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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

AUG 31 2021

BY 
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

CIV SB 2125302

LUIS ANGEL ROBLES GARCIA and
MARTIN GARCIA VERA, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

VAN DRUNEN FARMS – GOLDEN STATE
HERBS, INC., a California Corporation,

Defendant.

CASE NO:

**CLASS ACTION AND REPRESENTATIVE
ACTION PLAINTIFFS' COMPLAINT FOR:**
(1) FAILURE TO PAY MINIMUM WAGES
(LABOR CODE §§ 1194, 1194.2, 1197);
(2) FAILURE TO PAY OVERTIME (LABOR
CODE §§ 510, 558, 1194, SECTION 3 OF IWC
WAGE ORDER NO. 14);
(3) FAILURE TO PROVIDE MEAL PERIODS
AND PAY MISSED MEAL PERIOD
PREMIUMS (LABOR CODE §§ 226.7, 512,
SECTION 11 OF IWC WAGE ORDER NO. 14);
(4) FAILURE TO PROVIDE REST PERIODS
AND PAY MISSED REST BREAK PREMIUMS
(LABOR CODE §§ 226.7; SECTION 12 OF IWC
WAGE ORDER NO. 14);
(5) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210)
(6) WAITING TIME PENALTIES (LABOR
CODE § 201 – 203);
(7) FAILURE TO PROVIDE COMPLETE
WAGE STATEMENTS (LABOR CODE §§ 226,
226.3);
(8) UCL VIOLATIONS (BUS. & PROF. CODE
§§ 17200-17204);
(9) FAILURE TO MAINTAIN RECORDS
(LABOR CODE §§ 1198, SECTION 7 OF IWC
WAGE ORDER NO. 14);
(10) FAILURE TO REIMBURSE BUSINESS
EXPENSES; AND
(11) PAGA AND OTHER PENALTIES (LABOR
CODE §§ 2698 – 2699.5); &
DEMAND FOR JURY TRIAL

1 Plaintiffs Luis Angel Robles Garcia and Martin Garcia Vera (“Plaintiffs”), on behalf of
2 themselves, the State of California, other aggrieved employees, and all others similarly situated
3 (hereinafter “Class Members”), complain and allege as follows:

4 **OVERVIEW OF CLAIMS**

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

19 2. The “Class Period” is designated as the period from February 17, 2017 through the
20 trial date. The “PAGA Period” is from December 23, 2019 through the present and on-going.
21 Defendant’s violations of California’s wage- hour laws and unfair competition laws, as described
22 more fully below, have been ongoing throughout the Class Period and PAGA Period.

23 **VENUE**

24 3. Venue is proper in this county under section 395.5 of the California Code of Civil
25 Procedure. Some of the putative Class Members reside in San Bernardino County. Defendant is a
26 domestic agricultural grower and processor of air-dried herbs with plants, farms, and mills located
27 in Southern California. Defendant does business in San Bernardino County. Venue is therefore
28 proper in San Bernardino County.

JURISDICTION

4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of dollars of business as a domestic agricultural grower and processor of air-dried herbs in California. Thus, Defendant has obtained the benefits of the laws of the State of California. In addition, Plaintiffs assert no claims arising under federal law. Rather, Plaintiffs bring causes of action based solely on, and arising from, California law. The claims of the class are also based solely on California law described herein. Furthermore, the total amount at issue in this case, inclusive of attorneys' fees, is less than \$1.2 million. Therefore, jurisdiction is appropriate in San Bernardino County Superior Court.

THE PARTIES

5. Plaintiff Garcia is a California resident who worked for Defendant from approximately June 25, 2018, to October 23, 2020, as a night irrigator. Plaintiff Vera is a California resident who worked for Defendant from approximately July 2018 to May 2020 as a general laborer/irrigator.

6. From at least February 17, 2017 through the present, and on-going, Defendant's hourly-paid non-exempt employees, including Plaintiffs during their employment, were not paid by Defendant for their work performed off the clock. Additionally, Plaintiffs, the Class Members and the Aggrieved Employees were not paid overtime; did not receive premium payments for non-compliant meal and rest periods; were not provided compliant meal and rest periods; were not provided accurate and/or complete wage statements; did not receive timely wages; and did not receive all of their wages due upon termination of employment.

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

Plaintiffs and all other hourly-paid non-exempt individuals, who are or were employed by Defendant in the State of California during the PAGA Period (hereinafter referred to as "Aggrieved Employees").

8. Defendant is a California corporation with plants, farms, and mills located in Southern California. Defendant is a domestic agricultural grower and processor of air-dried herbs that transacts millions of dollars of business by providing air-dried herbs throughout

1 California.

2 9. Defendant employed Plaintiffs, the Class, and the Aggrieved Employees as hourly-
3 paid non-exempt employees in California at various times during the Class Period and PAGA
4 Period. According to Defendant, Defendant employed approximately 61 hourly-paid non-exempt
5 employees in California during the Class Period.

