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County of Los Angeles

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9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11 JACOB QUIROZ, individually and on behalf
12 of all others similarly situated,

13 Plaintiff,

14 v.

15 GOLDEN MANAGEMENT SERVICES,
16 INC. DBA GOLDEN MANAGEMENT
17 SERVICES XLIX, INC., a Nevada
18 Corporation, and DOES 1-10, inclusive

19 Defendant.

CASE NO: 20STCV43904

PLAINTIFF'S CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR:

(1) PAGA PENALTIES FOR DEFENDANT'S
WILLFUL MISCLASSIFICATION IN
VIOLATION OF LABOR CODE SECTION
226.8 AND 2698, ET SEQ.;
(2) FAILURE TO PAY SEPARATELY AND
HOURLY FOR TIME SPENT BY EMPLOYEES
ON NON-PRODUCTIVE TASKS (LABOR
CODE §§ 1194, 1194.2);
(3) FAILURE TO PAY OVERTIME (LABOR
CODE § 510;
(4) FAILURE TO PROVIDE PAID REST
PERIODS AND PAY MISSED REST BREAK
PREMIUMS (LABOR CODE §§ 226.7; IWC
WAGE ORDER NO. 16);
(5) FAILURE TO PROVIDE MEAL PERIODS
AND PAY MISSED MEAL PERIOD
PREMIUMS (LABOR CODE §§ 226.7, 512, IWC
WAGE ORDER NO. 16);
(6) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802);
(7) FAILURE TO PROVIDE COMPLETE
WAGE STATEMENTS (LABOR CODE § 226
AND 226.2);
(8) WAITING TIME PENALTIES (LABOR
CODE § 201 – 203);
(9) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210)
(10) UCL VIOLATIONS (BUS. & PROF. CODE
§§ 17200-17204); AND
(11) PAGA AND OTHER PENALTIES (LABOR
CODE §§ 2698 – 2699.5);

DEMAND FOR JURY TRIAL

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Attorneys for Plaintiff, the Class, and the Aggrieved Employees

1 Plaintiff Jacob Quiroz (“Plaintiff”), on behalf of himself, the State of California, other
2 aggrieved employees, and all others similarly situated (hereinafter “Class Members”), complains
3 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 and the LWDA, against Defendant Golden Management Services, Inc.
8 dba Golden Management Services XLIX, Inc. and DOES 1 to 100 (“Defendant”) for (1) its willful
9 misclassification of Plaintiff and other Class Members and Aggrieved Employees as independent
10 contractors; (2) its failure to pay its current and former employees in California separately and on
11 an hourly basis for their time spent taking their statutory rest periods and on non-productive tasks
12 (collectively referred to as “Non-Productive Tasks”); (3) its failure to pay overtime wages; (4) its
13 failure to provide paid rest breaks and rest break premiums to its current and former employees in
14 California; (5) its failure to provide meal periods and pay missed meal period premiums to its
15 current and former employees in California; (6) its failure to reimburse business expenses incurred
16 to its current and former employees in California; (7) its failure to provide complete wage
17 statements to its current and former employees in California within the one year prior to the filing
18 of this Complaint; (8) its failure to pay all wages due to former employees based on the foregoing;
19 (9) its failure to pay timely wages to employees based on the foregoing; (10) unfair business
20 practices based on the foregoing; and (11) PAGA and other penalties based on the foregoing. As a
21 result of the foregoing, Defendant has violated California statutory laws as described below.

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

27 VENUE

28 3. Venue is proper in this county under section 395.5 of the California Code of Civil

1 Procedure. Many of the putative Class Members and Aggrieved Employees were employed by
2 Defendant in Los Angeles County and/or performed work for Defendant in Los Angeles County
3 during the Class Period and the PAGA Period. Defendant provides property management services
4 in the county of Los Angeles. Many of the acts alleged herein including Defendant's willful
5 misclassification of its maintenance workers and electrical contractors, failure to pay separately
6 and hourly for Non-Productive Tasks, its failure to pay overtime pay, its failure to provide labor
7 code complaint meal and rest breaks, its failure to pay missed meal and rest break premiums, and
8 its failure to reimburse for business expenses occurred in Los Angeles County. Moreover, the
9 majority of the buildings managed by Defendant are located in Los Angeles County. Venue is
10 therefore proper in Los Angeles County.

11 **JURISDICTION**

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

19 **THE PARTIES**

20 5. Plaintiff is a California resident and, from January 2020 through August 2020 was
21 misclassified as a contractor but was actually employed by Defendant as a maintenance worker in
22 California performing both contractor and electric work. From at least four years from the filing
23 of this complaint through the present, and on-going, Defendant's maintenance workers, contractor
24 and electricians, including Plaintiff during his employment, were willfully misclassified as
25 independent contractors; were not paid by Defendant for their time spent on statutory rest periods
26 and the other Non-Productive Tasks; were not paid overtime wages; did not receive premium
27 payments for not being provided paid and compliant rest periods; were not provided timely duty
28 free meal breaks or paid missed meal break premiums; were not provided accurate and/or complete

1 wage statements; were not reimbursed for all business expenses including vehicle mileage, cell
2 phone and the use of personal equipment; did not receive timely wages; and did not receive all of
3 their wages due upon termination of employment.

4 6. Plaintiff represents the state of California and the following group of aggrieved
5 employees defined as:

6 All individuals who hold or held the title of maintenance worker, electrical contractor, or in
7 any other similar capacity, and who are or have been classified as independent contractors
8 and paid on an IRS Form 1099 basis by Defendant in California during the PAGA Period
(hereinafter referred to as "Aggrieved Employees").

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

10 All individuals who hold or held the title of maintenance worker, electrical contractor, or in
11 any other similar capacity, and who are or have been classified as independent contractors
and paid on an IRS Form 1099 basis by Defendant during the Class Period.

12 8. Defendant is a Nevada corporation with its principal place of business in Carson
13 City, Nevada. Defendant is a property management company that transacts millions of dollars of
14 business by providing property management services to property owners throughout California and
15 Nevada.

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

23 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
24 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
25 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
26 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
27 employer and/or joint employer of Plaintiff, the Class, and the Aggrieved Employees.
28

11. Despite its willful misclassification of Plaintiff, the Class, and the Aggrieved Employees, Defendant was and is the employer of Plaintiff and Class Members for all relevant time periods. In fact, Defendant employed Plaintiff, the Class, and the Aggrieved Employees as maintenance worker and electrical contractors in California at various times during the Class Period. Defendant employed approximately 60 maintenance workers and electrical contractors in California during the Class Period, who were all willingly misclassified as contractors.

