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VENTURA
SUPERIOR COURT
FILED

FEB 23 2021

MICHAEL D. PLANET
Executive Officer and Clerk
BY: _____, Deputy

MARIANA SUAZO

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF VENTURA**

13 COURTNEY JOHNSTON, individually and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 ERIC YOUNG CORPORATION., a California
18 Corporation, and DOES 1 to 100, inclusive,

19 Defendant.

CASE NO: 56-2021-00551031-CU-OE-VTA

20 **PLAINTIFF'S CLASS ACTION AND PAGA
21 REPRESENTATIVE COMPLAINT FOR:**

- 22 (1) FAILURE TO REIMBURSE BUSINESS
23 EXPENSES (LABOR CODE § 2802);
24 (2) FAILURE TO PROVIDE ACCURATE
25 ITEMIZED WAGE STATEMENTS (LABOR
26 CODE § 226);
27 (3) UCL VIOLATIONS (CAL. BUS. & PROF.
28 CODE §§ 17200-17204); AND
(4) PAGA PENALTIES (LABOR CODE § 2698
et seq.)

DEMAND FOR JURY TRIAL

1 Plaintiff Courtney Johnston, (“Plaintiff”), on behalf of herself, the Aggrieved Employees,
2 the State of California, and all others similarly situated (hereinafter “Class Members”), complains
3 and alleges as follows:

4 **OVERVIEW OF CLAIMS**

5 1. Plaintiff brings this action on behalf of himself and all others similarly situated, as a
6 Class Action, as a Representative Action, and on behalf of the California general public, against
7 Defendant Eric Young Corporation and Does 1 to 100 (“Defendant”) for its (1) failure to
8 reimburse its current and former truck drivers for their work-related business cell phone expenses
9 in California for which they have not been fully reimbursed; (2) failure to provide accurate
10 itemized wage statements; (3) unfair business practices based on the foregoing; and (4) PAGA
11 penalties based on the foregoing. As a result of the foregoing, Defendant has violated California
12 statutory laws as described below.

13 2. The “Class Period” is designated as the period from October 6, 2016 through the
14 present. Defendant’s violations of California’s wage and hour laws and unfair competition laws,
15 as described more fully below, have been ongoing throughout the Class Period.

16 3. The “PAGA Period” is designated as the period from one year prior to Plaintiff’s
17 mailing of the LWDA notice letter (*i.e.*, October 6, 2019) through the present.

18 **VENUE**

19 4. Venue is proper in this county under section 395.5 of the California Code of Civil
20 Procedure as the allegations herein took place within the County of Ventura. Further, Defendants
21 keeps and maintains its headquarters in Camarillo, California. Many of the putative Class
22 Members were employed and/or performed work during the Class Period by Defendant in Ventura
23 County, where Defendant maintains its headquarters. Finally, many of the acts alleged herein
24 including Defendant’s failure to reimburse Plaintiff and Class Members for all their business
25 expenses and failure to provide accurate itemized wage statements, occurred in Ventura County.
26 Venue is therefore proper in Ventura County.

27 **JURISDICTION**

28 5. Defendant is within the jurisdiction of this Court. Defendant transacts millions of

1 dollars of business by providing transportation services throughout California. Thus, Defendant
2 has obtained the benefits of the laws of the State of California. In addition, Plaintiff asserts no
3 claims arising under federal law. Rather, Plaintiff brings causes of action based solely on, and
4 arising from, California law. The claims of the class are also individual claims for violations of
5 California law described herein. The total amount at issue for the Class, the LWDA, and the
6 Aggrieved Employees is under \$3 million.

7 **THE PARTIES**

8 6. Plaintiff Courtney Johnston is a California resident. Throughout the Class Period
9 and the PAGA period, Defendant employed Plaintiff as a truck driver. From at least four years
10 ago through the present, Defendant's drivers, including Plaintiff during his employment, were not
11 reimbursed incurred business expenses in the course of carrying out their job duties in California,
12 specifically including cell phone business expenses and were not provided accurate itemized wage
13 statements in compliance with California law.

