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

CASE NO.: **21TRCV00019**

**PLAINTIFFS' INDIVIDUAL AND PAGA
REPRESENTATIVE ACTION COMPLAINT FOR:**

FERNANDO HERNANDEZ,
BEATRIZ MAYRA ARCHUNDIA,
individually and on behalf of the
LWDA and all aggrieved employees,

PLAINTIFFS,

v.

SHIKHA SETHI DBA SOUTH
BAY ESTATES, and DOES 1 to 10,
inclusive,

DEFENDANTS.

- 1. FAILURE TO PAY ALL MINIMUM WAGES (LABOR CODE §§ 1194, 1194.2, 1197; IWC WAGE ORDER NOS. 5 AND 16);**
- 2. FAILURE TO PAY OVERTIME WAGES (LABOR CODE §§ 510, 1198; IWC WAGE ORDER NOS. 5 AND 16);**
- 3. FAILURE TO PROVIDE COMPLIANT REST PERIODS TO AND/OR PAY MISSED REST BREAK PREMIUMS (LABOR CODE § 226.7; IWC WAGE ORDER NOS. 5 AND 16);**
- 4. FAILURE TO PROVIDE COMPLIANT MEAL PERIODS AND PAY MISSED MEAL PERIOD PREMIUMS (LABOR CODE §§ 226.7, 512; IWC WAGE ORDER NOS. 5 AND 16);**
- 5. FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES (LABOR CODE § 2802);**
- 6. FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS (LABOR CODE §§ 226(A));**
- 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);**
- 10. PAGA PENALTIES FOR DEFENDANT'S WILLFUL MISCLASSIFICATION OF EMPLOYEES IN VIOLATION OF LABOR CODE §§ 226.8 AND 2698, ET SEQ.; AND**
- 11. PAGA AND OTHER PENALTIES (LABOR CODE §§ 2698 – 2699.5)**

Plaintiffs FERNANDO HERNANDEZ and BEATRIZ MAYRA ARCHUNDIA (“Plaintiffs”) bring this action against Defendant SHIKHA SETHI, doing business as South Bay Estates, and DOES 1 through 10, (referred to collectively as “Defendants”), on personal knowledge with respect to themselves and their own acts, and, on information and belief as to all other matters, respectfully alleges as follows:

Summary

Plaintiffs allege that Defendants willfully misclassified them and the aggrieved employees as independent contractors and thus Defendants denied them the full protections of the California Labor Code. The Aggrieved Employees are defined as: all individuals who hold or held the title of maintenance worker, onsite manager, electrical contractor, or in any other similar capacity, and who are or have been classified as independent contractors with their wages reported on an IRS Form 1099 basis by Defendants in California during the PAGA Period. The PAGA Period is defined as the time period from one year prior to the submission of Plaintiffs' letter to the LDWA on September 20, 2020 through the present and on-going.

As a result of Defendants' misclassification, Plaintiffs bring individual and representative PAGA penalty action claims against Defendants for unpaid minimum wages, unpaid overtime wages, unpaid meal and rest period premiums, unreimbursed business expenses, civil penalties, interest, costs and reasonable attorneys' fees.

Jurisdiction and Venue

1. Venue is proper in this Court under C.C.P. § 395(a), because a substantial part of the events giving rise to the claims in this lawsuit occurred in Los Angeles County, California. Plaintiffs were employed by Defendants in Torrance, CA. Venue is therefore proper in Los Angeles County.

The Parties

2. Plaintiff Fernando Hernandez is, and at all times mentioned in this Complaint was, a resident of the County of Los Angeles, California.

3. Plaintiff Beatriz Mayra Archuandia is, and at all times mentioned in this Complaint was, a resident of the County of Los Angeles, California.

1 4. Plaintiffs are informed and believe and thereon allege that Defendant Shikha Sethi is
2 an individual and does business in Los Angeles County, California, and is and/or was the legal
3 employer of Plaintiffs and the Aggrieved Employees during the applicable statutory periods.

4 5. Plaintiffs are informed and believe and thereon allege that Defendant Shikha Sethi is
5 doing business under the fictitious business name of South Bay Estates.

6 6. Also, Plaintiffs are informed and believe and thereon alleges that the Defendants
7 sued herein as DOES 1-50 are now and at all material times herein mentioned were the
8 owner/owners of certain Defendants and the actual employer of Plaintiffs or, in the alternative, were
9 individuals employed by Defendants as a managerial and/or supervisory employee and/or agent.

10 7. In addition, Plaintiffs allege that at all relevant times herein the Defendants sued
11 herein as DOES 1-10 had the authority, in the interest of certain Defendants, to exercise
12 independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar
13 actions against Plaintiffs, and were in Plaintiffs' chain of command at the time of and direct
14 participants in the wrongful conduct which constitutes the basis of Plaintiffs' complaint herein.
15 Plaintiffs also allege that the Defendants sued herein as DOES 1-10 and certain Defendants are the
16 agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at
17 all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and
18 with the knowledge, consent and/or ratification of each other. Furthermore, in conducting
19 themselves in the manner described herein, the Defendants sued herein as DOES 1-10 and certain
20 Defendants were acting in active concert with on another such that the acts of each were fully
21 attributable to the other in all material respects. Plaintiffs also allege that certain Defendants were
22 merely the alter ego of the Defendants sued herein as DOES 1-10 in that there existed a unity of
23 interest and ownership such that any separateness between them ceased to exist and the Defendants
24 sued herein as DOES 1-10 exercised undue dominance, control, influence, and management over
25 certain Defendants. Plaintiffs further allege that, at all relevant times, certain Defendants have been
26 inadequately capitalized to conduct business, have failed to follow appropriate corporate
27 formalities, and have simply been a shell and instrumentality through which the Defendants sued
28 herein as DOES 1-10 have conducted their personal affairs. Accordingly, the corporate veil should

1 be pierced, and any liability attached to certain Defendants should be imposed jointly and severally
2 against the Defendants sued herein as DOES 1-10. Adherence to the fiction of the separate
3 existence of these corporate entities would permit abuse of the corporate privilege, thereby
4 sanctioning fraud and promoting injustice.