FACTUAL ALLEGATIONS

12. Defendant operates and, at all times during the Class Period and PAGA Period, has done and does business in California providing property management services in California. Defendant, in the course of operating its business in California during the Class Period, employed Plaintiff, the Class, and the Aggrieved Employees, even though they were misclassified and treated incorrectly as independent contractors.

13. Defendant operates in California. Defendant's maintenance workers and electrical contractors provide services to Defendant's property management clients throughout California and are paid on a per-project basis (i.e., piece-rate basis). During the Class Period, Plaintiff, like the other members of the Class and Aggrieved Employees, typically worked twelve to fourteen hours per day and five days per week. Class Members' and Aggrieved Employees' job duties included performing general repairs and maintenance to Defendant's property management clients.

14. Since at least four years prior to the filing of this action, including during the PAGA Period, Defendant has maintained policies and practices based on or including the willful misclassification of the Plaintiff, the Class, and Aggrieved Employees as independent contractors. Under applicable standards of law, Plaintiff, the Class, and Aggrieved Employees are, or were during their employment by Defendant, employees and not independent contractors.

15. The California Supreme Court in *Dynamex Operations West, Inc., v. Superior Court*, 4 Cal. 5th 903, 956-57 (Cal. 2018) set forth the standard for determining whether an individual performing work is an independent contractor or an employee, as follows:

We find merit in the concerns noted above regarding the disadvantages, particularly in the wage and hour context, inherent in relying upon a multifactor, all the circumstances standard for distinguishing between employees and independent contractors. As a consequence, we conclude it is appropriate, and most consistent with the history and

1 purpose of the suffer or permit to work standard in California's wage orders, to interpret
2 that standard as: (1) placing the burden on the hiring entity to establish that the worker
3 is an independent contractor who was not intended to be included within the wage
4 order's coverage; and (2) requiring the hiring entity, in order to meet this burden, to
5 establish *each* of the three factors embodied in the ABC test — namely (A) that the
6 worker is free from the control and direction of the hiring entity in connection with the
performance of the work, both under the contract for the performance of the work and
in fact; *and* (B) that the worker performs work that is outside the usual course of the
hiring entity's business; *and* (C) that the worker is customarily engaged in an
independently established trade, occupation, or business of the same nature as the work
performed. (citations omitted).

7 16. This standard – set forth by the California Supreme Court – is commonly referred to
8 as the “ABC test,” and was codified by California Assembly Bill 5 (2019). *See* Cal. Labor Code §
9 2750.3(a) (codifying the ABC test set forth by the California Supreme Court in *Dynamex*). Under
10 the ABC Test, Defendant has the burden of establishing that Plaintiff, the Class, and Aggrieved
11 Employees were independent contractors and not intended to be included within the wage order's
12 coverage. Further, Defendant must establish that Plaintiff, the Class, and Aggrieved Employees
13 meet all three factors of the ABC Test, which Defendant cannot meet.

14 17. At all times, Defendant has retained the right to control the method and manner of
15 how Plaintiff, the Class, and Aggrieved Employees performed their job duties and retained all
16 necessary control over Plaintiff, the Class, and Aggrieved Employees during their employment.
17 As described above, Plaintiff, the Class, and Aggrieved Employees were required to follow
18 detailed requirements imposed on him by Defendant governing his work performance.

19 18. Further, Defendant unilaterally set pay rates of Plaintiff, the Class, and Aggrieved
20 Employees, without Plaintiff, the Class, and Aggrieved Employees having an opportunity to
21 negotiate pay rates with Defendant, and directed when and where Plaintiff, the Class, and
22 Aggrieved Employees were to perform work by paying per “project.” Plaintiff, the Class, and
23 Aggrieved Employees were paid a base rate for each project.

24 19. As a result, under applicable law, Plaintiff, the Class, and Aggrieved Employees
25 were employees of Defendant and they were willfully misclassified with their pay reported on an
26 IRS Form 1099 basis. *See* Labor Code section 226.8; *see also* *Dynamex Operations West, Inc., v.*
27 *Superior Court*, 4 Cal. 5th 903, 956-57 (Cal. 2018); *Ayala v. Antelope Valley Newspapers, Inc.* 59
28 Cal.App.4th 522 (2014); *Ruiz v. Affinity Logistics, Corp.*, 754 F. Supp. 3d 1093 (9th Cir. 2014)

(employer's right to control detail of employees' work supports finding of employer-employee relationship); *Alexander v. FedEx Ground Package System, Inc.* 765 F. Supp. 3d 381 (9th Cir. 2014) (independent contractors were deemed employees as a matter of law where Defendant controlled times employees worked and controlled aspects of employees' work). *See also Villapando v. Excel Direct, Inc.*, 2015 WL 15179486 (N.D. Cal. 2015) (granting summary judgment to Plaintiff on Defendant's defense that the employees at issue were independent contractors).

20. Through the performance of his job duties, Plaintiff, the Class, and Aggrieved Employees performed an integral and entirely essential aspect of Defendant's business. Defendant's business is providing property management services to its customers. During the Class Period and PAGA Period, customers submitted work orders to Defendant and Defendant sent Plaintiff, the Class, and the Aggrieved Employees to complete these work orders. Thus, Plaintiff, the Class, and the Aggrieved Employees were individuals performing the work that Defendant was being paid by its customers to perform, since he and they were part of the maintenance dimension of Defendant's property management business. At Defendants' customers' requests and per Defendant's instructions, Plaintiff, the Class, and Aggrieved Employees provided maintenance services to Defendant's customers. As such, there can be no doubt that Plaintiff, the Class, and Aggrieved Employees performed work in the usual course of Defendant's business.

21. Plaintiff, the Class, and Aggrieved Employees do not operate as independent businesses. Rather, they provided maintenance services to Defendant's customers and in compliance with Defendant's policies, practices, and procedures. Plaintiff, the Class, and Aggrieved Employees did not provide maintenance services for any other company or entity. In short, Plaintiff, the Class, and Aggrieved Employees held themselves out to Defendant's customers and to the public as employees of Defendant, and not as an independent business.

22. Because Defendant cannot meet any part of the ABC test, it is clear that Defendant intentionally and willfully misclassified Plaintiff, the Class, and PAGA Aggrieved Employees as independent contractors in violation of Labor Code § 226.8(a). Moreover, the willful misclassification of Plaintiff, the Class, and PAGA Aggrieved Employees was part of a pattern or

1 practice of Defendant willfully misclassifying their maintenance workers and electrical
2 contractors. Accordingly, the stepped-up penalties in Section 226.8 should be recoverable here.

3 23. Labor Code § 1197 states the California requirement that employees must be paid at
4 least the minimum wage fixed by the Commission, and any payment of less than the minimum
5 wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the
6 legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this
7 minimum wage.” IWC Wage Order No. 16 also obligates employers to pay each employee
8 minimum wages for all hours worked.