14 7. Plaintiff represents the State of California and the following group of employees:
15 *All non-exempt individuals who were employed by Eric Young Corporation in the State of*
16 *California as drivers for FedEx or other third-party companies and who worked one or more shifts*
17 *during the PAGA Period* (the "Aggrieved Employees"). All such Aggrieved Employees are and
18 were subject to Defendant's unlawful cell phone reimbursement policy and wage statement policy,
19 as described in further detail below.

20 8. Plaintiff further seeks to represent a class defined as: *All non-exempt individuals*
21 *who were employed by Eric Young Corporation in the State of California as drivers for FedEx or*
22 *other third-party companies and who worked one or more shifts during the Class Period* ("the
23 Class Members"). All such Class Members are and were subject to Defendant's unlawful cell
24 phone reimbursement policy and wage statement policy, as described in further detail below.

25 9. Defendant Eric Young Corporation is a Delaware Corporation with its principal
26 place of business in Camarillo, California. Defendant provides transportation services for FedEx
27 and other third-party companies throughout California. Defendant was the employer of Plaintiff,
28 Class Members, and the Aggrieved Employees for all relevant time periods.

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

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff, the Class Members, and the other Aggrieved Employees. Further, Labor Code § 558.1 explicitly allows Plaintiff to name any owner, director, officer, or managing agent of Defendant as a Doe Defendant for violations of Labor Code § 2802.

12. Plaintiff, the Class Members, and the Aggrieved Employees were employed by Defendant as truck drivers in California at various times during the Class Period. Due to turnover during the Class Period, the total number of class members is estimated to be approximately 59.

FACTUAL ALLEGATIONS

13. Defendant operates and, at all times during the Class Period and PAGA Period, has done and does business in California as a transportation provider. Defendant, in the course of operating its business in California during the Class Period, employed Plaintiff, the Aggrieved Employees, and the Class Members.

14. Since at least four years ago, Plaintiff, the Aggrieved Employees, and the Class Members, at the direction of Defendant and/or with Defendant's knowledge and acquiescence, have used their personal cell phones to remain in contact with their managers, dispatchers and customers to perform necessary work-related duties on their California routes.

15. Among other things, during the Class Period, Defendant requires and required its truck drivers to use their personal cell phones for work-related reasons, specifically including

1 directing the aggrieved employees and putative class members to communicate with dispatchers
2 and requiring the aggrieved employees and putative class members to download applications on
3 their phone, including, TSheets, PackageRoute, Payroll and Safetyforward. All four applications
4 were needed as part of Defendant's delivery system. Despite this requirement, Defendant did not
5 provide devices that would allow such downloads to occur, nor did they reimburse for such cell
6 phone expenses.

7 16. Additionally, Defendant's dispatchers and managers maintained lists of aggrieved
8 employees' and Class Members' personal cell phone numbers to facilitate communications with
9 them by phone calls and texts about necessary work-related tasks. As a result, Plaintiff and the
10 aggrieved employees and Class Members, frequently during their workdays, used their personal
11 cell phone to remain in contact with their dispatchers, all with the knowledge and/or acquiescence
12 of Defendant.

13 17. Plaintiff, the Aggrieved Employees, and Class Members were thus expected by
14 Defendant to pay for, and have personally paid for, the purchase and maintenance of cell phones
15 used by Plaintiff, the Aggrieved Employees, and Class Members in the discharge of their job
16 duties (the "cell phone business expenses"). These expenses ranged, but typically amounted to
17 between \$50 per month to \$75 per month or more (for the entire data and cell phone plan) per
18 Aggrieved Employee and/or Class Member.

19 18. In sum, Defendant's expense-related policies and/or practices require and expect,
20 and/or with Defendant's knowledge thereof permit, Plaintiff and the aggrieved employees and
21 Class Members to pay for cell phone business expenses incurred in direct consequence of
22 discharging their necessary and business-related job duties on behalf of Defendant, without
23 reimbursement in full by Defendant for such expenses, as required by California law.

