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STEPHANIE CAMERON, CLERK
Nay Saelee, Deputy

1 **ACKERMANN & TILAJEF, P.C.**

2 Craig J. Ackermann (SBN 229832)
3 cja@ackermanntilajef.com
4 1180 South Beverly Drive, Suite 610
5 Los Angeles, California 90035
6 Telephone: (310) 277-0614
7 Facsimile: (310) 277-0635

8 **EMPLOYMENT RIGHTS LAW GROUP, APC.**

9 Amir H. Seyedfarshi, (SBN 301656)
10 amir@employmentrightslawgroup.com
11 1180 South Beverly Drive, Suite 610
12 Los Angeles, California 90035
13 Telephone: (424) 777-0964

14 Attorneys for Plaintiffs, the Class, and the Aggrieved Employees

Case Management Conference

03/16/2021 08:30 AM - Department 01

Assigned to Judicial Officer

David Mathias

For All Purposes

15 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF TULARE**

17 Christopher Sanchez, Fernando Bustillos and
18 Victor Pineda Morales, individually and on
19 behalf of all others similarly situated,

20 Plaintiffs,

21 v.

22 Valley Cleaning and Restoration, Inc., a
23 California Corporation, and DOES 1-10,
24 inclusive.

25 Defendant.

CASE NO: VCU285000

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

- (1) FAILURE TO PAY MINIMUM WAGES
(LABOR CODE §§ 1194, 1194.2, 218.5);
(2) FAILURE TO PAY OVERTIME (LABOR
CODE § 510, 1194);
(3) FAILURE TO PROVIDE REST PERIODS
AND PAY MISSED REST BREAK PREMIUMS
(LABOR CODE §§ 226.7; SECTION 12 OF IWC
WAGE ORDER NO. 16);
(4) FAILURE TO PROVIDE MEAL PERIODS
AND PAY MISSED MEAL PERIOD
PREMIUMS (LABOR CODE §§ 226.7, 512,
SECTION 11 OF IWC WAGE ORDER NO. 16);
(5) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802);
(6) FAILURE TO PROVIDE COMPLETE
WAGE STATEMENTS (LABOR CODE § 226);
(7) WAITING TIME PENALTIES (LABOR
CODE § 201 – 203);
(8) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210)
(9) UCL VIOLATIONS (BUS. & PROF. CODE
§§ 17200-17204); AND
(10) PAGA AND OTHER PENALTIES (LABOR
CODE §§ 2698 – 2699.5); &

DEMAND FOR JURY TRIAL

1 Plaintiffs Christopher Sanchez, Fernando Bustillos and Victor Pineda Morales
2 (“Plaintiffs”), on behalf of themselves, the State of California, other aggrieved employees, and all
3 others similarly situated (hereinafter “Class Members”), complain and allege as follows:

4 **OVERVIEW OF CLAIMS**

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

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

24 **VENUE**

25 3. Venue is proper in this county under section 395.5 of the California Code of Civil
26 Procedure. Many of the putative Class Members were employed and/or performed work during
27 the Class Period by Defendant in Tulare County. Defendant provides construction services to
28 private and governmental entities in the county of Tulare. Many of the acts alleged herein

1 including Defendant's failure to pay minimum wages, failure to pay overtime, its failure to provide
2 Labor Code complaint meal and rest breaks, its failure to pay missed meal and rest break
3 premiums, and its failure to reimburse for business expenses occurred in Tulare County. Moreover,
4 the majority of the construction projects by Defendant are located in Tulare County. Venue is
5 therefore proper in Tulare County.

6 **JURISDICTION**

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

15 **THE PARTIES**

16 5. Plaintiff Christopher Sanchez is a California resident who worked for Defendant
17 from February 2020 to August 2020. Plaintiff Fernando Bustillos is a California resident who
18 worked for Defendant from July 2018 to August 2020. Plaintiff Victor Morales is a California
19 resident who worked for Defendant from April 2019 to August 2020.