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

14 25. Labor Code § 1194.2 authorizes employees to recover liquidated damages in any
15 action under Labor Code § 1194 to recover unpaid minimum wages. Where an employee, such as
16 Plaintiff, was not paid for all hours worked under Labor Code § 1194, the employee may recover
17 minimum wages for the time worked for which they received no compensation. *See Sillah v.*
18 *Command Int’l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing
19 for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed
20 they were paid less than minimum wage); *accord Andrade v. Arby’s Rest. Grp., Inc.*, 2016 U.S.
21 Dist. LEXIS 172319, at *20-21 (N.D. Cal. Dec. 12, 2016).

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

28 27. Due to Defendant’s misclassification of Plaintiff, the Class, and the Aggrieved

1 Employees as independent contractors, Plaintiff, the Class, and the Aggrieved Employees were not
2 paid for all of his and their hours worked while employed by Defendant and thus have not been
3 paid all minimum and overtime wages owed. Instead, Plaintiff, the Class, and the Aggrieved
4 Employees have only received a base flat amount for each project worked. Thus, Plaintiff, the
5 Class, and the Aggrieved Employees were not paid for all other non-productive tasks performed
6 during their workday, by Defendant. As a result, Plaintiff, the Class, and the Aggrieved Employees
7 have been denied compensation for all hours worked, in violation of Cal. Labor Code §1194, and
8 have been denied compensation at the minimum wage in violation of Cal. Labor Code §§ 1197 and
9 1199.

10 28. Further, because Plaintiff, the Class, and the Aggrieved Employees were classified
11 as independent contractors, they did not receive the overtime premium pay rates applicable to
12 employees under California law for working in excess of eight hours in a day, or more than forty
13 hours in a workweek, in violation of IWC Wage Order 16-2001, and Labor Code §§ 1194 and 510.
14 On multiple occasions, Plaintiff, the Class, and the Aggrieved Employees worked shifts that were
15 longer than 8 hours in length.

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

19 30. Section 12 of IWC Wage Order No. 16 states in pertinent part: “Every employer
20 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be
21 in the middle of each work period. The authorized rest period time shall be based on the total
22 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
23 thereof.”

24 31. The California Supreme Court explained in the context of rest breaks that employer
25 liability attaches from adopting an unlawful policy: “An employer is required to authorize and
26 permit the amount of rest break time called for under the wage order for its industry. If it does
27 not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for
28 employees working a seven-hour shift when two are required—*it has violated the wage order and*

1 *is liable.*” *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1033 (2012) (emphasis added).

2 32. Following *Brinker*, the Courts of Appeal have confirmed that liability for on-duty
3 breaks arises when an employer adopts a uniform policy that fails to provide off-duty breaks. For
4 example, in *Faulkinbury v. Boyd & Associates, Inc.*, the California Court of Appeals
5 applied *Brinker*: “In *Faulkinbury I*, we concluded that even if [defendant]’s on-duty meal break
6 policy was unlawful, [defendant] would be liable only when it actually failed to provide a required
7 off-duty meal break. *Brinker* leads us now to conclude [defendant] would be liable upon a
8 determination that [defendant]’s uniform on-duty meal break policy was unlawful.” *Faulkinbury*,
9 216 Cal. App. 4th 220, 235 (2013). The Court further explained: “the employer’s liability arises by
10 adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was
11 able to take the required break goes to damages...” *Id.* (citations omitted); *see also Benton v.*
12 *Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 728 (2013).

13 33. Here, not only did Defendant fail to promulgate a compliant rest period policy and
14 fail to compensate Plaintiff, the Class, and the Aggrieved Employees for their rest periods, but
15 Defendant in fact has a policy that effectively penalized and subjected Plaintiff, the Class, and the
16 Aggrieved Employees to potential reprimand and/or discipline if Plaintiff, the Class, and the
17 Aggrieved Employees took rest breaks, which would often cause Plaintiff, the Class, and the
18 Aggrieved Employees to be late in completing projects Defendant. Further, because of the time-
19 pressure nature of the work schedules of Plaintiff, the Class, and the Aggrieved Employees,
20 Plaintiff, the Class, and the Aggrieved Employees were never relieved of all duties while working
21 for Defendant.

22 34. Additionally, under California law Defendant was and is obligated to pay Plaintiff,
23 the Class, and the Aggrieved Employees separately and hourly for their rest break time in
24 California. *See Bluford v. Safeway Stores, Inc.*, (2013) 216 Cal. App. 4th 864, 872-73 (“Thus,
25 contrary to Safeway’s argument, a piece-rate compensation formula that does not compensate
26 separately for rest periods does not comply with California minimum wage law.”); *Shook v. Indian*
27 *Transport Co.*, 2014 WL 7178199 (E.D.Cal. Dec. 15, 2014) (adopting *Bluford* and noting that,
28 “IRT has not identified any split in the California appellate courts that would indicate that there is

1 any disagreement over whether piece-rate workers must be separately compensated for breaks”);
2 *Cardenas v. McLane FoodServices, Inc.* (C.D.Cal.2011) 796 F.Supp.2d 1246, 1252 (piece-rate pay
3 system that did not separately pay truck drivers for rest periods and other non-driving tasks
4 violates California law requiring compensation for each hour worked); and, *Gonzalez v. Downtown*
5 *LA Motors, LP*, (2013) 215 Cal. App. 4th 36, 49 (favorably citing and adopting *Cardenas*).

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

10 36. Under California Labor Code Section 512 and IWC Wage Order No. 16, no
11 employer shall employ any person for a work period of more than five (5) hours without providing
12 a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty
13 (30) minutes, the employee is to be completely free of the employer’s control and must not
14 perform any work for the employer. If the employee does perform work for the employer during
15 the thirty (30) minute meal period, the employee has not been provided a meal period in
16 accordance with the law. Also, the employee is to be compensated for any work performed during
17 the thirty (30) minute meal period.

18 37. Under California Labor Code Section 226.7, if the employer does not provide an
19 employee a meal period in accordance with these requirements, the employer shall pay the
20 employee one (1) hour of pay at the employee’s regular rate of compensation for each workday
21 that the meal period is not provided. Plaintiff, the Class, and the Aggrieved Employees worked
22 shifts that were longer than 5 hours in length. Here, despite the fact that Plaintiff, the Class, and the
23 Aggrieved Employees were never authorized to take their timely 30-minute duty-free meal breaks,
24 on or before the fifth and tenth hours of shifts, Defendant never paid any missed meal break
25 premiums to Plaintiff, the Class, and the Aggrieved Employees.