24 19. Defendant does not maintain an expense reimbursement policy and/or practice
25 stating that Defendant will affirmatively reimburse Plaintiff and the aggrieved employees and
26 Class Members for a reasonable portion of their monthly personal cell phone bills and expenses
27 necessarily incurred in their discharge of their duties, as required by Labor Code sections 2802(a)
28 and (c) and the holding of *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal.

1 Aug. 12, 2014) (“We hold that when employees must use their personal cell phones for work-
2 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
3 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement
4 owed is a reasonable percentage of their cell phone bills.”) (reversing denial of class certification
5 in cell phone reimbursement class action and setting forth the applicable law for these claims);
6 *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion
7 for partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue*
8 *Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen)
9 (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*). To the
10 contrary, although Plaintiff and the Aggrieved Employees and Class Members used their personal
11 cell phones for necessary work-related purposes to perform their job duties with the knowledge of
12 and/or acquiescence of Defendant, Defendant did not reimburse Plaintiff, the Aggrieved
13 Employees, or the Class Members in any amount for any such expenses incurred throughout the
14 Class Period or the PAGA Period. Defendant’s failure to reimburse Plaintiff, the Aggrieved
15 Employees, and the Class Members for their on-going cell phone business expenses incurred in
16 their discharge of their duties continues through the present day.

17 20. In short, Defendant’s policies and/or practices require and expect, and/or with
18 Defendant’s knowledge thereof permit, Plaintiff, the Class, and the aggrieved employees to pay for
19 cell phone business expenses incurred in direct consequence of discharging their duties on behalf
20 of Defendant, without reimbursement for a reasonable percentage of the monthly cell phone bills
21 by Defendant for such expenses. Defendant has maintained its policies and/or practices of denying
22 reimbursement in full of Plaintiff’s, the Class’ and the aggrieved employees’ necessarily incurred
23 business expenses, or substantially similar policies, throughout California and throughout the Class
24 and PAGA Period.

25 21. Defendant is aware or should have been aware that Plaintiff, the Class, and the
26 aggrieved employees regularly incur cell phone business expenses in the discharge of their duties
27 as employees by virtue of Defendant’s instructions to Plaintiff, the Class, and the aggrieved
28 employees to communicate with dispatchers via their cell phones and to download the four

1 applications. Defendant nevertheless has, throughout the PAGA Period and Class Period, failed
2 and refused to reimburse Plaintiff and the aggrieved employees for such cell phone business
3 expenses incurred by them in connection with their work.

4 22. As background, under California Labor Code § 2699(f)(2), Defendant is subject to a
5 civil penalty of \$100 per pay period penalty for each employee for each initial violation of the
6 aforementioned labor code violations, and \$200 for each subsequent pay period where the
7 violation occurred. Pursuant to *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209
8 (2008), “[u]ntil the employer has been notified that it is violating a Labor Code provision (whether
9 or not the Commissioner or court chooses to impose penalties), the employer cannot be presumed
10 to be aware that its continuing underpayment of employees is a “violation” subject to penalties.
11 However, after the employer has learned its conduct violates the Labor Code, the employer is on
12 notice that any future violations will be punished just the same as violations that are willful or
13 intentional - *i.e.*, they will be punished at twice the rate of penalties that could have been imposed
14 or that were imposed for the initial violation.” *Id.*

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

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

25 24. Due to, *inter alia*, Defendant’s inclusion of incorrect addresses for the employer on
26 the wage statements issued to Plaintiff, the Class, and other Aggrieved Employees, the wage
27 statements issued by Defendants to Plaintiff, the Class, and the Aggrieved Employees violate
28 Labor Code section 226.

1 25. Defendant's violation of Labor Code § 226 was knowing and intentional. *See*
2 *Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the
3 defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew
4 that it was not providing total hours worked to plaintiff or other employees paid on commission"
5 even though it believed that employees paid solely on commission or commission and salary "are
6 exempt and therefore we do not record hours on a wage statement"). Labor Code § 226(e)
7 provides that an employee is entitled to recover \$50 for initial pay period in which a violation of
8 Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an
9 award of costs and reasonable attorney's fees, for all pay periods in which the employer fails to
10 provide accurate itemized statements to the employee causing the employee to suffer injury.