20 6. From at least four years from the filing of this complaint through the present, and
21 on-going, Defendant's constructions workers and contractors, including Plaintiffs during their
22 employment, were not paid by Defendant for their time while commuting in company vehicles to
23 their construction sites. Specifically, Plaintiffs and the Class Members and Aggrieved employees
24 were using Defendant's vehicles to travel to worksites, often requiring at least one-hour drive time.
25 The employer's vehicle was a U-Haul truck where Plaintiffs, the Class Members and the
26 Aggrieved Employees were driving and being driven, and were also carrying therein heavy
27 equipment to perform the construction projects. Moreover, Plaintiffs, the Class Members and the
28 Aggrieved Employees were not paid overtime; did not receive premium payments for non-

1 compliant rest periods; were not provided timely duty free meal breaks or paid missed meal break
2 premiums; were not provided accurate and/or complete wage statements; were not reimbursed for
3 all business expenses including cell phone and the use of personal equipment; did not receive
4 timely wages; and did not receive all of their wages due upon termination of employment.

5 7. Plaintiffs represent the state of California and the following group of aggrieved
6 employees defined as:

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

9 8. Defendant is a California corporation with its principal place of business in
10 Porterville, CA. Defendant is a construction company that transacts millions of dollars of business
11 by providing construction services to buildings throughout California.

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

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

24 11. Defendant employed Plaintiffs, the Class, and the Aggrieved Employees as
25 construction workers in California at various times during the Class Period and PAGA Period. On
26 information and belief, Defendant employed approximately 100 construction workers in California
27 during the Class Period.
28

FACTUAL ALLEGATIONS

12. Defendant operates and, at all times during the Class Period and PAGA Period, has done and does business in California providing building and construction services in California. Defendant, in the course of operating its business in California during the Class Period, employed Plaintiffs, the Class, and the Aggrieved Employees as construction workers. Plaintiffs, the Class, and the Aggrieved Employees were paid by Defendant both hourly wages and prevailing wages.

13. During the Class Period, Plaintiffs, like the other members of the Class and Aggrieved Employees, typically worked twelve to fourteen hours per day and five to six days per week. Class Members' and Aggrieved Employees' job duties included, among other things, performing general repairs and maintenance to Defendant's construction projects.

14. Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission for all hours worked and/or under the control of Defendant, and any payment of less than the minimum wage for such hours is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order No. 16 also obligates employers to pay each employee minimum wages for all hours worked and/or under the control of Defendant.

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

16. Labor Code § 1194.2 authorizes employees to recover liquidated damages in any action under Labor Code § 1194 to recover unpaid minimum wages. Where an employee, such as Plaintiffs, the Class and the Aggrieved Employees, were not paid for all hours worked and/or under the control of Defendant under Labor Code § 1194, the employee may recover minimum wages for the time worked for which they received no compensation. *See Sillah v. Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay

1 overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less
2 than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 2016 U.S. Dist. LEXIS 172319,
3 at *20-21 (N.D. Cal. Dec. 12, 2016). Like section 1194, the IWC Wage Orders all require
4 California employers pay employees no less than minimum wage for all hours worked. *See e.g.*,
5 IWC Wage Order No. 16, section 4(B). The phrase “hours worked” is defined as “the time during
6 which an employee is subject to the control of an employer and includes all the time the employee
7 is suffered or permitted to work, whether or not required to do so.” *Id.*, section 2(G). In *Morillion v.*
8 *Royal Packing*, 22 Cal. 4th 575 (2000), where certain agricultural employees were subject to
9 employer control during the time they spent riding to and from fields when required to ride in
10 employer provided buses, such time was held to be compensable under the applicable IWC Wage
11 Order. The California Supreme Court there noted that: “The two phrases [in Section 2(G) of the
12 Wage Order’s definition of “hours worked”] – “time during which an employee is subject to the
13 control of an employer” and “time the employee is suffered or permitted to work, whether or not
14 required to do so”—can also be interpreted as independent factors, each of which defines whether
15 certain time spent is compensable as “hours worked”. Thus, an employee who is subject to an
16 employer’s control does not have to be working during that time to be compensated under Wage
17 Order 14-80 [internal citation to *Bono* omitted].” *Morillion*, 22 Cal.4th at 582; *see also Bono*
18 *Enterprises, Inc. v. Bradshaw*, 32 Cal.App.4th 968, 977 (1995) (“When an employer directs,
19 commands or restrains an employee from leaving the workplace during his or her lunch hour and
20 thus prevents the employee from using the time effectively for his or her own purposes, **that**
21 **employee remains subject to the employer’s control.** According to IWC Order 1-89, the
22 employee must be paid.”).