26 38. As a result of Defendant misclassifying Plaintiff, the Class, and the Aggrieved
27 Employees as independent contractors, Defendant violated Labor Code § 512 by failing to advise
28 Plaintiff, the Class, and the Aggrieved Employees of their right to receive thirty (30) minute

1 uninterrupted meal periods within the first five hours of his shift. In fact, because Defendant
2 misclassified Plaintiff, the Class, and the Aggrieved Employees as independent contractors, it did
3 not set any policies providing meal periods to Plaintiff, the Class, and the Aggrieved Employees.

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

6 40. Pursuant to Labor Code 226.7(c), if an employer failed to provide an employee with
7 a meal or rest period, “the employer shall pay the employee one additional hour of pay at the
8 employee’s regular rate of compensation for each workday that the meal or rest or recovery period
9 is not provided.”

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

19 42. Specifically, under Labor Code § 2802, employers must reimburse employees for
20 required work-related use of personal cell phones, regardless of whether they incur any additional
21 out-of-pocket expense from that work-related use. *See Cochran v. Schwan’s Home Service*, 228
22 Cal. App. 4th 1137 (2014) (reversing denial of class certification in cell phone reimbursement
23 class action). *Cochran* held that “[i]f an employee is required to make work-related calls on a
24 personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does
25 not matter whether the phone bill is paid for by a third person, or at all. . . . It is irrelevant whether
26 the employee changed plans to accommodate work-related cell phone usage. . . . *To show liability*
27 *under section 2802, an employee need only show that he or she was required to use a personal cell*
28 *phone to make work-related calls, and he or she was not reimbursed.” Id.* at 1144-45 (emphasis

1 added); *see also Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting
2 plaintiffs’ motion for partial summary judgment on the plaintiffs’ cell phone reimbursement
3 claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014)
4 (Hon. Edward Chen) (certifying class of cell phone reimbursement claim and adopting the logic of
5 *Cochran*).

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

12 44. Under Labor Code § 2802, where, as here, an employer expects Plaintiff, the Class,
13 and the Aggrieved Employees to use their tools such as jackhammer, drills, concrete finishing
14 tools, drywall tools, angle grinder, cell phone, their vehicle mileage, and to buy or use other items
15 such as electrical tools, and fixing and engaging in construction projects, then Defendant must
16 reimburse employees. Moreover, here Plaintiff, the Class, and the Aggrieved Employees used
17 their cars to drive from one project to another project every day and did not receive any
18 reimbursement. Defendant never reimbursed Plaintiff, the Class, and the Aggrieved Employees for
19 their mileage and gas. Defendant did not reimburse Plaintiff, the Class, and the Aggrieved
20 Employees for all the expensive construction tools that they were required to use to perform their
21 job duties.

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

27 46. Furthermore, by virtue of the misclassification, Defendant did not and does not
28 issue adequate wage statements to Plaintiff, the Class, and the Aggrieved Employees, under Labor

1 Code Sections 226(a) and 226.2.

2 47. Plaintiff, the Class, and the Aggrieved Employees did not receive any wage
3 statements, let alone complaint wage statements, from Defendant. Plaintiff, the Class, and the
4 Aggrieved Employees received a check on a bi-monthly basis which was for \$3,000.00 in total.
5 There was no paystub or wage statement attached to the check or any description of the number of
6 the hours that each employee worked. Furthermore, Plaintiff, the Class, and the Aggrieved
7 Employees did not use any clock-in and clock-out system, so Defendant did not track their actual
8 hours worked. They were required to finish every single project on a daily basis.

9 48. Due to, *inter alia*, Defendants' failure to pay Plaintiff, the Class, and the Aggrieved
10 Employees minimum wages, overtime payments, and meal and rest break premiums, as well as
11 Defendant's failure to track actual hours worked and meal breaks, the wage statements issued by
12 Defendants to Plaintiff, the Class, and the Aggrieved Employees do not indicate the correct
13 amount of gross wages earned, total hours worked, net wages earned, hours worked, or the
14 applicable hourly rates in effect during the pay period and the corresponding number of hours
15 worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9). Defendant also
16 failed to include the time spent on rest breaks in violation of Labor Code section 226.2.

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

23 50. Defendant's failure to furnish accurate itemized wage statements has caused
24 Plaintiff, the Class, and the Aggrieved Employees to incur economic damages in that they were not
25 aware that they were owed and not paid compensation for their time spent on overtime work and
26 statutory rest breaks. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to
27 the employee to add up the daily hours shown on the time cards or other records so that the
28 employee must perform arithmetic computations to determine the total hours worked during the

1 pay period, the requirements of section 226 would not be met”); *McKenzie v. Federal Express*
2 *Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by
3 not including, inter alia, total hours worked giving rise to claims under both Section 226 and for
4 PAGA penalties); *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 960-961 (2005)
5 (reversing summary judgment for defendants where wage statements did not “give an accurate
6 report of the hours plaintiff worked, at least not on its face”); Labor Code § 226(e)(2)(B)
7 (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or
8 (5), among other provisions, and where employees cannot easily determine the gross or net wages
9 earned by the employee during the pay period).

10 51. Aggrieved Employees will prevail on their claim for PAGA penalties under Labor
11 Code § 226(a). *See Lopez v. Friant & Assoc. LLC*, 15 Cal. App.5th 773, 788 (2017) (a plaintiff
12 seeking PAGA penalties for a violation of Labor Code section 226(a) does not have to show injury
13 or a knowing and intentional violation); *Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136
14 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a
15 violation of section 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp.*
16 *Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering
17 PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a
18 Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28
19 (C.D. Cal. July 3, 2013) (“Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to
20 recover penalties under § 2699(f) of PAGA.”).

21 52. Labor Code § 201(a) provides in pertinent part: “If an employer discharges an
22 employee, the wages earned and unpaid at the time of discharge are due and payable
23 immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written
24 contract for a definite period quits his or her employment, his or her wages shall become due and
25 payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice
26 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
27 of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement
28 or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of

1 an employee who is discharged or who quits, the wages of the employee shall continue as a
2 penalty from the due date thereof at the same rate until paid or until an action therefor is
3 commenced; but the wages shall not continue for more than 30 days.”

4 53. Following Plaintiff’s separation of employment from Defendant, he, like other
5 members of the Class and Aggrieved Employees who are former employees of Defendant, did not
6 receive all wages due, including wages due for non-productive tasks, overtime, and his unpaid
7 meal and rest breaks during the Class Period, in violation of Labor Code Sections 201-203,
8 triggering waiting time penalties under those provisions.

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

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

21 56. Pursuant to Labor Code Section 210, as amended,

22 (a) In addition to, and entirely independent and apart from, any other penalty
23 provided in this article, every person who fails to pay the wages of each employee as
24 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:

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

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

1 (b) The penalty shall either be recovered by the employee as a statutory penalty
2 pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the
3 issuance of a citation or pursuant to Section 98.3. The procedures for issuing,
4 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.