5 Factual Background

6 8. Defendants are in the business of managing numerous buildings in the city of
7 Torrance, county of Los Angeles. Defendants use the buildings for rental purposes. In the course of
8 operating its business, Defendants employed Plaintiffs and the Aggrieved Employees, but they were
9 wrongfully misclassified as independent contractors.

10 9. Plaintiff Fernando Hernandez, termed as a “maintenance technician” by Defendants,
11 was improperly classified by Defendants as an independent contractor and was *not* properly
12 classified as an employee, both for tax purposes and for purposes of the California Labor Code.
13 Plaintiff was employed by Defendants as a maintenance technician from in or around October 2019
14 through in or around April 2020.

15 10. Plaintiff Beatriz Mayra Archuandia, termed as a “resident manager” by Defendants,
16 was improperly classified by Defendants as an independent contractor and was *not* properly
17 classified as an employee, both for tax purposes and for purposes of the California Labor Code.
18 Plaintiff was employed by Defendants as an onsite resident manager from in or around December
19 2019 through in or around September 2020.

20 11. Defendants maintained various policies and practices based on the willful
21 misclassification of the Plaintiffs and the Aggrieved Employees as independent contractors. Under
22 applicable standards of law, Plaintiffs and the Aggrieved Employees were Defendants’ employees
23 and were not independent contractors.

24 12. Defendants assigned a work location to Plaintiff Fernando Hernandez every morning
25 which he was to provide maintenance services using his own personal vehicle, and own personal
26 cell phone. Plaintiff Hernandez was also provided with daily maintenance schedules by
27 Defendants, and these schedules were accessed by Plaintiff through Folio Property Management
28 apps on his personal cell phone. The daily schedules provided to Plaintiffs were a further indication

1 of an employment relationship.

2 13. Plaintiff Hernandez was required to follow Defendants' directions and instruction as
3 to the various maintenance and construction tasks. Plaintiff Hernandez's assignments included
4 changing carpet, plumbing repair, window repair, painting, mold removal, etc. Defendants
5 requested that Plaintiff submit a daily spreadsheet where Plaintiff would specific each task
6 performed.

7 14. Plaintiff Hernandez was also required to show up at Defendants' office every
8 morning prior to commencing his work duties.

9 15. Plaintiff Beatriz Archuandia was hired as an onsite resident manager for one of
10 Defendants' properties. She was required to work onsite as a resident manager, showing the
11 apartments to prospective tenants, cleaning the premise, take care of garbage, inform the
12 headquarter of any maintenance request and remain on-call 24/7.

13 16. Plaintiff Beatriz Archuandia was working in excess of five hours every day without
14 being paid any salary.

15 17. *Dynamex Operations West, Inc., v. Superior Court* (2018) 2018 WL 1999120 at *29,
16 sets forth the standard for determining whether an individual performing work is an independent
17 contractor or an employee, as follows:

18 We find merit in the concerns noted above regarding the disadvantages, particularly
19 in the wage and hour context, inherent in relying upon a multifactor, all the
20 circumstances standard for distinguishing between employees and independent
21 contractors. As a consequence, we conclude it is appropriate, and most consistent
22 with the history and purpose of the suffer or permit to work standard in California's
23 wage orders, to interpret that standard as: (1) placing the burden on the hiring entity
24 to establish that the worker is an independent contractor who was not intended to
25 be included within the wage order's coverage; and (2) requiring the hiring entity, in
26 order to meet this burden, to establish *each* of the three factors embodied in the
27 ABC test — namely (A) that the 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]

28 18. The standard – set forth by the California Supreme Court – is commonly referred to

1 as the “ABC test.” Under the ABC Test, Defendants have the burden of establishing that Plaintiffs
2 and the Aggrieved Employees were independent contractors and not intended to be included within
3 the wage order’s coverage. Further, Defendants must establish that Plaintiffs and the Aggrieved
4 Employees met all three factors of the ABC Test, which it did not meet.

5 19. At all relevant times, Defendants retained the right to control the method and manner
6 of how Plaintiffs and the Aggrieved Employees performed their job duties and retained all
7 necessary control over Plaintiffs during their employment. As described above, Plaintiffs and the
8 Aggrieved Employees were required to follow detailed requirements imposed on them by
9 Defendants governing their interactions with tenants.

10 20. Further, Defendants set Plaintiff Hernandez’s hourly rates of pay at the fixed rate of
11 \$15 per hour initially and increased it in 2020 to \$17 per hour.

12 21. Defendants never paid any wages to Plaintiff Beatriz Archuandia.

13 22. As a result, under applicable law, Plaintiffs and the Aggrieved Employees were
14 employees of Defendants. *See*, Labor Code section 226.8; *see also Dynamex Operations West, Inc.,*
15 *v. Superior Court* (2018) 2018 WL 1999120 at *29; *Ayala v. Antelope Valley Newspapers, Inc.*
16 (2014) 59 Cal.App.4th 522; *Ruiz v. Affinity Logistics, Corp.*, 754 F.Supp.3d 1093 (9th Cir. 2014)
17 (employer’s right to control detail of drivers’ work support finding of employer-employee
18 relationship); *Alexander v. FedEx Ground Package System, Inc.* 765 F.Supp.3d 381 (9th Cir. 2014)
19 (driver were employees as a matter of law where FedEx controlled times drivers worked and
20 controlled aspects of when packages would be delivered);

21 23. Through the performance of their job duties, Plaintiffs and the Aggrieved Employees
22 performed an integral and entirely essential aspect of Defendants’ business. Defendants’ business is
23 the maintenance of residential property buildings. Tenants submit orders to Defendants, and
24 Defendants send Plaintiffs and the Aggrieved Employees to complete those maintenance orders.
25 Thus, Plaintiffs and the Aggrieved Employees were the individuals who were performing all aspect
26 of maintenance and upkeep of the properties.