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

20 27. Further and in addition to the penalties outlined above, Labor Code § 226.3
21 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a
22 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an
23 initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
24 citation, for which the employer fails to provide the employee a wage deduction statement or fails
25 to keep the required in subdivision (a) of Section 226." As explained in detail above, Defendant
26 failed to provide Plaintiff, the Class, and the other Aggrieved Employees with accurate itemized
27 wage statements that contained accurate information about their employer's address. Accordingly,
28 Defendant is additionally liable for Labor Code § 226.3 penalties for their violations of Labor

1 Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059
2 AWI-BAM, 2015 WL 1137151, at *7 [“the weight of authority counsels that violations of Section
3 226.3 may be the basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK
4 DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3 merely provides
5 that failure to perform actions mandated by § 226(a) may trigger civil penalties.”).¹

6 28. Plaintiff, the Aggrieved Employees, and Class Members have been harmed by
7 Defendant’s unlawful business expense policies and/or practices in that they have not been paid for
8 any cell phone business expenses incurred while employed by Defendant in California, thereby
9 diminishing their agreed-upon compensation, and not reimbursing according to law, in substantial
10 amounts to be proved at trial. Plaintiff, the Aggrieved Employees and Class Members have also
11 been harmed by Defendant’s unlawful wage statement policy in that they were not provided wage
12 statements in compliance with Labor Code section 226.

13 29. Plaintiff has fully and completely exhausted and/or will have fully and completed
14 and exhausted his administrative remedies under PAGA prior to proceeding with the PAGA claim.
15 On October 6, 2020, Plaintiff filed his PAGA Notice online with the Labor Workforce
16 Development Agency (“LWDA”) and sent a letter by certified mail to Defendant setting forth the
17 facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698
18 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by regular
19 mail. Pursuant to Labor Code § 2699.3(a)(2)(A), Plaintiff will have satisfied his administrative
20 pre-requisites after sixty-five (65) calendar days of the postmark date of the PAGA notice have
21 elapsed, i.e., by December 10, 2020.

22 **CLASS ACTION ALLEGATIONS**

23 30. Plaintiff brings this action on behalf of herself and all others similarly situated as a
24 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
25 composed of and defined as *All non-exempt individuals who were employed by Eric Young*
26

27 ¹ *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D.Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326,
28 *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7–9, 2011 WL 2434043; *Willis v. Xerox Bus. Servs., LLC* (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

1 *Corporation in the State of California as drivers for FedEx or other third-party companies and*
2 *who worked one or more shifts during the Class Period* (“Class Members”). All such Class
3 Members were subject to Defendant’s policy and practice of not fully reimbursing drivers’ cell
4 phone expenses and issuing non-compliant wage statements.

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

9 a. Numerosity: The potential members of the Class as defined are so
10 numerous that joinder of all the members of the Class is impracticable. While the precise number
11 of Class Members has not been determined at this time, Plaintiff is informed and believes that
12 Defendant has employed approximately 59 drivers during the Class Period. The Class Members
13 are dispersed throughout California. Joinder of all members of the proposed classes is therefore
14 not practicable.

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

18 i. Whether Plaintiff and Class Members incurred unreimbursed business
19 expenses in the discharge of their duties as employees, including but not limited to expenses for
20 cellular phones and monthly cellular phone bills, in violation of Labor Code § 2802;

21 ii. Whether Defendant intended, suffered and/or permitted, and/or knew and/or
22 should have known that Plaintiff and Class Members incurred unreimbursed cell phone business
23 expenses, in the discharge of their duties as employees;

24 iii. Whether Defendant’s failure to reimburse the cell phone business expenses
25 incurred by Plaintiff and Class Members was the result of, and/or pursuant to, a business policy or
26 regular practice of Defendant;

27 iv. Whether Defendant failed to provide Plaintiff and the members of the Wage
28 Statement Class complete wage statements in violation of Labor Code section 226(a);

1 v. Whether Plaintiff is entitled to restitution under Business and Professions
2 Code § 17200;

3 vi. Whether Defendant owes penalties pursuant to PAGA for failing to
4 reimburse its drivers for the necessarily incurred business expenses.