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

7 57. Here, Plaintiff seeks to recover all penalties available under Labor Code Section
8 210 for Defendant's violations of Labor Code Section 204.

9 58. The administrative prerequisites of PAGA will be satisfied after 65 days have
10 elapsed from September 5, 2020 (i.e. 65 days since Plaintiff's mailing of the PAGA notice with no
11 further communication from the LWDA to Plaintiff's counsel, which should occur on or around
12 November 10, 2020). Plaintiff has paid the \$75.00 fee and has otherwise satisfied the
13 administrative prerequisites of PAGA, as amended.

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

19 CLASS ACTION ALLEGATIONS

20 60. Plaintiff brings this action, on behalf of himself and all others similarly situated, as
21 a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
22 composed of and defined as: All individuals who hold or held the title of maintenance worker,
23 electrical contractor, or in any other similar capacity, and who are or have been classified as
24 independent contractors by Defendant during the Class Period (hereinafter "Class Members"). All
25 such Class Members were subject to Defendant's unlawful misclassification, and, as a result, were
26 not paid for all hours worked, were not paid overtime, were not provided code-compliant meal or
27 rest breaks, and were not reimbursed for their out-of-pocket business expenses.

28 61. This action has been brought and may properly be maintained as a class action

1 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
2 litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the
3 Class:

4 a. Numerosity: The potential members of the Class as defined are so
5 numerous that joinder of all the members of the Class is impracticable. While the precise number
6 of Class Members has not been determined at this time, Plaintiff is informed and believes that
7 Defendant has employed approximately 60 Class Members as maintenance and electrical
8 contractors in California who were subject to Defendant's unlawful misclassification. The Class
9 Members are dispersed throughout California. Joinder of all members of the proposed classes is
10 therefore not practicable.

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

14 i. Whether Defendant violated Section 226.8 of the Labor Code by willfully
15 misclassifying Plaintiff, Class Members and Aggrieved Employees as independent contractors.

16 ii. Whether Defendant violated sections 1194, 1194.2, and 226.2 of the Labor
17 Code by failing to pay Plaintiff and the members of the Class separately and on an hourly basis for
18 their time spent on their statutory rest breaks and other Non-Productive Tasks engaged in by
19 members of the Class on a daily basis during the Class Period;

20 iii. Whether Defendant violated Section 12 of IWC Wage Order No. 16 by
21 failing to provide paid rest periods to Plaintiff and the members of the Class in California during
22 the Class Period;

23 iv. Whether Defendant violated Labor Code section 226.7 and section 12 of
24 IWC Wage Order No. 16 by failing to pay one hour of premium pay to each member of the Class for
25 each day that a paid rest break was not provided during the Class Period;

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

28 vi. Whether Defendant violated Labor Code sections 512 and 226.7, and

1 section 11 of IWC Wage Order No. 16 by failing to pay one hour of premium pay to each member
2 of the Class for each day that a paid meal break was not provided during the Class Period;

3 vii. Whether Defendant violated 2802 of the Labor Code and section 17203 of
4 the California Business and Professions Code during the Class Period by failing to reimburse
5 Plaintiff and the Class Members for their work-related expenses;

6 viii. Whether Defendant failed to provide Plaintiff and the members of the Class
7 complete wage statements in violation of Labor Code Section 226(a) and 226.2;

8 ix. Whether Defendant violated Section 203 of the Labor Code by failing to pay
9 members of the Waiting Time Penalty Subclass for all wages due to them (including their pay due
10 for unpaid rest breaks and the other Non-Productive Tasks, overtime, and meal and rest break
11 premiums) upon their separation of employment from Defendant;

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

14 xi. Whether Defendant engaged in an unfair practice and violated section 17200
15 of the California Business and Professions Code by failing to pay Plaintiff and the members of the
16 Class separately and on an hourly basis for their time spent on statutory rest breaks and other Non-
17 Productive Tasks and by failing to reimburse them for fair business-related expenses during the
18 Class Period;

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

22 xiii. Whether Defendant engaged in an unfair practice and violated section 17200
23 of the California Business and Professions Code by failing to provide Plaintiff and the members of
24 the Class with compliant breaks during the Class Period;

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

28 xv. Whether Defendant engaged in an unfair practice and violated section 17200

1 of the California Business and Professions Code by failing to provide Plaintiff and the members of
2 the Class with timely, duty-free meal breaks during the Class Period;

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

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

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

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

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

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

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

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

10 **FIRST CAUSE OF ACTION**
11 **PAGA PENALTIES FOR WILLFUL MISCLASSIFICATION OF ALL OF**
12 **DEFENDANT'S MAINTENANCE WORKERS AND ELECTRICAL CONTRACTORS**
13 **[Cal. Labor Code §§ 2698 *et seq.* and 226.8(a)(1) and 226.8(b) or 226.8(c)]**
14 **On behalf of Plaintiff, the LWDA and the PAGA Aggrieved Employees**

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

17 63. Plaintiff and similarly situated employees are "Aggrieved Employees" under the
18 PAGA as they were employed by Defendant during the applicable statutory period and suffered
19 the Labor Code violation alleged herein. At all times relevant hereto, Plaintiff and Aggrieved
20 Employees were employees for purposes of the California Labor Code, although they were
21 willfully misclassified as independent contractors.

22 64. In violation of the Labor Code provisions cited herein and in willful violation of
23 California law and public policy, Defendant intentionally misclassified Plaintiff and Aggrieved
24 Employees as independent contractors in violation of Labor Code § 226.8(a). This was part of a
25 pattern as practice of willful misclassification of all, or virtually all, of Defendant's maintenance
26 workers and electrical contractors thereby triggering heightened penalties under sections 226.8(b)
27 and (c).

28 65. The administrative prerequisites of PAGA will be satisfied after 66 days have
elapsed from September 5, 2020 (i.e. 60 days since Plaintiff's mailing of the PAGA notice with no

1 further communication from the LWDA to Plaintiff's counsel). The actionable period is one year
2 prior to the sending of the LWDA letter through the present. Plaintiff has paid the \$75.00 fee and
3 has otherwise satisfied the administrative prerequisites of PAGA, as amended.

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

9 **SECOND CAUSE OF ACTION**
10 **FAILURE TO PAY SEPARATELY AND HOURLY FOR TIME SPENT**
11 **BY MAINTENANCE WORKERS AND ELECTRICAL CONTRACTORS ON NON-**
12 **PRODUCTIVE TASKS IN CALIFORNIA**
13 **[Cal. Labor Code §§ 1194; 1194.2, and 226.2]**
14 **On behalf of Plaintiff and the Class**

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

17 68. The actionable period for this cause of action is three years prior to the filing of this
18 Complaint through the present, and on-going until the violations are corrected or the Class is
19 certified.