27 24. Plaintiffs and the Aggrieved Employees were not operating as independent
28 businesses. They were providing maintenance services to Defendants and Defendants’ customers,

1 using Defendants' policies, practices, and procedures.

2 25. Because Defendants cannot meet any part of the ABC test, it is clear that Defendants
3 intentionally and willfully misclassified Plaintiffs and the Aggrieved Employees as independent
4 contractors in violation of Labor Code § 226.8(a). Moreover, the willful misclassification was part
5 of a pattern or practice of willfully misclassifying employees, such as the stepped up penalties in
6 Section 226.8 should be recoverable here.

7 26. Labor Code § 1197 states the California requirement that employees must be paid at
8 least the minimum wage fixed by the Commission, and any payment of less than the minimum
9 wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal
10 minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum
11 wage." IWC Wage Order Nos. 5 and 16 also obligates employers to pay each employee minimum
12 wages for all hours worked.

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

18 28. Under Labor Code § 351, employers are required to pay employees at least
19 minimum wage, in addition to any tips earned. Employers are not permitted to use an employee's
20 tips earned as a credit toward its obligation to pay minimum wage.

21 29. Labor Code § 1194.2 authorizes employees to recover wages to recover liquidated
22 damages for violations of Labor Code § 1194. Where an employee, such as Plaintiff, was not paid
23 for all hours worked under Labor Code § 1194, the employee may recover minimum wages for the
24 time associated with the time for which they received no compensation. See *Sillah v. Command*
25 *Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees suing for failure to
26 pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid
27 less than minimum wage]; *accord Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016)
28 2016 U.S. Dist. LEXIS 172319, at *20-21.

1 30. Labor Code § 510 requires an employer to compensate an employee who works
2 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8)
3 hours worked on the seventh consecutive day no less than one and one-half times the regular rate of
4 pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at
5 no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a
6 day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor
7 Code § 1194, Plaintiffs could not then agree and cannot now agree to work for a lesser wage than
8 the amount proscribed by Labor Code §§ 510 and 1194.

9 31. Due to Defendants' misclassification of Plaintiffs as independent contractors,
10 Plaintiffs were not paid for all of his hours worked while employed by the Defendant and thus was
11 not paid all minimum and overtime wages owed. Instead, Plaintiff Hernandez only received a base
12 rate of compensation for each block worked, plus any tips earned. Thus, working time that was
13 spent waiting for an order, and on all other nonproductive tasks typically taking up to an hour or
14 more per day, was not separately compensated, or compensated for at all. Moreover, Plaintiff
15 Beatriz Hernandez was not compensated for any of the hours that she was required to work such as
16 cleaning, showing the property or remaining on-call. As a result, Plaintiffs the aggrieved employees
17 were denied compensation for all hours worked, in violation of Cal. Labor Code §1194, and were
18 denied compensation at the minimum wage in violation of Cal. Labor Code §§1197 and 1199.

19 32. Further, because Plaintiffs and the aggrieved employees were classified as
20 independent contractors, they did not receive the overtime premium pay rates applicable to
21 employees under California law for working in excess of eight hours in a day, or more that forty
22 hours in a workweek, in violation of IWC Wage Order 5/16-2001, and Labor Code §§ 1194 and
23 510.

24 33. In addition, Defendants failed to adopt meal and rest break policies consistent with
25 California law applicable to Plaintiffs and the aggrieved employees. By virtue of the
26 misclassification, Defendants did not maintain a policy authorizing its employees to take paid rest
27 breaks amounting to 10 minutes of time for each four hours of work or major fraction thereof on
28 their shifts in California. On a routine basis Plaintiffs and the aggrieved employees worked shifts

1 that were longer than 10 hours. However, Plaintiffs and the aggrieved employees were not
2 authorized or permitted to take paid rest breaks.

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

6 35. Section 12 of IWC Wage Order Nos. 5 and 16 states in pertinent part: “Every
7 employer shall authorize and permit all employees to take rest periods, which insofar as practicable
8 shall be in the middle of each work period. The authorized rest period time shall be based on the
9 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
10 fraction thereof.”

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

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

28 38. In addition to failing to authorize and permit compliant rest periods, Plaintiffs and

1 the aggrieved employees were not compensated with one (1) hour's worth of pay at their regular
2 rate of compensation when they were not provided with a compliant rest period in accordance with
3 Labor Code § 226.7(b).

4 39. Under California Labor Code Section 512 and IWC Wage Order Nos. 5 and 16, no
5 employer shall employ any person for a work period of more than five (5) hours without providing
6 a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty
7 (30) minutes, the employee is to be completely free of the employer's control and must not perform
8 any work for the employer. If the employee does perform work for the employer during the thirty
9 (30) minute meal period, the employee has not been provided a meal period in accordance with the
10 law. Also, the employee is to be compensated for any work performed during the thirty (30) minute
11 meal period. Finally, an employer may not employ an employee for a work period of more than ten
12 (10) hours a day without providing the employee with another meal period of not less than thirty
13 (30) minutes.

14 40. Under California Labor Code Section 226.7, if the employer does not provide an
15 employee a meal period in accordance with these requirements, the employer shall pay the
16 employee one (1) hour of pay at the employee's regular rate of compensation for each workday that
17 the meal period is not provided. Here, despite the fact that Plaintiffs and the aggrieved employees
18 were never authorized to take their timely 30-minute duty-free meal breaks, on or before the fifth
19 and tenth hours of time shifts, Defendants never paid any missed meal break premiums to Plaintiffs
20 and the aggrieved employees.