6 **FACTUAL ALLEGATIONS**

7 10. Defendant operates and, at all times during the Class Period and PAGA Period, has
8 done and does business in California as a domestic agricultural grower and processor of air-dried
9 herbs. Defendant, in the course of operating its business in California during the Class Period,
10 employed Plaintiffs, the Class, and the Aggrieved Employees as hourly-paid non-exempt
11 employees.

12 11. Defendant has a policy and practice of denying Plaintiffs, the Class, and other
13 Aggrieved Employees legally complaint meal breaks per the California Labor Code, section 512
14 and Section 11 of the IWC Wage Order. Specifically, Plaintiffs, the Class, and other Aggrieved
15 Employees were not always relieved of all duty to take an uninterrupted, thirty-minute meal break
16 on or before the 5th hour of their shifts. While Plaintiffs, the Class, and Aggrieved Employees
17 were on occasion able to eat while at work, Defendant had a policy and practice of instructing
18 some workers to remain on premises during the entire workday, including for any breaks.

19 12. In addition, Defendant has an improper policy and practice of not always paying
20 meal break premiums to its workers, all who are still being regularly denied uninterrupted duty-
21 free meal breaks as per the law.

22 13. Not only is Defendant not providing meal breaks or paying meal break premiums
23 owed to Plaintiffs, the Class, and Aggrieved Employees, it also employed an unlawful policy and
24 procedure of automatically deducting thirty minutes from Plaintiffs, the Class, and Aggrieved
25 Employee's hours worked as if an exact thirty-minute meal period were provided every day and
26 without keeping accurate meal break records. For example, per Plaintiff Garcia's time records in
27 January 2020 for the workweek of January 20, 2020 – January 25, 2020, Plaintiff Garcia worked a
28 total of 59 hours and 41 minutes. However, in the corresponding wage statement, the total hours

1 listed is 56.2 hours. There is zero indication per Defendant's time records of Plaintiff Garcia's
2 work hours that Plaintiff Garcia was ever provided with a meal break, let alone one for thirty
3 uninterrupted minutes that was duty-free and not subject to control by Defendant. Yet, 2.5 hours
4 were deducted from the total hours he actually worked that week, depriving him of minimum wage
5 and overtime pay. The auto-deduction of thirty minutes from Class Members' and Aggrieved
6 Employees' hours results in further violations of the Labor Code, including but not limited to
7 failure to pay minimum wage, failure to pay overtime and failure to provide accurate itemized
8 wage statements.

9 14. Labor Code § 1197 states the California requirement that employees must be paid at
10 least the minimum wage fixed by the Commission, and any payment of less than the minimum
11 wage is unlawful. Labor Code § 1194 entitles "any employee receiving less than the legal
12 minimum wage...to recover in a civil action the unpaid balance of the full amount of this
13 minimum wage." IWC Wage Order 14-2001 § 4 also obligates employers to pay each employee
14 minimum wages for all hours worked.

15 15. Defendant regularly failed to pay Plaintiffs, the Class, and the aggrieved employees
16 for work performed off the clock. Specifically, Defendant's unlawful policy of auto-deducting
17 thirty minutes as if a meal break had been taken by Plaintiff, the Class, and Aggrieved Employees
18 resulted in thirty minutes of uncompensated off-the-clock work.

19 16. As noted, the IWC Wage Orders all require California employers to pay employees
20 no less than minimum wage for all hours worked. *See e.g.*, IWC Wage Order No. 14, section 4(B).
21 The phrase "hours worked" is defined as "the time during which an employee is subject to the
22 control of an employer and includes all the time the employee is suffered or permitted to work,
23 whether or not required to do so." *Id.*, section 2(G).

24 17. Further, Defendant does not always allow its employees to leave the premises while
25 on the clock. The California Court of Appeals has held that an employer's policy of requiring an
26 employee to remain on premises for lunch periods transforms what would otherwise be a duty-free,
27 unpaid 30- minute meal period (*see* Section 11 of the various IWC Wage Orders) into paid, on-
28 duty time that counts as "hours worked" that is subject to the employer's control for purposes of

1 the Wage Order. *See Bono Enterprises, Inc. v. Bradshaw*, 32 Cal.App.4th 968, 977 (1995). In
2 *Bono Enterprises*, where employees at a manufacturing plant were required to remain on premises
3 during their 30-minute lunch break, during which time they were relieved of all duties and
4 permitted to eat or relax at the employer's on-site cafeteria, the Court of Appeals upheld the Labor
5 Commissioner's interpretation of IWC Order 1-89 (the predecessor order to IWC Wage Order No.
6 1-2001), that employees were entitled to compensation for any such meal period during which they
7 were restricted to the employer's premises. *Id.* at 977. The Court noted:

8 "When an employer directs, commands or restrains an employee from leaving the
9 workplace during his or her lunch hour and thus prevents the employee from using
10 the time effectively for his or her own purposes, ***that employee remains subject to
the employer's control.*** According to IWC Order 1-89, the employee must be paid."