23 17. Courts applying California law have held that commuting time in company vehicles
24 is compensable. *See Rutti v. Lojack Corp.*, 596 F.3d 1046, 1061-2 (9th. Cir. 2010) (“There is
25 simply no denying that Rutti was under Lojack's control while driving the Lojack vehicle en route
26 to the first Lojack job of the day and on his way home at the end of the day.”; *Hernandez Pacific*
27 *Bell Telephone Co.*, 29 Cal. App. 5th 131 (2018) (an employee subject to an employer’s control
28 while commuting in a company vehicle does not have to be working during that time to be entitled

1 to compensation under the applicable Wage Order.).

2 18. Due to Defendant's policy of failing to pay Plaintiffs, the Class, and the Aggrieved
3 Employees and the Class for all of their hours worked and/or under Defendant's control, including
4 their time spent commuting in company vehicles while employed by Defendant, Plaintiffs, the
5 Aggrieved Employees and the Class have not been paid all minimum and overtime wages owed.
6 Notably, Defendants paid drive time to the employees who was actually driving the company
7 vehicle, which included some company equipment, further supporting Plaintiffs' view that this was
8 working time, but anomalously failed to pay all of the employee passengers for their travel time.
9 However, Plaintiffs, the Class and the Aggrieved Employees were all under the control of
10 Defendants during the driving time, since they were all in Defendant's company-owned vehicle
11 and were collectively responsible to the transport of heavy equipment for Defendant. Plaintiffs, the
12 Class and the Aggrieved Employee were all expected to show up at their jobsite and could not stop
13 during their drive to the worksite. Among other things, Plaintiffs, the Class and the Aggrieved
14 Employees could not stop to perform personal errands during their commute to work, when they
15 were being driven in company owned vehicles. They were also subject to Defendant's policies
16 and work rules in route.

17 19. Thus, Plaintiffs, the Class, and the Aggrieved Employees have only received
18 compensation for the hours worked on the projects and not the hours they were commuting in
19 Defendant's vehicle, which was often one hour per day or more. Thus, Plaintiffs, the Class, and the
20 Aggrieved Employees were not paid minimum wages for all tasks performed during their workday
21 and/or for all time controlled by Defendant. As a result, Plaintiffs, the Class, and the Aggrieved
22 Employees have been denied compensation for all hours worked or under Defendant's control, in
23 violation of Cal. Labor Code §1194, and have been denied compensation at the minimum wage in
24 violation of Cal. Labor Code §§ 1197 and 1199. Labor Code § 510 requires an employer to
25 compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in
26 a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than
27 one and one-half times the regular rate of pay for an employee. In accordance with Labor Code §
28 1194, Plaintiffs, the Class, and the Aggrieved Employees could not then agree to work for a lesser

1 wage than the amount of overtime wages proscribed by Labor Code §§ 510 and 1194.

2 20. Further, because Plaintiffs, the Class, and the Aggrieved Employees did not receive
3 the overtime premium pay rates applicable to employees under California law for working in
4 excess of eight hours in a day, or more than forty hours in a workweek, in violation of IWC Wage
5 Order 16-2001, and Labor Code §§ 1194 and 510. On multiple occasions, Plaintiffs, the Class, and
6 the Aggrieved Employees worked shifts that were longer than 8 hours in length but not receive
7 overtime pay for all overtime hours worked.

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

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

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

22 24. Following *Brinker*, the Courts of Appeal have confirmed that liability for on-duty
23 breaks arises when an employer adopts a uniform policy that fails to provide off-duty breaks. For
24 example, in *Faulkinbury v. Boyd & Associates, Inc.*, the California Court of Appeals
25 applied *Brinker*: “In *Faulkinbury I*, we concluded that even if [defendant]’s on-duty meal break
26 policy was unlawful, [defendant] would be liable only when it actually failed to provide a required
27 off-duty meal break. *Brinker* leads us now to conclude [defendant] would be liable upon a
28 determination that [defendant]’s uniform on-duty meal break policy was unlawful.” *Faulkinbury*,

1 216 Cal. App. 4th 220, 235 (2013). The Court further explained: “the employer’s liability arises by
2 adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was
3 able to take the required break goes to damages...” *Id.* (citations omitted); *see also Benton v.*
4 *Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 728 (2013).