21 41. As a result of Defendants' misclassifying Plaintiffs as independent contractors,
22 Defendants violated Labor Code § 512 by failing to advise Plaintiffs and the aggrieved employees
23 of his and their right to receive thirty (30) minute uninterrupted meal periods within the first five
24 hours of the employee's shift. In fact, because Defendants misclassified Plaintiffs and the aggrieved
25 employees as independent contractors, it did not set any policies providing meal periods to
26 Plaintiffs and the aggrieved employees. To the contrary, Plaintiffs were placed on-call at all times
27 during their working hours.

28 42. Defendant also failed to pay Plaintiffs and the aggrieved employees members meal

1 period premiums for each workday that they did not receive all compliant meal periods.

2 43. Pursuant to Labor Code 226.7(c), if an employer failed to provide an employee with
3 a meal or rest period, “the employer shall pay the employee one additional hour of pay at the
4 employee’s regular rate of compensation for each workday that the meal or rest or recovery period
5 is not provided.” (emphasis added).

6 44. Defendants did not maintain an expense reimbursement policy and/or practice
7 stating that Defendants would affirmatively reimburse Plaintiffs and the aggrieved employees for a
8 reasonable portion of their monthly personal cell phone bills and other expenses necessarily
9 incurred in the discharge of their duties, as required by Labor Code sections 2802(a)-(c), and
10 *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014) (“We hold
11 that when employees must use their personal cell phones for work-related calls, Labor Code section
12 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with
13 unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their
14 cell phone bills.”) (reversing denial of class certification in cell phone reimbursement class action
15 and setting forth the applicable law for these claims); *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17
16 (N.D.Cal. Aug. 27, 2014) (granting plaintiffs’ motion for partial summary judgment on the
17 plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL
18 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of cell phone
19 reimbursement claim and adopting the logic of *Cochran*). Under Labor Code section 2802(a),
20 employers must reimburse all necessary business expenses incurred by employees. Section 2802(c)
21 clarifies that necessary expenses include all “reasonable” expenses. Notably, claims for
22 reimbursement under section 2802 are not waivable. See Labor Code section 2804.

23 45. Defendants violated Labor Code § 2802 by failing to reimburse Plaintiffs and the
24 aggrieved employees for their reasonable business-related expenses including cell phones bills, and
25 mileage for the use of their personal vehicle and gas-related expenses. Plaintiffs and the aggrieved
26 employees were required to utilize their personal cellphone to use Defendants’ online applications
27 and in order to submit reports, communicate with Defendants’ customers, and to receive driving
28 directions. Plaintiff Hernandez was also required to repeatedly fill his personal vehicle up with gas

1 in order to fulfill his job duties for Defendants. As a result, Plaintiffs and the aggrieved employees
2 spent hundreds of dollars each *week* on non-reimbursed business-related expenses that should have
3 been paid for by the Defendant, including, most significantly, between \$30 to \$50 *per day* on gas
4 for his personal vehicle and \$50 or more per month on his personal cell phone expenses.

5 46. Defendants' policies and/or practices require and expect, and/or with Defendants'
6 knowledge thereof permit, Plaintiffs and the aggrieved employees to pay for business expenses
7 incurred in direct consequence of discharging their duties on behalf of Defendants, without
8 reimbursement in full by Defendants for such expenses. Defendants have maintained their policies
9 and/or practices of denying reimbursement in full of Plaintiffs' necessarily incurred business
10 expenses.

11 47. Defendants are aware or should have been aware that Plaintiffs and the aggrieved
12 employees regularly incurred business expenses in the discharge of their duties by virtue of
13 Defendants' instructions to Plaintiffs. Defendants nevertheless have failed and refused to reimburse
14 Plaintiffs for such business expenses incurred by them in connection with his work.

15 48. Labor Code § 226(a) requires an employer to provide its employees with itemized
16 wage statements accurately stating (1) gross wages earned, (2) total hours worked by the employee,
17 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
18 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
19 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
20 of the period for which the employee is paid, (7) the name of the employee and only the last four
21 digits of his or her social security number or an employee identification number other than a social
22 security number, (8) the name and address of the legal entity that is the employer, and (9) all
23 applicable hourly rates in effect during the pay period and the corresponding number of hours
24 worked at each hourly rate by the employee.

25 49. Furthermore, by virtue of the misclassification, Defendants did not issue adequate
26 wage statements to Plaintiffs, under Labor Code Section 226(a). Specifically, Defendants have not
27 issued wage statements that included Plaintiffs' and the aggrieved employees' total hours worked
28 and all applicable hourly rates in effect during the pay period and the corresponding number of

1 hours worked at each hourly rate in violation of Labor Code Section 226(a), including for all time
2 spent on rest periods. *See*, Labor Code § 226(a).

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

14 51. Here, Defendants failed to pay Plaintiffs and the aggrieved employees all wages that
15 were due and owing (including all minimum wages, overtime wages, and meal and rest period
16 premiums owed) within the required time following the end of their employment in accordance
17 with Labor Code §§ 201-202. As a result, Plaintiffs are entitled to 30 days of wages as a “waiting
18 time penalty.”

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

24 53. Due to Defendants’ failure to pay Plaintiffs and the aggrieved employees all
25 minimum wages and meal and rest period premiums and overtime wages, Defendants failed to
26 timely pay Plaintiffs within seven (7) days of the close of the payroll period in accordance with
27 Labor Code § 204 on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016
28 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after Ling

1 that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

2 54. Pursuant to Labor Code Section 210, as amended,

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

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

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

9 (b) The penalty shall either be recovered by the employee as a statutory penalty
10 pursuant to Section 98 or by the Labor Commissioner as a civil penalty through
11 the issuance of a citation or pursuant to Section 98.3. The procedures for issuing,
12 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.

13 (c) An employee is only entitled to either recover the statutory penalty provided
14 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.