20 69. Section 1194 of the Labor Code provides, in relevant part:

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

26 70. Section 1194.2 of the Labor Code provides, in relevant part:

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

71. Labor Code section 226.2 also requires employers in California who pay on a piece-
rate basis, such as the per project basis Defendant used here, to pay separately and hourly for all

1 non-productive working time.

2 72. As set forth above, during the Class Period, although Plaintiff and the Class
3 Members were misclassified, they were, in reality, employees of Defendant. Moreover, during the
4 Class Period, Plaintiff and Class Members were entitled to several statutory rest periods during
5 their shifts. Further, as set forth above, during the Class Period, Plaintiff and Class Members
6 engaged in several Non-Productive Tasks during their shifts. Plaintiff and the members of the
7 Class were paid on a per project basis, but Defendant did not separately compensate on an hourly
8 basis for their time spent on statutory rest periods or Non-Productive Tasks in violation of Labor
9 Code § 1194.

10 73. Accordingly, during the Class Period, Plaintiff and the members of the Class did not
11 receive minimum wage for their on-duty time spent taking statutory rest breaks and on Non-
12 Productive Tasks.

13 74. In failing to pay for rest periods and the Non-Productive Tasks separately
14 particularly after Section 226.2 of the Labor Code became effective in January 2016, Defendant
15 operated in bad faith given the cases and the state of the law set forth above. Accordingly,
16 pursuant to sections 1194, 1194.2, and 226.2 of the California Labor Code, Plaintiff and the Class
17 are entitled to recover, either their unpaid hourly wages due, or minimum wage plus interest and/or
18 liquidated damages in an additional amount equal to the total amount of wages unlawfully
19 withheld during the Class Period for rest period time.

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

22 **THIRD CAUSE OF ACTION**
23 **FAILURE TO PAY OVERTIME WAGES**
24 **[Cal. Labor Code § 510]**
On behalf of Plaintiff and the Class

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

27 77. The actionable period for this cause of action is three years prior to the filing of the
28 Complaint through the present, and on-going until the violations are corrected or the Class is

1 certified.

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

6 79. Here, Defendant hired Plaintiff and the Class to work as maintenance workers and
7 electrical contractors in California and to work on various of Defendant's properties and
8 construction sites. Plaintiff and the Class often worked in excess of 8 hours and over 40 hours per
9 week. On average, Plaintiff and the Aggrieved Employees worked between 12 to 14 hours on a
10 daily basis. Defendant only paid Plaintiff and the Class the regular hourly rate per each project. To
11 make matters worse, Defendant just issued an invoice sheet and a check for all the hours worked
12 by Plaintiff and the Class. Plaintiff and the Class did not receive any compensation for the hours
13 that they worked beyond eight hours per day.

14 80. Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order No. 16,
15 Defendant did not pay Plaintiff and the Class any overtime wages corresponding to one and a half
16 time of Plaintiff and the Class' hourly rates of pay. Plaintiff and the Class often worked eight hours
17 per day and often worked over 40 hours per week. Defendant violated Labor Code § 510 by failing
18 to pay Plaintiff and the Class their overtime wages at the applicable overtime rates, including daily
19 overtime and weekly overtime, and instead merely paid Plaintiff and the Class straight time wages
20 for all hours worked.

21 **FOURTH CAUSE OF ACTION**
22 **FAILURE TO PROVIDE PAID REST PERIODS**
23 **AND PAY MISSED REST BREAK PREMIUMS**
24 **[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order No. 16]**
25 **On behalf of Plaintiff and the Class**

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

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

1 certified.

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

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

12 85. Courts have interpreted Section 12 of the applicable Wage Order to mean that
13 employees paid on a piece-rate must receive separate and hourly pay for their time spent on rest
14 breaks. *See, e.g., Bluford v. Safeway Stores, Inc.*, (2013) 216 Cal. App. 4th 864, 872-73 (“Thus,
15 contrary to Safeway’s argument, a piece-rate compensation formula that does not compensate
16 separately for rest periods does not comply with California minimum wage law.”).

17 86. As alleged herein, although misclassified, Plaintiff and the Class were employees of
18 Defendant. By failing to provide its maintenance workers and electrical contractors paid rest
19 periods of 10 minutes for each 4 hours of work, Defendant has violated California Labor Code §
20 226.7, and is liable to Plaintiff and the Class.

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

26 //

27 //

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE OFF-DUTY MEAL BREAKS AND FAILURE
TO PAY MISSED MEAL BREAK PREMIUMS

[Cal. Labor Code §§ 226.7, 512]
On behalf of Plaintiff and the Class

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

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

90. 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.

91. Section 11(A) and (B) of IWC Wage Order No. 16 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.

92. Section 11(C) of IWC Wage Order No. 16 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.

93. 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 94. As alleged herein by virtue of the misclassification of Defendant's maintenance
2 workers and electrical contractors, and by failing to provide them with duty-free timely 30-minute
3 meal breaks, on their shifts greater than 5 hours in length, Defendant has violated California Labor
4 Code § 226.7 and IWC Wage Order No. 16, and is liable to Plaintiff and the Class.

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

10 **SIXTH CAUSE OF ACTION**
11 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
12 **[Cal. Labor Code § 2802]**
 On Behalf of Plaintiff and the Class

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

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

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

27 99. Specifically, under Labor Code § 2802, employers must reimburse employees for
28 required work-related use of personal cell phones, regardless of whether they incur any additional

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

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

20 101. Under Labor Code § 2802, where, as here, an employer expects Plaintiff and the
21 Class to use their tools such as jackhammer, drills, concrete finishing tools, drywall tools, angle
22 grinder, cell phone, their vehicle mileage, and to buy or use other items such as electrical tools, and
23 fixing and engaging in construction projects, then Defendant must reimburse employees.
24 Moreover, here Plaintiff and the Class used their car to drive from one project to another project
25 every day and did not receive any reimbursement. Defendant never reimbursed the employees for
26 their mileage and gas. Defendant did not reimburse Plaintiff and the Class for all the expensive
27 construction tools that they were required to use for

28 102. Accordingly, by virtue of its misclassification of Plaintiff and the Class as

1 independent contractors when they were, in reality, employees, Defendant violated Labor Code §
2 2802 and continue to do so by failing to reimburse Plaintiff and all other Reimbursement
3 Aggrieved Employees for all work-related charges they incurred in connection with their job
4 duties. By failing to reimburse Plaintiff and the Class for their personal expenses incurred for
5 work-related purposes, Defendant violated Labor Code § 2802.