5 vii. Whether Defendants owed penalties pursuant to PAGA for failing to issue
6 accurate itemized wage statements;

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

9 ix. The nature and extent of class-wide damages.

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

14 d. Adequacy of Representation: Plaintiff is a member of the Class and will
15 fairly and adequately represent and protect the interests of the Class and Class Members.
16 Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who
17 represents Plaintiff are competent and experienced in litigating large wage and hour class actions,
18 and will devote sufficient time and resources to the case and otherwise adequately represent the
19 Class and Class Members.

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

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

9 **FIRST CAUSE OF ACTION**
10 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**
11 **[Cal. Labor Code § 2802]**
On Behalf of Plaintiff and the Class Against Defendant

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

14 33. The actionable period for this cause of action is from three years ago through the
15 present.

16 34. Labor Code § 2802(n) provides that "[a]n employer shall indemnify his or her
17 employee for all necessary expenditures or losses incurred by the employee in direct consequence
18 of the discharge of his or her duties." Section 2802(c) defines "necessary" to include all
19 "reasonable costs."

20 35. In order to discharge their duties for Defendant, Plaintiff and similarly situated
21 Class Members were and are required and expected by Defendant to use their own personal cell
22 phones for work-related calls between Defendant's dispatchers and to download applications
23 necessary for job performance. However, although having knowledge of such usage, Defendant
24 did not reimburse Plaintiff and similarly situated Class Members for a reasonable percentage of
25 their monthly cellular phone bills, as required by California law as stated in *Cochran v. Schwan's*
26 *Home Service, Inc.*, 228 Cal.App.4th 1137 (August 12, 2014) ("We hold that when employees
27 must use their personal cell phones for work-related calls, Labor Code section 2802 requires the
28 employer to reimburse them. Whether the employees have cell phone plans with unlimited

1 minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone
2 bills.”).

3 36. Defendant’s failure to pay for or reimburse the work-related business expenses of
4 Plaintiff and Class Members violated non-waivable rights secured to Plaintiff and Class Members
5 by Labor Code §2802. See Labor Code §2804. Plaintiff and similarly situated Class Members are
6 entitled to reimbursement for these necessary expenditures, plus interest and attorneys’ fees and
7 costs, under Labor Code § 2802(c).

8 **SECOND CAUSE OF ACTION**
9 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
10 **[Cal. Labor Code section 226(a)]**

11 **On behalf of Plaintiff and the Wage Statement Subclass Against Defendant**

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

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

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

28 39. Here, Defendant failed to provide Plaintiff and the Class with wage statements that
include the incorrect address for the employer, thus violating Labor Code § 226(a).

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

THIRD CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
[Bus. & Prof. Code § 17200]
On Behalf of Plaintiff and the Class Against Defendant

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

42. Section 17200 of the California Business & Professions Code 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 himself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

43. Under section 17208 of the California Business and Professions Code, the statute of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this cause of action is from four years ago through the present.

44. 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.

45. Beginning on a date at least four years prior to the filing of this Complaint, and continuing to the present, Defendant has committed unlawful, unfair, and/or fraudulent business acts and practices as defined by the UCL, by failing to reimburse and indemnify Plaintiff and similarly situated Class Members for employment-related cell phone business expenses, in violation of Labor Code § 2802, and by failing to issue accurate itemized wage statements to Plaintiff and similarly situated Class Members, in violation of Labor Code section 226.

46. As a direct and proximate result of Defendant’s unlawful, unfair, and/or fraudulent acts and practices described herein, Defendant has received and continues to hold unlawfully obtained property and money belonging to Plaintiff and the Class in the form of unreimbursed employee cell phone business expenses and penalties that reduced or offset compensation earned

1 by Plaintiff and Class Members.