15 55. Here, Plaintiffs seek to recover all penalties available under Labor Code Section 210
16 for Defendants' violations of Labor Code Section 204.

17 **FIRST CAUSE OF ACTION**
18 **FAILURE TO PAY MINIMUM WAGES**
[Labor Code §§ 1194 and 1194.2]
19 *Plaintiffs Against All Defendants*

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

22 57. Although misclassified as independent contractors, Plaintiffs were not exempt from
23 the requirement to be paid at least the applicable California minimum wage throughout the statutory
24 period for each hour worked. The statute of limitations on this claim is 3 years.

25 58. Section 1194 of the Labor Code provides, in relevant part, "[n]otwithstanding any
26 agreement to work for a lesser wage, any employee receiving less than minimum wage...applicable
27 to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this
28 minimum wage ..., including interest thereon, reasonable attorney's fees, and costs of suit."

1 59. Section 1194.2 of the Labor Code provides, in relevant part, “[i]n any action
2 under...Section 1194 to recover wages because of the payment of a wage less than the minimum
3 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated
4 damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

5 60. Due to Defendants’ misclassification of Plaintiffs as independent contractors,
6 Plaintiffs were not paid at least minimum wage for non-productive time while employed by the
7 Defendant. Thus, time spent waiting for an order, or planning their routes, and all other
8 nonproductive tasks typically taking up to an hour or more, was not compensated. As a result,
9 Plaintiffs were denied compensation for all hours suffered or permitted to work.

10 61. Further, Plaintiffs did not receive minimum wage for his on-duty time spent taking
11 statutory rest breaks and for all their working time.

12 62. Consequently, Defendants violated California Labor Code laws and minimum wage
13 laws, *inter alia*, Labor Code §§ 1194, 1194.2, 1197, and IWC Wage Order Nos. 5 and 16.

14 63. Plaintiffs are informed and believes and thereon alleges that Defendant intentionally,
15 willfully, and improperly failed to pay wages to Plaintiffs.

16 64. Defendants’ conduct was willful, as Defendant knew that Plaintiffs were entitled to
17 be paid wages for each hour worked, including proper minimum wages, yet Defendants chose not
18 to pay him in accordance thereto.

19 65. As a result of Defendants’ wrongful conduct, Plaintiffs have been damaged in
20 amounts to be proven at trial.

21 66. Accordingly, pursuant to sections 1194 and 1194.2 of the California Labor Code,
22 Plaintiffs are entitled to recover, either his unpaid hourly wages due, or minimum wage plus interest
23 and/or liquidated damages in an additional amount equal to the total amount of wages unlawfully
24 withheld for rest period time.

25 67. Plaintiffs seeks recovery of all unpaid minimum wages, liquidated damages,
26 penalties, interest, attorneys’ fees and costs of suit, pursuant to Labor Code §§ 1194, 1194.2, and
27 1197, against Defendants in an amount to be proven at trial.

28 ///

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES

[Labor Code §§ 510, 1194, 1194.2, 1197; IWC Wage Order No. 9]

Plaintiffs Against All Defendants

68. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

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

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

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

72. Because Plaintiffs were classified as independent contractors, they did not receive the overtime premium wage rates for working in excess of eight hours in a day, or more than forty hours in a workweek, in violation of IWC Wage Order 5/16-2001, and Labor Code §§ 1194 and 510. The statute of limitations on this claim is 3 years.

73. Plaintiffs suffered losses related to the use and enjoyment of compensation due and owing to him as a direct result of Defendants' unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

74. Plaintiff seeks all available remedies for Defendants' violations including, but not limited to any and all wages due, monies, interest, attorney's fees, and costs to the extent permitted

1 by law.

2 **THIRD CAUSE OF ACTION**
3 **FAILURE TO PROVIDE REST PERIODS**
4 [Labor Code § 226.7; IWC Wage Order No. 9 § 12]
5 *Plaintiff Against All Defendants*

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

8 76. Although misclassified as independent contractors by Defendant, Plaintiffs were, in
9 fact, a non-exempt employee of Defendants who did not receive proper protections and benefits of
10 the laws governing statutory rest periods.

11 77. Labor Code § 226.7 requires employers, including Defendants, to provide rest
12 periods to its non-exempt employees as mandated by Order of the Industrial Welfare Commission.
13 The statute of limitations on this claim is 3 years.

14 78. IWC Wage Order Nos. 5/16, § 12 states, in part, that every employer shall authorize
15 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of
16 each work period. Employees shall receive a 10-minute rest period every four hours or major
17 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
18 hours worked, for which there shall be no deduction from wages.

19 79. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order,
20 Defendants shall pay Plaintiffs one additional hour of pay at their regular rate of compensation for
21 each day that a compliant rest period was not provided.

22 80. Because Defendants misclassified Plaintiffs as independent contractors, Defendants
23 failed to implement a lawful rest period policy that informed Plaintiffs of their right to receive
24 lawful rest periods for shifts that were more than at least a major fraction of four hours worked.

25 81. By their failure to provide Plaintiffs with paid rest periods as required by California
26 law, and by failing to pay one hour of additional wages in lieu of each rest break not provided,
27 Defendants willfully violated Labor Code §§ 226.7 and IWC Wage Order Nos. 5/16. Accordingly,
28 Defendants are liable for one hour of additional wages at the Plaintiffs' regular rate of
compensation for each workday that a compliant rest period was not lawfully provided in an

1 amount to be proven at time of trial.

2 82. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and IWC
3 Wage Order No. 9, § 12, Defendant is liable to Plaintiffs for unpaid wage premiums, penalties,
4 costs, and interest.