6 **SEVENTH CAUSE OF ACTION**
7 **FAILURE TO PROVIDE COMPLIANT WAGE STATEMENTS**
8 **[Cal. Labor Code § 226(a) and 226.2(a)(2)(A)-(B)]**
9 **On behalf of Plaintiff and the Wage Statement and Penalty Subclass**

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

12 104. The actionable period for this cause of action is one year prior to the filing of this
13 Complaint through the present, and on-going until the violations are corrected or the subclass is
14 certified.

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

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

31 106. As set forth above, during the Class Period, due to misclassification, Defendant
32 failed to issue wage statements to its maintenance workers and electrical contractors in California,
33 including Plaintiff, that complied with Labor Code Section 226(a).

34 107. Moreover, Labor Code Section 226.2(a)(2)(A) provides that, for piece-rate workers,
35 "The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other

1 items specified in that subdivision, separately state the following to which Section 226 shall also
2 be applicable: (A) The total hours of compensable rest and recovery periods, the rate of
3 compensation, and the gross wages paid for those periods during the pay period.” The total
4 amount of non-productive working time must also appear on the wage statement. *See*, Labor Code
5 Section 226.2(a)(2)(B). Defendant’s “wage statements” issued to Plaintiff and the Aggrieved
6 Employees were inadequate. Defendant’s “wage statements” also did not include total hours
7 worked, the total amount of time spent on rest periods & other Non-Productive Tasks, and all
8 applicable hourly rates in effect during the pay period and the corresponding number of hours
9 worked at each hourly rate in violation of Labor Code Sections 226(a) and 226.2.

10 108. Defendants’ violation of Labor Code § 226 was knowing and intentional. *See*
11 *Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the
12 defendant knowingly and intentionally violated Labor Code § 226 because the “[d]efendant knew
13 that it was not providing total hours worked to plaintiff or other employees paid on commission”
14 even though it believed that employees paid solely on commission or commission and salary “are
15 exempt and therefore we do not record hours on a wage statement”) and/or the passage of Section
16 226.2.

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

24 **EIGHTH CAUSE OF ACTION**
25 **WAITING TIME PENALTIES FOR**
26 **FAILURE TO PAY WAGES DUE ON TERMINATION**
27 **[Cal. Labor Code §§ 201-203]**
28 **On Behalf of Plaintiff and the Waiting Time Penalty Subclass**

110. Plaintiff re-alleges and incorporates by reference each and every allegation set forth

1 in the preceding paragraphs.

2 111. The actionable period for this cause of action is three years prior to the filing of the
3 Complaint through the present, and on-going until the violations are corrected or the subclass is
4 certified.

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

9 113. Section 203 of the California Labor Code provides that if an employer willfully
10 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and
11 202, then the employer is liable for penalties in the form of continued compensation up to thirty
12 (30) work days.

13 114. By virtue of its willful misclassification of maintenance workers and electrical
14 contractors, Defendant willfully failed to pay Plaintiff and other members of the waiting time
15 penalty Subclass (i.e., those members of the Class whose employment with Defendant ended the
16 actionable period for this cause of action) who are no longer employed by Defendant for their time
17 spent on statutory rest breaks and the other Non-Productive Tasks prior to or upon termination or
18 separation from employment with Defendant as required by California Labor Code §§ 201 and
19 202, as well as overtime wages and meal and rest break premiums.

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

25 **NINTH CAUSE OF ACTION**
26 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
27 **[Cal. Labor Code §§ 204, 210]**
On behalf of Plaintiff and the Class

28 116. Plaintiff re-alleges and incorporates by reference each and every allegation set forth

1 in the preceding paragraphs.

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

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

14 119. Labor Code § 210 provides that “in addition to, an entirely independent and apart
15 from, any other penalty provided in this article, every person who fails to pay the wages of each
16 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
17 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
18 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
19 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
20

21
22 ¹ 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
25 penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals
26 decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a
27 section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages
28 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 faulty compensation policies and practices described in detail above, Plaintiff and the Class are
2 entitled to recover penalties under Labor Code § 210.

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

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

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

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

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

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

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

1 such restitution, at rates specified by law. Defendant should be required to disgorge all the profits
2 and gains it has reaped and restore such profits and gains to Plaintiff and Class Members, from
3 whom they were unlawfully taken.

4 126. Through its actions alleged herein, Defendant has engaged in unfair competition
5 within the meaning of section 17200 of the California Business & Professions Code, because
6 Defendant's conduct, as herein alleged has damaged Plaintiff and the Class Members by
7 wrongfully denying them wages due for on rest periods and other Non-Productive Tasks,
8 wrongfully denying them overtime, wrongfully denying them reimbursement for business
9 expenses, and wrongfully denying them missed meal and rest period premiums, and therefore was
10 substantially injurious to Plaintiff and the Class Members.

11 127. Defendant engaged in unfair competition in violation of sections 17200 et seq. of
12 the California Business & Professions Code by violating Sections 1194 and 226.2 of the California
13 Labor Code, and Sections 11 and 12 of the IWC Wage Order No. 16.

14 128. Defendant's course of conduct, act and practice in violation of the California laws
15 mentioned above constitute independent violations of sections 17200 et seq. of the California
16 Business and Professions Code.

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

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

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ELEVENTH CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEY GENERAL ACT
PAGA PENALTIES FOR LABOR CODE VIOLATIONS OTHER THAN
MISCLASSIFICATION
(Labor Code §§ 2698-2699.5; 558)
On Behalf of Plaintiff and the PAGA Subclass

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

132. Plaintiff and those members of the class who were employed by Defendant within the last year are, “aggrieved employees” under PAGA as they were employed by Defendant during the applicable statutory period and suffered the Labor Code violations alleged herein; specifically, violations of §§ 1194, 1194.2, 226, 226.2, 226.7, 510, 512, 201-203, 204, 210 and 2802 of the Labor Code. Plaintiff was employed by Defendant during the one year preceding the submission of a PAGA letter to the LDWA on or around September 5, 2020. As such, he seeks to recover, on behalf of himself and all other current and former aggrieved employees of Defendant, the civil penalties provided by PAGA.

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

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

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

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

134. The aggrieved employees are all individuals who hold or held the title of maintenance worker, electrical contractor, or in any other similar capacity, and who are or have been classified as independent contractors by Defendant in California during the PAGA Period. These employees were subject to the aforementioned Labor Code violations, during the period of time from one year prior to the submission of Plaintiff’s letter to the LDWA on September 5, 2020 through the present and on-going.