5 25. Here, not only did Defendant fail to have a compliant rest period policy, but
6 Defendant in fact has a policy that effectively penalized and subjected Plaintiffs, the Class, and the
7 Aggrieved Employees to potential reprimand and/or discipline if Plaintiffs, the Class, and the
8 Aggrieved Employees took rest breaks, which would often cause Plaintiffs, the Class, and the
9 Aggrieved Employees to be late in completing projects for Defendant. Further, because of the
10 time-pressure nature of Plaintiffs, the Class, and the Aggrieved Employees’ work schedule,
11 Plaintiffs, the Class, and the Aggrieved Employees were never relieved of all duties while working
12 for Defendant.

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

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

25 28. Under California Labor Code Section 226.7, if the employer does not provide an
26 employee a meal period in accordance with these requirements, the employer shall pay the
27 employee one (1) hour of pay at the employee’s regular rate of compensation for each workday
28 that the meal period is not provided. Plaintiffs, the Class, and the Aggrieved Employees worked

1 shifts that were longer than 5 hours in length. Here, despite the fact that Plaintiffs, the Class, and
2 the Aggrieved Employees were never authorized to take their timely 30-minute duty-free meal
3 breaks, on or before the fifth and tenth hours of shifts, Defendant never paid any missed meal
4 break premiums to Plaintiffs, the Class, and the Aggrieved Employees.

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

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

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

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

23 33. Specifically, under Labor Code § 2802, employers must reimburse employees for
24 required work-related use of personal cell phones, regardless of whether they incur any additional
25 out-of-pocket expense from that work-related use. *See Cochran v. Schwan’s Home Service*, 228
26 Cal. App. 4th 1137 (2014) (reversing denial of class certification in cell phone reimbursement
27 class action). *Cochran* held that “[i]f an employee is required to make work-related calls on a
28 personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does

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

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

16 35. Under Labor Code § 2802, where, as here, an employer expects Plaintiffs, the
17 Class, and the Aggrieved Employees to use their tools such as jackhammers, drills, concrete
18 finishing tools, drywall tools, angle grinders, cell phones, their vehicle mileage, and to buy or use
19 other items such as electrical tools, and fixing and engaging in construction projects, then
20 Defendant must reimburse employees. Moreover, here Plaintiffs, the Class, and the Aggrieved
21 Employees used Defendant’s vehicle to drive from one project to another project every day and did
22 not receive any reimbursement for some of their construction equipment and cell-phone expenses.
23 Defendant never reimbursed Plaintiffs, the Class, and the Aggrieved Employees for the cost of
24 their construction project equipment, tools and a reasonable portion of their work-related cell-
25 phone expenses. Defendant did not reimburse Plaintiffs, the Class, and the Aggrieved Employees
26 for all of their expensive construction tools that they were required to use to perform their job
27 duties.

28 36. Accordingly, Defendant violated Labor Code § 2802 and continue to do so by

1 failing to reimburse Plaintiffs, the Class, and the Aggrieved Employees for all work-related
2 charges they incurred in connection with their job duties. By failing to reimburse Plaintiffs, the
3 Class, and the Aggrieved Employees for their personal expenses incurred for work-related
4 purposes, Defendant violated Labor Code § 2802.

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

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

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

20 40. Defendant's failure to furnish accurate itemized wage statements has caused
21 Plaintiffs, the Class, and the Aggrieved Employees to incur economic damages in that they were
22 not aware that they were owed and not paid additional compensation. *See Cicairos v. Summit*
23 *Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee to add up the daily hours shown
24 on the time cards or other records so that the employee must perform arithmetic computations to
25 determine the total hours worked during the pay period, the requirements of section 226 would not
26 be met"); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage
27 statements violated California Labor Code by not including, *inter alia*, total hours worked giving
28 rise to claims under both Section 226 and for PAGA penalties); *Cicairos v. Summit Logistics, Inc.*,

1 133 Cal.App.4th 949, 960-961 (2005) (reversing summary judgment for defendants where wage
2 statements did not “give an accurate report of the hours plaintiff worked, at least not on its face”);
3 Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated
4 Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily
5 determine the gross or net wages earned by the employee during the pay period).