5 **FOURTH CAUSE OF ACTION**
6 **FAILURE TO PROVIDE MEAL PERIODS**
7 [Labor Code § 226.7 and 512; IWC Wage Order No. 9, § 11]
8 *Plaintiffs Against All Defendants*

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

11 84. Although misclassified as independent contractors by Defendants, Plaintiffs were, in
12 fact, non-exempt employees of Defendants who did not receive proper protections and benefits of
13 the laws governing statutory meal periods.

14 85. Labor Code § 512(a), in part, provides that employers, including Defendant, may not
15 employ an employee for a work period of more than five hours per day without providing an
16 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except
17 that if the total work period per day of the employee is no more than six hours, the meal period may
18 be waived by mutual consent of both the employer and the employee. Employers may not employ
19 an employee for a work period more than 10 hours per day without providing the employee with a
20 second meal period of not less than 30 minutes.

21 86. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order No. 9,
22 Defendant shall pay Plaintiff one additional hour of pay at their regular rate of compensation for
23 each day that a compliant meal period was not provided.

24 87. At all relevant times herein, Plaintiffs were denied the 30-minute off-duty meal
25 periods to which he was entitled. The statute of limitations on this claim is 3 years.

26 88. As a result of Defendants misclassifying Plaintiffs as independent contractors,
27 Defendants violated Labor Code § 512 by failing to advise Plaintiff of his right to receive thirty (30)
28 minute uninterrupted meal periods within the first five hours of his shift. In fact, because
29 Defendants misclassified Plaintiffs as independent contractors, they did not set any policies

1 providing meal periods to Plaintiffs.

2 89. As a result of Defendants' failure to provide lawful meal periods because Defendants
3 misclassified Plaintiffs as independent contractors, Plaintiff frequently did not receive duty-free
4 meal periods within the first five (5) hours of his work. Defendants also failed to pay Plaintiffs meal
5 period premiums for each workday that he did not receive a compliant duty-free meal period.

6 90. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order
7 every pay period Plaintiff was not provided with all mandatory meal periods and Defendants failed
8 to pay Plaintiff one additional hour of compensation in lieu thereof.

9 91. On information and belief, Plaintiffs did not voluntarily or willfully waive the
10 mandated meal periods. Any expressed or implied waivers obtained from Plaintiffs was not
11 willfully obtained, was not voluntarily agreed to, was a condition of employment, or was a part of a
12 contract of unlawful adhesion. Defendants did not provide Plaintiffs meal periods in accordance
13 with California law.

14 92. By their failure to provide Plaintiffs with meal periods as required by California law,
15 and by failing to pay one hour of additional wages in lieu of each meal period not provided,
16 Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage Order Nos. 5/16.
17 Accordingly, Defendants are liable for one hour of additional wages at Plaintiffs' regular rate of
18 compensation for each workday that a meal period and/or paid rest break was not lawfully provided
19 in an amount to be proven at time of trial.

20 93. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
21 and IWC Wage Order Nos. 5/16, Defendants, and each of them, are liable to Plaintiff for unpaid
22 wage premiums, penalties, costs, and interest.

23 **FIFTH CAUSE OF ACTION**
24 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
25 [Cal. Labor Code § 2802(a) and (c)]
Plaintiffs Against All Defendants

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

28 95. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her

1 employee for all necessary expenditures or losses incurred by the employee in direct consequence
2 of the discharge of his or her duties.” “Necessary” business expenses are defined to include all
3 “reasonable expenses.” See Labor Code § 2802 (c).

4 96. To perform their duties, Plaintiffs regularly incurred expenses during the course of
5 their employment, such as mileage, gas, cellphone charges for data, and other costs, for which they
6 were not reimbursed. Plaintiffs were never reimbursed for the use of their personal vehicle or
7 cellphone data plans.

8 97. Plaintiffs are entitled to reimbursement for these reasonably incurred business-
9 related expenditures, plus interest and attorneys’ fees and costs, under Labor Code § 2802(a) and
10 (c). The statute of limitations on this claim is 3 years.

11 98. As a result of Defendants’ violations of Labor Code § 2802, Defendant is also liable
12 for attorneys’ fees and costs under Labor Code § 2802(c).

13 **SIXTH CAUSE OF ACTION**
14 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
15 [Labor Code § 226]
Plaintiffs Against All Defendants

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

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

19 Every employer shall...furnish each of his or her employees...an accurate
20 itemized statement in writing showing (1) gross wages earned, (2) total hours
21 worked by the employee, except for any employee whose compensation is solely
22 based on a salary who is exempt from payment of overtime under subdivision (a)
23 of Section 515 or any applicable order of the Industrial Welfare Commission, (3)
24 the number of piece-rate units earned and any applicable piece rate if the
25 employee is paid on a piece-rate basis, (4) all deductions, provided that all –
26 deductions made on written orders of the employee may be aggregated and shown
27 as one item, (5) net wages earned, (6) the inclusive dates of the period for which
28 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...

101. As set forth above, Defendants issued pay information to Plaintiffs including which

1 are inadequate and do not even constitute wage statements under Labor Code Section 226(a). Here,
2 as a result of its misclassification of Plaintiffs as independent contractors, Defendant failed to issue
3 Plaintiffs wage statements violation of Labor Code section 226(a)(1, 2, 5 and 9). In addition,
4 Defendants failed to comply with the requirements of Labor Code section 226.2.

5 102. Defendants' failure to comply with section 226(a) of the Labor Code was knowing
6 and intentional, which is deemed to be automatic in the case of the absence of the information
7 provided in the cited subparts of Section 226(a). See Labor Code section 226(e)

8 103. As a result of Defendants' issuance of inaccurate itemized wage statements to
9 Plaintiffs in violation of section 226(a) of the California Labor Code, Plaintiffs are entitled to
10 recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding
11 an aggregate penalty of \$4,000 Defendants pursuant to section 226(e) of the Labor Code, costs and
12 reasonable attorney's fees.