135. In addition, as set forth above, Defendant failed to provide Plaintiff and all

1 aggrieved employees with accurate itemized wage statements in compliance with Labor Code §
2 226(a). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section
3 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
4 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
5 each violation in a subsequent citation, for which the employer fails to provide the employee a
6 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

7 136. Pursuant to Labor Code § 226.3, for PAGA penalties associated with the Section
8 226 claim, Plaintiff and the Aggrieved Employees for the Section 226 claim are entitled to \$250
9 for each initial pay period with a violation and \$1,000 for each subsequent pay period with a
10 violation. See *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal. App. 5th 667, 674-675
11 (2018) (finding that Labor Code § 226.3 applies to all violations of Labor Code § 226(a)); see also
12 *Magadia v. Wal- Mart Assocs.*, 384 F. Supp. 3d. 1058, 1109 (N.D. Cal. 2019) (“the Court finds
13 that Cal. Lab. Code § 226.3 penalties are applicable as the appropriate measure of civil penalties
14 under PAGA” for the violation of Labor Code § 226(a).

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

25 138. Plaintiff seeks to recover the PAGA civil penalties through a representative action
26 as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46
27 Cal.4th 969. Therefore, class certification hereby of the PAGA claims is not required, but Plaintiff
28 may choose to seek certification of the PAGA claims.

1 139. Pursuant to Labor Code § 2699.3 (a), on September 5, 2020, Plaintiff gave written
2 notice by certified mail to Defendant, and to the Labor and Workforce Development Agency
3 (“LWDA”) of his claims, including the facts and theories supporting all claims outlined in this
4 Complaint. Accordingly, Plaintiff will have have fulfilled all administrative prerequisites to the
5 pursuit of his PAGA claim on behalf of himself and all other current and former aggrieved
6 employees of Defendant after 60 days have elapsed from September 5, 2020.

7 **JURY DEMAND**

8 140. Plaintiff hereby demands trial by jury of his and the Class’s claims against
9 Defendant, except for his PAGA and UCL claims which are properly tried to the Court.

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff, on behalf of himself and the members of the Class, pray for judgment
12 against Defendant as follows:

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

14 2. On the First Cause of Action:

15 a. That the Court find that Defendant violated California Labor Code §§ 226.8(a)(1)
16 by willfully misclassifying Plaintiff and Aggrieved Employees as independent contractors.

17 b. That Plaintiff and other Aggrieved Employees be awarded penalties, at a minimum,
18 as specified in Labor Code §226.8(b).

19 c. That the Court find, additionally, the Defendant engaged in a pattern or practice of
20 willful misclassification of Plaintiff and the Aggrieved Employees.

21 d. That Plaintiff and other Aggrieved Employees be awarded penalties, upon a finding
22 of a pattern or practice, as specified in Labor Code § 226.8(c) in lieu of the penalties in 226.8(b).

23 e. That the Court award attorneys’ fees and costs pursuant to Labor Code §
24 2699(g)(1).

25 3. On the Second Cause of Action:

26 a. A declaratory judgment that Defendant violated sections 1194, 1194.2, and
27 226.2 of the California Labor Code by failing to pay Plaintiff and other members of the Class
28 hourly and separately for statutory rest periods and the Non-Productive Tasks during the class

1 period;

2 b. An award to Plaintiff and other members of the Class in the amount of their
3 unpaid wages owed to them for their statutory rest periods, plus interest and/or liquidated damages
4 during the class period;

5 c. An award to Plaintiff and the other members of the Class in the amount of
6 their unpaid wages owed to them for their time spent on the other Non-Productive Tasks during the
7 class period, plus interest; and/or liquidated damages;

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

11 4. On the Third Cause of Action:

12 a. A Declaratory judgment that Defendant has violated California Labor Code
13 § 510;

14 b. An award to Plaintiff and the other members of the Class in the amount of
15 their unpaid overtime compensation for worked performed, plus interest and/or liquidated damages
16 during the 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, and Section 12 of IWC Wage Order No. 16-2001;

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

23 6. On the Fifth Cause of Action:

24 a. A declaratory judgment that Defendant has violated California Labor Code
25 §§ 226.7, 510, and Section 11 of IWC Wage Order No. 16-2001;

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

1 7. On the Sixth Cause of Action:

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

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

5 8. On the Seventh Cause of Action:

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

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

15 9. On the Eighth Cause of Action:

16 a. A declaratory judgment that Defendant violated California Labor Code
17 §§201 through 203;

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

21 10. On the Ninth Cause of Action:

22 a. A declaratory judgment that Defendant violated California Labor Code §§
23 204 and 210;

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

26 11. On the Tenth Cause of Action:

27 a. That the Court find and declare that Defendants have violated the UCL and
28 committed unfair and unlawful business practices by misclassifying Plaintiff and Class Members,

1 by failing to pay Plaintiff and Class Members on a separate and hourly basis for rest break time
2 and time spent on Non-Productive Tasks, by failing to pay overtime, by failing to pay missed meal
3 and rest break premiums, and by failing to reimburse Plaintiff and the Class for all their business-
4 related expenses;

5 b. Restitution, including, but not limited to, the relief permitted by sections
6 1194, 226.2, 226.7 and 2802 of the California Labor Code (i.e., pay as specified for time spent on
7 the Non-Productive Tasks and rest periods and reimbursement of all business-related expenses by
8 Plaintiff and the members of the Class during the Class Period);

9 11. On the Eleventh Cause of Action:

10 a. A civil penalty against Defendant in the amount of \$100 for the initial
11 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the
12 California Labor Code for Plaintiff and for member of the Wage Statement and PAGA Penalty
13 Subclass during all of the pay periods in the one year preceding the filing of this Complaint
14 through the present and on-going until the violations are corrected or this subclass is certified;

15 b. Pursuant to Labor Code § 226.3, for PAGA penalties associated with the
16 Section 226 claim, Plaintiff is entitled to \$250 for each initial pay period with a violation and
17 \$1,000 for each subsequent pay period with a violation. See *Raines v. Coastal Pacific Food*
18 *Distributors, Inc.*, 23 Cal. App. 5th 667, 674-675 (2018) (finding that Labor Code § 226.3 applies
19 to all violations of Labor Code § 226(a)); see also *Magadia v. Wal- Mart Assocs.*, 384 F. Supp. 3d.
20 1058, 1109 (N.D. Cal. 2019) (“the Court finds that Cal. Lab. Code § 226.3 penalties are applicable
21 as the appropriate measure of civil penalties under PAGA” for the violation of Labor Code §
22 226(a).

23 c. An award of reasonable attorney’s fees against Defendant as specified in
24 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection
25 with the PAGA claims;

26 d. An award of all costs incurred by the undersigned counsel for Plaintiff in
27 connection with Plaintiff’s and Class Members’ PAGA claim against Defendant, as provided for in
28 Labor Code § 2699(g)(1);

1 12. All other relief as this Court deems proper.
2

3 Dated: November 13, 2020

Respectfully,

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

6
7 By:



Craig Ackermann, Esq.

8 Amir Seyedfarshi, Esq.

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