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

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

27 43. Following Plaintiffs’ separation of employment from Defendant, they, like other
28 members of the Class and Aggrieved Employees who are former employees of Defendant, did not

1 receive all wages due, including all minimum wages, overtime, and his unpaid meal and rest
2 breaks during the Class Period, in violation of Labor Code Sections 201-203, triggering waiting
3 time penalties under those provisions.

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

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

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

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

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

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

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

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

47. Here, Plaintiffs seek to recover all penalties available under Labor Code Section

210 for Defendant's violations of Labor Code Section 204.

48. The administrative prerequisites of PAGA was satisfied after 65 days have elapsed from September 5, 2020 (i.e. 65 days since Plaintiffs' mailing of the PAGA notice with no further communication from the LWDA to Plaintiff's counsel). Plaintiff has also paid the \$75.00 fee and has otherwise satisfied the administrative prerequisites of PAGA, as amended. On October 19, 2020, Plaintiffs amended their initial PAGA letter.

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

CLASS ACTION ALLEGATIONS

50. Plaintiffs bring this action, on behalf of themselves and all others similarly situated, as a class action pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent a Class composed of and defined as: All individuals who hold or held the title of construction worker, or in any other similar capacity, and who are or have been classified as independent contractors by Defendant during the Class Period (hereinafter "Class Members"). All such Class Members were subject to Defendant's unlawful policies including, Defendant's failure to pay for all hours worked, Defendant's failure to pay overtime, Defendant's failure to provide code-compliant meal or rest breaks, and Defendant's failure to reimburse for out-of-pocket business expenses.

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

a. Numerosity: The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiffs are informed and believes that Defendant has employed approximately 100 Class Members as construction workers in California

1 who were subject to Defendant's unlawful compensation, meal and rest break, and reimbursement
2 policies. The Class Members are dispersed throughout California. Joinder of all members of the
3 proposed classes is therefore not practicable.

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

7 i. Whether Defendant violated sections 1194 and 1194.2 of the Labor Code by
8 failing to pay Plaintiffs and the members of the Class all minimum wages owed including for
9 commuting time in company vehicles engaged in by members of the Class on a daily basis during
10 the Class Period;

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

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

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

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

23 vi. Whether Defendant violated Labor Code sections 512 and 226.7, and
24 section 11 of IWC Wage Order No. 16 by failing to pay one hour of premium pay to each member
25 of the Class for each day that a paid meal break was not provided during the Class Period;

26 vii. Whether Defendant failed to provide Plaintiffs and the members of the Class
27 complete wage statements in violation of Labor Code Section 226(a); ;

28 viii. Whether Defendant violated Section 203 of the Labor Code by failing to pay

1 members of the Waiting Time Penalty Subclass for all wages due to them (including all minimum
2 wages due, overtime, and meal and rest break premiums) upon their separation of employment
3 from Defendant;

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

6 x. Whether Defendant engaged in an unfair practice and violated section 17200
7 of the California Business and Professions Code by failing to pay Plaintiffs and the members of the
8 Class all minimum wages and overtime wages owed and by failing to reimburse them for their
9 business-related expenses during the Class Period;

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

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

16 xiii. Whether Defendant engaged in an unfair practice and violated section 17200
17 of the California Business and Professions Code by failing to provide Plaintiffs and the members
18 of the Class with timely, duty-free meal breaks during the Class Period;

19 xiv. Whether Defendant engaged in an unfair practice and violated section 17200
20 of the California Business and Professions Code by failing to provide Plaintiffs and members of
21 the Class with meal period premiums for each day they were not provided a compliant meal break;

22 xv. Whether Plaintiff and the Class are entitled to restitution under Business and
23 Professions Code § 17200;

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

26 xvii. The nature and extent of class-wide damages.

27 c. Typicality: Plaintiffs' claims are typical of the claims of the Class. Both
28 Plaintiffs and Class Members sustained injuries and damages, and were deprived of property

1 rightly belonging to them, arising out of and caused by Defendant's common course of conduct in
2 violation of law as alleged herein, in similar ways and for the same types of unpaid wages.

3 d. Adequacy of Representation: Plaintiffs are members of the Class and will
4 fairly and adequately represent and protect the interests of the Class and Class Members.
5 Plaintiffs' interests do not conflict with those of Class and Class Members. Counsel who represent
6 Plaintiffs are competent and experienced in litigating large wage and hour class actions, including
7 numerous cases virtually identical to this one (i.e., trucker or construction crew wage and hour
8 class action cases), and other employment class actions, and will devote sufficient time and
9 resources to the case and otherwise adequately represent the Class and Class Members.