2 47. As a direct and proximate result of Defendant's unlawful business practices,
3 Plaintiffs and the Class Members have suffered economic injuries including, but not limited to out-
4 of-pocket business expenses and penalties. Defendant has profited from its unlawful, unfair,
5 and/or fraudulent acts and practices in the amount of those business expenses and interest accrued
6 thereon.

7 48. Plaintiff and similarly situated Class Members are entitled to monetary relief
8 pursuant to Business & Professions Code §§ 17203 and 17208 for all unreimbursed business
9 expenses, penalties, and interest thereon, from at least four years ago through to the date of such
10 restitution, at rates specified by law. Defendant should be required to disgorge all the profits and
11 gains it has reaped and restore such profits and gains to Plaintiff and Class Members from whom
12 they were unlawfully taken.

13 49. Beginning four years prior to the filing of this Complaint, Defendant committed,
14 and continues to commit, acts of unfair competition, as defined in sections 17200 *et seq.* of the
15 California Business and Professions Code by, among other things, failing to reimburse Plaintiff
16 and the Class members for a reasonable portion of their monthly cell phone bills as required by
17 California law, and by failing to issue accurate itemized wage statements to Plaintiff and Class
18 Members, and therefore was substantially injurious to Plaintiff and the Class members.

19 50. Defendant engaged in unfair competition in violation of sections 17200 *et seq.* of
20 the California Business & Professions Code by violating Section 2802 of the Labor Code.

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

24 52. The unlawful, unfair and fraudulent business practices and acts of Defendant, as
25 described above, have injured Plaintiff and the Class in that they were denied reimbursement for a
26 reasonable percentage of their monthly business-related cell phone expenses and were denied
27 accurate itemized wage statements, and therefore was substantially injurious to Plaintiff and the
28 Class Members.

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

54. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of himself and other similarly situated Class Members previously or presently employed by Defendant in California. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff 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.

FOURTH CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEY GENERAL ACT
[Cal. Labor Code §§ 2698-2699.5]
On Behalf of Plaintiff and the Aggrieved Employees Against Defendant

55. Plaintiff, on behalf of herself and all Aggrieved Employees, re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

56. Based on the above allegations incorporated by reference, Defendant has violated Labor Code § 2802 and 226 by failing to reimburse Plaintiff and the Aggrieved Employees their reasonable and necessary business expenses, including cell phone expenses and by failing to issue accurate itemized wage statements to Plaintiff and the Aggrieved Employees.

57. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, et. seq., because of Defendant's violations of Labor Code § 2802 and 226.

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

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

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

1 \$200 for each subsequent violation per employee per pay period.²

2 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
3 Development Agency (LWDA) and twenty-five percent (25%) to the affected employees. These
4 penalties may be stacked separately for each of Defendant’s violations of the California Labor
5 Code. *See e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S. Dist.
6 LEXIS 86975, at *59, fn. 77 (C.D. Cal. June 22, 2012) (holding that although the plaintiff did not
7 seek stacked PAGA penalties, that “PAGA penalties can be ‘stacked,’ *i.e.*, multiple PAGA
8 penalties can be assessed for the same pay period for different Labor Code violations.”); *See Lopez*
9 *v. Friant & Assocs., LLC*, No. A148849, 2017 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26,
10 2017) (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code
11 section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of
12 section 226(e)(1) and acknowledging that a Plaintiff could recover separately under PAGA for
13 violations of Labor Code §§ 226(a) and 226(e)); *accord Schiller v. David's Bridal, Inc.*, No. 1:10-
14 cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F*
15 *& B, Inc.*, No. 2:08-cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at *
16 2-3 (E.D. Cal. Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist.
17 LEXIS 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

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

23
24

² Defendant is aware or should have been aware that Plaintiff and the aggrieved employees regularly incur cell phone
25 business expenses in the discharge of their duties as employees by virtue of Defendant’s instructions to Plaintiff and
26 the aggrieved employees and managements’ communications with Plaintiff and the aggrieved employees and class
27 members via their cell phones. Defendant nevertheless has, throughout the PAGA Period, failed and refused to
28 reimburse Plaintiff and the aggrieved employees for such cell phone business expenses incurred by them in connection
with their work. Notably, Defendant US Foods was previously sued for and settled on a class basis for its drivers for
similar claims. *See Alcazar v. US Foods*, LASC Case No. BC 567664, final approval granted on March 18, 2016 with
class and PAGA release through September 15, 2015. As a result, Defendant was definitely “on notice” of these
claims and all violations here are “subsequent” violations under the statute. See Labor Code section 2699(f)(2).