13 **SEVENTH CAUSE OF ACTION**
14 **FAILURE TO TIMELY PAY FINAL WAGES**
15 [Labor Code § 201 – 203]
Plaintiffs Against All Defendants

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

18 105. The actionable period for this cause of action is three years prior to the filing of this
19 Complaint through the present, and on-going until the violation is corrected.

20 106. Sections 201 and 202 of the California Labor Code require Defendants to pay all
21 compensation due and owing to Plaintiffs during the actionable period for this cause of action at or
22 around the time that his employment was terminated or ended.

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

27 108. As a result of Defendants' misclassification of Plaintiffs as independent contractors,
28 and as a result of their failure to pay Plaintiff for all hours worked, including minimum wages, all

1 overtime wages, and meal and rest period premiums, Defendants willfully failed to pay Plaintiffs
2 for all wages owed, upon termination or separation from employment with Defendants as required
3 by California Labor Code §§ 201 and 202.

4 109. As a result, Defendants are liable to Plaintiffs for waiting time penalties amounting
5 to thirty (30) days wages pursuant to California Labor Code § 203. *See, e.g., DLSE Manual, 4.3.4*
6 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time
7 penalties).

8 **EIGHTH CAUSE OF ACTION**
9 **FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER**
10 [Labor Code § 204]
Plaintiff Against All Defendants

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

13 111. Cal. Labor Code § 200 provides that “‘wages’ include all amounts for labor
14 performed by employees of every description, whether the amount is fixed or ascertained by the
15 standard of time, task, pieces, commission basis, or other method of calculation.”

16 112. Cal. Labor Code § 204 states that all wages earned by any person in any employment
17 are payable twice during the calendar month, and must be paid not more than seven days following
18 the close of the period when the wages were earned.

19 113. As discussed in detail above, and as a result of Defendants classifying Plaintiffs as
20 independent contractors, failing to pay for non-productive time, failing to pay overtime wages, and
21 failing to pay meal period premiums and rest period premiums, Defendants failed to pay Plaintiffs
22 at least twice per month in violation of Labor Code § 204. Defendants regularly and consistently
23 failed to pay Plaintiffs minimum and overtime wages for all of their hours worked, and for meal and
24 rest period premiums.

25 114. As a result, Plaintiffs are entitled to penalties pursuant to Labor Code § 210.

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NINTH CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
[Bus. & Prof. Code §§ 17200, *et seq.*]
On Behalf of Plaintiff Against All Defendants

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

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

117. Under California Business and Professions Code § 17208, the statute of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this cause of action is four years prior to the filing of this Complaint through the present, and on-going until the violations are corrected, and/or the class is certified.

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

119. As a direct and proximate result of Defendants’ unlawful business practices, Plaintiff has suffered economic injuries. Defendants’ have profited from these unlawful, unfair, and/or fraudulent acts and practices.

120. Plaintiffs are entitled to monetary relief pursuant to Business & Professions Code § 17203 and 17208 for all unpaid wages, including unpaid overtime, meal period premiums, and rest period pay or premiums, and for unreimbursed business expenses, including gas, insurance and cell phone expenses, from at least four years prior to the filing of this Complaint through the date of such restitution, at rates specified by law. Defendants should be required to disgorge all the profits and gains it has reaped and restore such profits and gains to Plaintiffs, from whom they

1 were unlawfully taken.

2 121. Through its action alleged herein, Defendants have engaged in unfair competition
3 within the meaning of section 17200 of the California Business & Professions Code, because
4 Defendants' conduct, as herein alleged has been and continues to be substantially injurious to
5 Plaintiff.

6 122. Defendants' course of conduct, act and practice in violation of the California laws
7 mentioned above each constitute independent violations of Business & Professions Code §§ 17200
8 *et seq.*

9 123. Plaintiff is entitled to enforce all applicable penalty provisions of the Labor Code
10 pursuant to Business & Professions Code § 17202.

11 124. Plaintiffs have assumed the responsibility of enforcement of the laws and public
12 policies specified herein by suing on behalf of himself. Plaintiffs' success in this action will
13 enforce important rights affecting the public interest. Plaintiffs will incur a financial burden in
14 pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to
15 Plaintiffs is appropriate pursuant to Code of Civil Procedure §1021.5.

16 **TENTH CAUSE OF ACTION**
17 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
18 **PAGA PENALTIES FOR LABOR CODE VIOLATIONS OTHER THAN**
19 **MISCLASSIFICATION**

[Labor Code §§ 2698-2699.5]

19 *On Behalf of Plaintiffs and the Aggrieved Employees*

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

22 126. Plaintiffs and similarly situated employees are "Aggrieved Employees" under the
23 PAGA as they were employed by Defendants during the applicable statutory period and suffered
24 the Labor Code violation alleged herein. At all times relevant hereto, Plaintiffs and Aggrieved
25 Employees were employees for purposes of the California Labor Code, although they were
26 willfully misclassified as independent contractors.

27 127. In violation of the Labor Code provisions cited herein and in willful violation of
28 California law and public policy, Defendant intentionally misclassified Plaintiff and Aggrieved

1 Employees as independent contractors in violation of Labor Code § 226.8(a). This was part of a
2 pattern as practice of willful misclassification of all, or virtually all, of the aggrieved employees
3 thereby triggering heightened penalties under sections 226.8(b) and (c).

4 128. The administrative prerequisites of PAGA will be satisfied after 66 days have
5 elapsed from September 20, 2020 (i.e., 66 days since Plaintiffs' mailing of the PAGA notice with
6 no further communication from the LWDA to Plaintiffs' counsel). The actionable period is one
7 year prior to the sending of the LWDA letter through the present.

8 129. Plaintiffs by this action seek to recover, on behalf of themselves and all other
9 current and former Aggrieved Employees of Defendants, the civil penalties provided by PAGA, as
10 specified in Labor Code § 2699(f). Plaintiffs seek to recover the PAGA civil penalties through a
11 representative action as permitted by PAGA and the California Supreme Court in *Arias v.*
12 *Superior Court*, 46 Cal. 4th 969(2009).

