and Workforce Development Agency
11 (“LWDA”) of his claims, including the facts and theories supporting all claims outlined in this
12 Complaint. Accordingly, Plaintiff will have have fulfilled all administrative prerequisites to the
13 pursuit of his PAGA claim on behalf of himself and all other current and former aggrieved
14 employees of Defendant after 65 days have elapsed from September 23, 2020.

15 JURY DEMAND

16 120. Plaintiff hereby demands trial by jury of his and the Class’s claims against
17 Defendant, except for the PAGA and UCL claims which shall be tried to the Court.

18 PRAYER FOR RELIEF

19 Wherefore, Plaintiff, on behalf of himself and the members of the Class, and the LWDA
20 and the Aggrieved Employees, prays for judgment against Defendant as follows:

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

22 2. On the First Cause of Action:

23 a. A declaratory judgment that Defendant violated sections 1194 and 1194.2 of
24 the California Labor Code by failing to pay Plaintiff, the Aggrieved Employees and the other
25 members of the Class all minimum wages owed during the class period;

26 b. An award to Plaintiff and other members of the Class in the amount of their
27 unpaid wages owed to them, plus interest and/or liquidated damages during the class period;

1 c. An award to Plaintiff and the Class Members of their attorneys' fees and
2 costs of suit to the extent permitted by law, including, but not limited to, section 1194 of the
3 California Labor Code and section 1021.5 of the California Code of Civil Procedure;

4 3. On the Second Cause of Action:

5 a. A Declaratory judgment that Defendant has violated California Labor Code
6 § 510 in failing to pay Plaintiff, the Class and the Aggrieved Employees all overtime wages due;

7 b. An award to Plaintiff and the other members of the Class in the amount of
8 their unpaid overtime compensation for worked performed, plus interest and/or liquidated damages
9 during the Class Period, as well as attorneys' fees under Labor Code section 1194;

10 4. On the Third Cause of Action:

11 a. A declaratory judgment that Defendant has violated California Labor Code
12 § 226.7, and Section 12 of IWC Wage Order No. 9-2001 as to Plaintiff, the Class and the
13 Aggrieved Employees;

14 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class
15 Members for an hour of pay for each day that a compliant rest period was not provided during the
16 Class Period;

17 5. On the Fourth Cause of Action:

18 a. A declaratory judgment that Defendant has violated California Labor Code
19 §§ 226.7, 510, and Section 11 of IWC Wage Order No. 9-2001 as to Plaintiff, the Class and the
20 Aggrieved Employees;

21 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class
22 Members for an hour of pay for each day that a compliant meal period was not provided during the
23 Class Period;

24 6. On the Fifth Cause of Action:

25 a. A declaratory judgement that Defendant violated Labor Code § 2802
26 as to Plaintiff, the Class and the Aggrieved Employees;

27 b. Pursuant to 2802 (a)-(c), reimbursement for all at the unreimbursed business
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1 incurred by Plaintiff and the Class, plus interest and attorney's fees.

2 7. On the Sixth Cause of Action:

3 a. A declaratory judgment that Defendant violated California Labor Code §226
4 by issuing inaccurate and/or incomplete wage statements that failed to include total hours worked,
5 total wages owed, and all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate to Plaintiff, the Aggrieved Employees
7 and the wage statement and penalty subclass members;

8 b. An award to Plaintiff and Wage Statement Subclass Members of \$50 for
9 each initial pay period in which a violation of Section 226 occurred and \$100 for each subsequent
10 pay period in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of
11 the Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code §
12 226(e).

13 8. On the Seventh Cause of Action:

14 a. A declaratory judgment that Defendant violated California Labor Code
15 §§201 through 203 as to former employees in the Class who are the waiting time penalty subclass
16 members;

17 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiff and
18 the waiting time penalty subclass members for waiting time penalties in the amount of 30 days'
19 wages per waiting time penalty subclass Class Member.

20 9. On the Eighth Cause of Action:

21 a. A declaratory judgment that Defendant violated California Labor Code §§
22 204 and 210;

23 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiff and the Late
24 Wage Subclass for penalties pursuant to Labor Code § 210.

25 10. On the Ninth Cause of Action:

26 a. That the Court find and declare that Defendants have violated the UCL and
27 committed unfair and unlawful business practices by failing to pay Plaintiff and Class Members all
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1 minimum wages owed, by failing to pay overtime, by failing to pay missed meal and rest break
2 premiums, and by failing to reimburse Plaintiff and the Class for all their business-related
3 expenses;

4 b. Restitution, including, but not limited to, the relief permitted by sections
5 1194 and 2802 of the California Labor Code (i.e., unpaid minimum wages owed, unpaid overtime
6 wages owed and reimbursement of all business-related expenses by Plaintiff and the members of
7 the Class during the Class Period);

8 11. On the Tenth Cause of Action:

9 a. A civil penalty against Defendant in the amount of \$100 for the initial
10 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the
11 California Labor Code for Plaintiff and the Aggrieved Employees during all of the pay periods in
12 the one year preceding the submission of Plaintiff's LWDA letter through the present and on-going
13 until the violations are corrected or this subclass is certified;

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

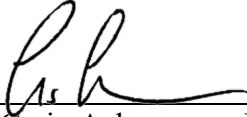
17 c. An award of all costs incurred by the undersigned counsel for Plaintiff in
18 connection with Plaintiff's and Class Members' PAGA claim against Defendant, as provided for in
19 Labor Code § 2699(g)(1);

20 12. All other relief as this Court deems proper.

21 Dated: November 30, 2020

Respectfully,

22 ACKERMANN & TILAJEF, P.C.
23 EMPLOYMENT RIGHTS LAW GROUP, APC

24 By: 

25 Craig Ackermann, Esq.

26 Amir Seyedfarshi, Esq.

27 Counsel for Plaintiff, the Class, and the
28 Aggrieved Employees