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

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FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
[Cal. Labor Code §§ 1194; 1194.2]
On behalf of Plaintiffs and the Class

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

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

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

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

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

In any action under...Section 1194 to recover wages because of the payment 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.

56. During the Class Period, Plaintiffs and Class Members were not paid minimum wages for time spent commuting in company vehicles and under Defendant's control to Defendant's construction projects on a daily basis in violation of Labor Code § 1194. Accordingly, during the Class Period, Plaintiffs and the members of the Class did not receive minimum wages for all work time.

57. In failing to pay for all time worked and/or under Defendant's control, Plaintiff and the Class are entitled to recover, either their unpaid hourly wages due, or minimum wage plus interest and/or liquidated damages in an additional amount equal to the total amount of wages unlawfully withheld during the Class Period for rest period time.

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

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

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

60. 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 certified.

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

62. Here, Defendant hired Plaintiffs and the Class to work as construction workers in California and to work on various of Defendant's private and public construction sites. Plaintiffs and the Class often worked in excess of 8 hours and over 40 hours per week. On average, Plaintiffs and the Class worked between 12 to 14 hours on a daily basis. Defendant only paid Plaintiffs and the Class the regular hourly rate per each project. Plaintiffs and the Class did not receive compensation for their commuting time in company vehicles, which was frequently also overtime over 8 hours in a day. Plaintiffs and the Class did not receive any overtime compensation for the hours that they worked beyond eight hours per day.

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

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THIRD CAUSE OF ACTION
FAILURE TO PROVIDE COMPLIANT REST PERIODS
AND PAY MISSED REST BREAK PREMIUMS
[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order No. 16]
On behalf of Plaintiff and the Class

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

65. 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 certified.

66. 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.”

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

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

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

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1 **FOURTH CAUSE OF ACTION**
2 **FAILURE TO PROVIDE OFF-DUTY MEAL BREAKS AND FAILURE**
3 **TO PAY MISSED MEAL BREAK PREMIUMS**

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

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

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

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

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

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

24 74. Section 11(C) of IWC Wage Order No. 16 provides that

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

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

If an employer fails to provide an employee a meal period in accordance with
the applicable provisions of this order, the employer shall pay the employee
one (1) hour of pay at the employee’s regular rate of compensation for each
workday that the meal period is not provided.

76. Here, by failing to provide them with duty-free timely 30-minute meal breaks, on their shifts greater than 5 hours in length, Defendant has violated California Labor Code § 226.7 and IWC Wage Order No. 16, and is liable to Plaintiffs and the Class.

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

FIFTH CAUSE OF ACTION
FAILURE TO REIMBURSE BUSINESS EXPENSES
[Cal. Labor Code § 2802]
On Behalf of Plaintiff and the Class

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

79. 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 subclass is certified.

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

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

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

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

19 83. Under Labor Code § 2802, where, as here, an employer expects Plaintiffs and the
20 Class to use their own construction tools such as gloves, hammers and cell phones, and to buy or
21 use other items for construction projects, then Defendant must reimburse employees for their
22 business related expenses. Defendant did not reimburse Plaintiffs and the Class for all the
23 expensive construction tools that they were required to use.

24 84. Accordingly, Defendant violated Labor Code § 2802 and continue to do so by
25 failing to reimburse Plaintiffs and all other Class Members for all work-related charges they
26 incurred in connection with their job duties. By failing to reimburse Plaintiffs and the Class for
27 their personal expenses incurred for work-related purposes, Defendant violated Labor Code §
28 2802.

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

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

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

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

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

88. As set forth above, during the Class Period Defendant failed to issue wage statements to its construction workers in California, including Plaintiffs, that complied with Labor Code Section 226(a). Defendant's "wage statements" were inadequate. Defendant's "wage statements" also did not include total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code Sections 226(a).

89. Defendant's violation of Labor Code § 226 was knowing and intentional. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission"

1 even though it believed that employees paid solely on commission or commission and salary “are
2 exempt and therefore we do not record hours on a wage statement”).

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

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

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

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

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

25 94. Section 203 of the California Labor Code provides that if an employer willfully
26 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and
27 202, then the employer is liable for penalties in the form of continued compensation up to thirty
28 (30) work days.