13 **ELEVENTH TENTH CAUSE OF ACTION**
14 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
15 **PAGA PENALTIES FOR LABOR CODE VIOLATIONS OTHER THAN**
16 **MISCLASSIFICATION**

[Labor Code §§ 2698-2699.5; 558]

On Behalf of Plaintiffs and the Aggrieved Employees

17 130. Plaintiffs re-alleges and incorporates by reference each and every allegation set
18 forth in the preceding paragraphs.

19 131. Plaintiffs and those aggrieved employees who were misclassified as contractors but
20 who were, in reality, employed by Defendants and who worked for Defendants within the last year
21 and whose wages were reported on an IRS Form 1090 basis are, "aggrieved employees" under
22 PAGA as they were employed by Defendants during the applicable statutory period and suffered
23 the Labor Code violations alleged herein; specifically, violations of §§ 1194, 1194.2, 226, 226.2,
24 226.7, 510, 512, 201-203, 204, 210 and 2802 of the Labor Code. Plaintiff Hernandez was
25 employed by Defendant during the one year preceding the submission of a PAGA letter to the
26 LDWA on or around October 10, 2020. Plaintiff Archundia was employed by Defendants during
27 the one year preceding the submission of a PAGA letter to the LDWA on or around September 20,
28 2020. As such, they seek to recover, on behalf of themselves and all other current and former

1 aggrieved employees of Defendant, the civil penalties provided by PAGA.

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

5 \$100 for the initial violation per employee per pay period; and

6 \$200 for each subsequent violation per employee per pay period.

7 These penalties will be allocated 75% to the Labor Workforce Development Agency and
8 25% to the affected employees.

9 133. The aggrieved employees are all individuals who hold or held the title of
10 maintenance worker, electrical contractor, or in any other similar capacity, and who are or have
11 been classified as independent contractors by Defendants in California during the PAGA Period.
12 These employees were subject to the aforementioned Labor Code violations, during the period of
13 time from one year prior to the submission of Plaintiff's letter to the LDWA on September 20,
14 2020 through the present and on-going.

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

22 135. Pursuant to Labor Code § 226.3, for PAGA penalties associated with the Section
23 226 claim, Plaintiffs and the Aggrieved Employees for the Section 226 claim are entitled to \$250
24 for each initial pay period with a violation and \$1,000 for each subsequent pay period with a
25 violation. See *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal. App. 5th 667, 674-675
26 (2018) (finding that Labor Code § 226.3 applies to all violations of Labor Code § 226(a)); see also
27 *Magadia v. Wal- Mart Assocs.*, 384 F. Supp. 3d. 1058, 1109 (N.D. Cal. 2019) ("the Court finds
28 that Cal. Lab. Code § 226.3 penalties are applicable as the appropriate measure of civil penalties

1 under PAGA” for the violation of Labor Code § 226(a).

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

12 137. Plaintiffs seeks to recover the PAGA civil penalties through a representative action
13 as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46
14 Cal.4th 969.

15 138. Pursuant to Labor Code § 2699.3 (a), on September 20, 2020, Plaintiff Archundia
16 and on October 10, 2020 Plaintiff Hernandez gave written notice by certified mail to Defendant,
17 and to the Labor and Workforce Development Agency (“LWDA”) of his claims, including the
18 facts and theories supporting all claims outlined in this Complaint. Accordingly, Plaintiffs will
19 have fulfilled all administrative prerequisites to the pursuit of their PAGA claim on behalf of
20 himself and all other current and former aggrieved employees of Defendant after 65 days have
21 elapsed from September 20, 2020 and October 10, 2020.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff requests the following relief:

24 a. For a declaration that Plaintiffs and other Aggrieved Employees of Defendants
25 were willfully misclassified;

26 b. For compensatory damages in the amount of the regular rate of compensation made
27 by Plaintiffs for each day of noncompliant rest periods for which premium pay was not properly
28 paid, as may be proven;

1 c. For compensatory damages in the amount of the regular rate of compensation made
2 by Plaintiffs for each day of noncompliant meal periods for which premium pay was not properly
3 paid, as may be proven;

4 d. For compensatory damages in the amount of the unpaid minimum wages
5 compensation for work performed and for rest periods by Plaintiffs, as may be proven;

6 e. For compensatory damages in the amount of the unpaid overtime compensation for
7 work performed by Plaintiffs during overtime hours, as may be proven;

8 f. For actual damages and/or penalties pursuant to Labor Code § 226(e) for Plaintiffs,
9 as may be proven;

10 g. For reimbursement of all incurred gas, cell phone and insurance expenses by the
11 Plaintiff on behalf of Defendants pursuant to Labor Code section 2802;

12 h. That Plaintiffs and other Aggrieved Employees be awarded penalties, at a
13 minimum, as specified in Labor Code §226.8(b);

14 i. That the Court find and declare that Defendants have violated the UCL and
15 committed unfair and unlawful business practices;

16 j. A civil penalty against Defendant in the amount of \$100 for the initial violation and
17 \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code
18 for Plaintiff and the Aggrieved Employees during all of the pay periods in the one year preceding
19 the filing of this Complaint through the present and on-going until the violations are corrected;

20 k. For pre-judgment and post-judgment interest on all damages awarded;

21 l. For reasonable attorneys' fees;

22 m. For costs of suit incurred;

23 n. For declaratory and injunctive relief;

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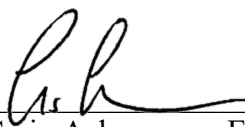
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o. For such other and further relief as the Court may deem just and proper.

Dated: January 7, 2020

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

By:



Craig Ackermann, Esq.
Amir Seyedfarshi
*Attorneys for Plaintiff and the Aggrieved
Employees*