1 each violation in a subsequent citation, for which the employer fails to provide the employee a
2 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

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

13 62. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
14 § 2699, et seq. because of Defendant’s violation of Labor Code §§ Labor Code §§ 226, 226.3, and
15 2802.

16 JURY DEMAND

17 63. Plaintiff hereby demands trial by jury of his and the Class’s Section 226 and 2802
18 claims against Defendant, but recognizes that his PAGA and UCL claims shall be tried to the
19 Court.

20 PRAYER FOR RELIEF

21 Wherefore, Plaintiff, on behalf of himself and the members of the Class, prays for
22 judgment against Defendant as follows:

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

24 2. On the First Cause of Action:

25 a. That the Court find and declare that Defendant’s business expense policies
26 and/or practices violate California law, including Labor Code § 2802, by refusing and/or failing to
27 reimburse all business expenses reasonably incurred by Plaintiff and other and Class Members in
28 the discharge of their duties in California as employees of Defendant;

1 b. That the Court award to Plaintiff and Class Members all unreimbursed
2 business expenses, and interest thereon, that they are owed, pursuant to Labor Code § 2802, and
3 attorneys fees, pursuant to Labor Code § 2802(c), in an amount to be proved at trial;

4 3. On the Second Cause of Action:

5 a. A declaratory judgment that Defendant violated California Labor Code §226
6 by issuing inaccurate and/or incomplete wage statements to Plaintiff and the wage statement Class
7 Members;

8 b. An award to Plaintiff and Class Members of \$50 for each initial pay period,
9 one year prior to the filing of this Complaint through the date of trial, in which a violation of
10 Section 226 occurred and \$100 for each subsequent pay period, one year prior to the filing of this
11 Complaint through the date of trial, in which a violation of Section 226 occurred, not to exceed
12 \$4,000 for each member of the Class, as well as an award of costs and reasonable attorney's fees,
13 pursuant to Labor Code § 226(e);

14 4. On the Third Cause of Action:

15 a. That the Court find and declare that Defendant has violated the UCL and
16 committed unfair and unlawful business practices by failing to reimburse Plaintiff and similarly
17 situated Class Members for their reasonable cell phone business expenses incurred by them in the
18 course of their duties for the benefit of Defendant, their employers;

19 b. Restitution, including, but not limited to, the relief permitted by section
20 2802 of the California Labor Code;

21 c. That Defendant be ordered to pay restitution to Plaintiff and the Class
22 Members due to Defendant's UCL violations under the First Cause of Action pursuant to Business
23 and Professions Code §§ 17200-17205, in the amount of their unreimbursed business expenses and
24 interest thereon;

25 5. On the Fourth Cause of Action:

26 a. A civil penalty against Defendant, in the amount of \$200 for each violation
27 as specified in section 2699(f)(2) of the California Labor Code for Plaintiff and the Aggrieved
28 Employees during all of the pay periods from October 6, 2019 through date of trial;

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

4 c. An award of all costs incurred by the undersigned counsel for Plaintiff in
5 connection with Plaintiff's and Class Members' PAGA claim against Defendant as provided for in
6 Labor Code § 2699(g)(1) and/or in Labor Code § 2802(c);

7 6. All other relief as this Court deems proper.

8
9 Dated: February 23, 2021

Respectfully submitted,

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

12
13 By: _____


Craig Ackermann, Esq.

Amir Seyedfarshi, Esq.

*Attorneys for Plaintiff, the Class, and the
Aggrieved Employees*