95. Defendant willfully failed to pay Plaintiffs and other members of the waiting time

1 penalty Class (i.e., those members of the Class whose employment with Defendant ended the
2 actionable period for this cause of action) who are no longer employed by Defendant all minimum
3 wages owed prior to or upon termination or separation from employment with Defendant as
4 required by California Labor Code §§ 201 and 202, as well as overtime wages and meal and rest
5 break premiums.

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

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

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

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

22 99. Due to Defendant’s failure to pay Plaintiffs and the other Late Wages Subclass
23 Members for minimum wages, overtime wages, and meal and rest period premiums owed,¹

24
25 ¹ Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting
26 time penalties under Labor Code § 203. See e.g. *In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal.
27 Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time
28 penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals
decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a
section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages
under section 218.5’”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5
(N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor

(continued . . .)

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

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

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

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

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

24
25 (continued ...)

26 Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying
27 defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be
28 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.

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

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

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

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

20 107. Through its actions alleged herein, Defendant has engaged in unfair competition
21 within the meaning of section 17200 of the California Business & Professions Code, because
22 Defendant's conduct, as herein alleged has damaged Plaintiffs and the Class Members by
23 wrongfully denying them minimum wages, wrongfully denying them overtime, wrongfully
24 denying them reimbursement for business expenses, and wrongfully denying them missed meal
25 and rest period premiums, and therefore was substantially injurious to Plaintiffs and the Class
26 Members.

27 108. Defendant engaged in unfair competition in violation of sections 17200 et seq. of
28 the California Business & Professions Code by violating Section 1194 of the California Labor

Code, and Sections 11 and 12 of the IWC Wage Order No. 16.

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

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

111. Plaintiffs have assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of themselves and other similarly situated Class Members previously or presently employed by Defendants in California. Plaintiffs' success in this action will enforce important rights affecting the public interest. Plaintiffs will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5, and Labor Code §§ 1194 and 2802.

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

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

113. Plaintiffs and the "Aggrieved Employees" under PAGA, i.e., those employees who, during the PAGA Period, suffered the Labor Code violations alleged herein; specifically, violations of §§ 1194, 1194.2, 226, 226.7, 510, 512, 201-203, 204, 210 and 2802 of the Labor Code bring claims under PAGA. Plaintiffs were 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, they seek to recover, on behalf of themselves and all other current and former aggrieved employees of Defendant, the civil penalties provided by PAGA.

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

1 subject to the following formula:

2 \$100 for the initial violation per employee per pay period; and

3 \$200 for each subsequent violation per employee per pay period.

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

6 115. The aggrieved employees are all individuals who hold or held the title of
7 construction worker, or in any other similar capacity, and who worked for Defendant in California
8 during the PAGA Period. These employees were subject to the aforementioned Labor Code
9 violations, during the period of time from one year prior to the submission of Plaintiffs' letter to
10 the LDWA on September 5, 2020 through the present and on-going.

11 116. In addition, as set forth above, Defendant failed to provide Plaintiffs and all
12 aggrieved employees with accurate itemized wage statements in compliance with Labor Code §
13 226(a). Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section
14 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
15 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
16 each violation in a subsequent citation, for which the employer fails to provide the employee a
17 wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

18 117. Further, Plaintiffs, as Aggrieved Employees, need not demonstrate or prove that
19 Defendant's conduct in refusing to provide accurate and itemized wage statements was knowing,
20 intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above; *see also Willner v. Manpower*
21 *Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all
22 [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed
23 above."); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that
24 "for the purposes of recovering PAGA penalties, one need only prove a violation of Section
25 226(a), and need not establish a Section 226(e) injury."); *Aguirre v. Genesis Logistics*, 2013 U.S.
26 Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) ("Plaintiff do not need to establish a Cal. Lab.
27 Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.").

28 118. Plaintiffs seek to recover the PAGA civil penalties through a representative action

1 as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46
2 Cal.4th 969. Therefore, class certification hereby of the PAGA claims is not required. *Id.*,

3 119. Pursuant to Labor Code § 2699.3 (a), on September 5, 2020, Plaintiffs gave written
4 notice by certified mail to Defendant, and to the Labor and Workforce Development Agency
5 (“LWDA”) of his claims, including the facts and theories supporting all claims outlined in this
6 Complaint. Plaintiffs amended their PAGA notice on October 19, 2020. Accordingly, Plaintiffs
7 will have fulfilled all administrative prerequisites to the pursuit of his PAGA claim on behalf
8 of himself and all other current and former aggrieved employees of Defendant after 65 days have
9 elapsed from September 5, 2020.

10 JURY DEMAND

11 120. Plaintiffs hereby demand trial by jury of his and the Class’s claims against
12 Defendant, except for the PAGA and UCL claims which shall be tried to the Court.

13 PRAYER FOR RELIEF

14 Wherefore, Plaintiffs, on behalf of himself and the members of the Class, and the LWDA
15 and the Aggrieved Employees, pray for judgment against Defendant as follows:

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

17 2. On the First Cause of Action:

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

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

23 c. An award to Plaintiffs and the Class Members of their attorneys’ fees and
24 costs of suit to the extent permitted by law, including, but not limited to, section 1194 of the
25 California Labor Code and section 1021.5 of the California Code of Civil Procedure;

26 3. On the Two Cause of Action:

27 a. A Declaratory judgment that Defendant has violated California Labor Code
28 § 510 in failing to pay Plaintiffs, the Class and the Aggrieved Employees all overtime wages due;

1 b. An award to Plaintiffs and the other members of the Class in the amount of
2 their unpaid overtime compensation for worked performed, plus interest and/or liquidated damages
3 during the Class Period;

4 4. On the Third Cause of Action:

5 a. A declaratory judgment that Defendant has violated California Labor Code
6 § 226.7, and Section 12 of IWC Wage Order No. 16-2001 as to Plaintiffs, the Class and the
7 Aggrieved Employees;

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

11 5. On the Fourth Cause of Action:

12 a. A declaratory judgment that Defendant has violated California Labor Code
13 §§ 226.7, 510, and Section 11 of IWC Wage Order No. 16-2001 as to Plaintiffs, the Class and the
14 Aggrieved Employees;

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

18 6. On the Fifth Cause of Action:

19 a. A declaratory judgement that Defendant violated Labor Code § 2802
20 as to Plaintiffs, the Class and the Aggrieved Employees ;

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

23 8. On the Sixth Cause of Action:

24 a. A declaratory judgment that Defendant violated California Labor Code §226
25 by issuing inaccurate and/or incomplete wage statements that failed to include total hours worked
26 and all applicable hourly rates in effect during the pay period and the corresponding number of
27 hours worked at each hourly rate to Plaintiffs, the Aggrieved Employees and the wage statement
28 and penalty subclass members;

1 b. An award to Plaintiff and Wage Statement Subclass Members of \$50 for
2 each initial pay period in which a violation of Section 226 occurred and \$100 for each subsequent
3 pay period in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of
4 the Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code §
5 226(e).

6 9. On the Seventh Cause of Action:

7 a. A declaratory judgment that Defendant violated California Labor Code
8 §§201 through 203 as to former employees in the Class who are the waiting time penalty subclass
9 members;

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

13 10. On the Eighth Cause of Action:

14 a. A declaratory judgment that Defendant violated California Labor Code §§
15 204 and 210;

16 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiffs and the Late
17 Wage Subclass for penalties pursuant to Labor Code § 210.

18 11. On the Ninth Cause of Action:

19 a. That the Court find and declare that Defendants have violated the UCL and
20 committed unfair and unlawful business practices by failing to pay Plaintiffs and Class Members
21 all minimum wages owed, by failing to pay overtime, by failing to pay missed meal and rest break
22 premiums, and by failing to reimburse Plaintiff and the Class for all their business-related
23 expenses;

24 b. Restitution, including, but not limited to, the relief permitted by sections
25 1194 and 2802 of the California Labor Code (i.e., unpaid minimum wages owed, unpaid overtime
26 wages owed and reimbursement of all business-related expenses by Plaintiffs and the members of
27 the Class during the Class Period);
28

1 11. On the Tenth Cause of Action:

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

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

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

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

14
15 Dated: November 13, 2020

Respectfully,

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

18
19 By: _____

20 Craig Ackermann, Esq.
21 Amir Seyedfarshi, Esq.
22 Counsel for Plaintiff, the Class, and the
23 Aggrieved Employees
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