11 *See Bono Enterprises*, 32 Cal. App. 4th at 977 (emphasis added).¹

12 18. The *Bono* Court's interpretation of "hours worked" was approved by the California
13 Supreme Court in *Morillion v. Royal Packing*, 22 Cal. 4th 575 (2000) (agricultural employees were
14 subject to employer control during time spent riding to and from fields when required to ride in
15 employer provided buses and thus such time was compensable under the applicable IWC Wage
16 Order). The California Supreme Court there noted that:

17 "The two phrases [in Section 2(G) of the Wage Order's definition of "hours
18 worked"] – "time during which an employee is subject to the control of an employer"
19 and "time the employee is suffered or permitted to work, whether or not required to
20 do so"—can also be interpreted as independent factors, each of which defines
21 whether certain time spent is compensable as "hours worked". Thus, an employee
22 who is subject to an employer's control does not have to be working during that time
to be compensated under Wage Order 14-80 [internal citation to *Bono* omitted]."

23 *Morillion*, 22 Cal.4th at 582.

24 19. Based on the foregoing, the DLSE also has concluded that "...employees who were
25 not paid for meal breaks during which they were prohibited from leaving the employer's premises,
notwithstanding the fact that they were relieved from all duty during those meal periods, are

26 ¹ *See also Brinker Restaurant Corp., v. Sup. Ct.*, 53 Cal. 4th 1004 (Cal. 2012) (agreeing with DLSE Opinion Letter No.
27 1988.01.05, that states, "The Division has historically taken the position that unless employees are relieved of all
28 duties and are free to leave the premises, the meal period is considered hours worked."); *Aguilar v. Association for
Retarded Citizens*, 234 Cal.App.3d 21, 30 (1991) (employees should be compensated for the time they spend sleeping
while on the employer's premises, even though they performed no work then).

1 entitled to compensation for their unpaid meal periods.” See DLSE Opinion letter, Jan. 12, 2001.²
2 Here, Plaintiffs are subject to the employer’s “control” from the start to the end of their shifts, and
3 their time is compensable from that moment they clock in and onward. As a result, Plaintiffs, the
4 Class, and the Aggrieved Employees were denied compensation for all hours worked, including
5 the time they spent on Defendant’s premises for any “meals”, in violation of Cal. Labor Code §
6 1194.

7 20. Similarly, Labor Code § 1194.2 authorizes employees to recover liquidated
8 damages for violations of Labor Code § 1194. Where an employee (such as Plaintiffs, the Class,
9 and the Aggrieved Employees) is not paid for all hours worked under Labor Code § 1194, the
10 employee may recover minimum wages for the time associated with the overtime for which they
11 received no compensation. See *Sillah v. Command Int’l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D.
12 Cal. 2015) (holding that employees suing for failure to pay overtime could recover liquidated
13 damages under § 1194.2 if they also showed they were paid less than minimum wage); accord
14 *Andrade v. Arby’s Rest. Grp., Inc.*, No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-
15 21 (N.D. Cal. Dec. 12, 2016).

16 21. Since Defendant failed to provide Plaintiffs, the Class, and all Aggrieved
17 Employees with compensation for all hours worked, including overtime hours, and on-premises
18 mealtimes, each are entitled to recover liquidated damages under Labor Code § 1194.2.

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

25 23. Before January 1, 2019, the applicable Wage Order 14-2001 § 3 defined “overtime”
26 as over ten (10) hours a day or more than six (6) days in any workweek. Further, Assembly Bill

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28 ² DLSE opinion letters can be found here: <https://www.dir.ca.gov/dlse/OpinionLetters-bySubject.htm>, including the
cited letter: <https://www.dir.ca.gov/dlse/opinions/2001-01-12.pdf> (both links last checked on 7/9/19).

1 No. 1066 created a timetable for agricultural workers to receive overtime pay so that they will
2 gradually receive overtime pay on the same basis as would other industries.³ Per the timetable,
3 effective January 1, 2020, overtime pay is required when an agricultural worker works over nine
4 (9) hours in a day or fifty (50) hours in a workweek. In accordance with Labor Code § 1194,
5 Plaintiffs, the Class, and the Aggrieved Employees could not then and cannot now agree to work
6 for a lesser wage than the amount proscribed by Labor Code §§ 510 and 1194 and the applicable
7 Wage Order. At various times during the Class Period, until 2021, Defendant did not always pay
8 all overtime hours owed and due.

9 24. California Labor Code sections 226.7 and 512(a) and the applicable IWC Wage
10 Order require employers to provide meal breaks and to pay an employee one (1) additional hour of
11 pay at the employee's regular rate for each workday that a meal period is not provided. Pursuant
12 to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may
13 not require, cause or permit an employee to work for a period of more than five (5) hours per day
14 without providing the employee with an uninterrupted meal period of not less than thirty (30)
15 minutes, except that if the total work period per day of the employee is not more than six (6) hours,
16 the meal period may be waived by mutual consent of both the employer and the employee. Under
17 California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v.*
18 *Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a)
19 and the applicable IWC Wage Order also require employers to provide a second meal break of not
20 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
21 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
22 hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual
23 consent of the employer and the employee only if the first meal period was not waived.

24 25. Plaintiffs, the Class, and other Aggrieved Employees were sometimes prevented
25 from being able to taking compliant meal periods. First, as noted, Plaintiffs, the Class, and
26 Aggrieved employees were required to remain on premises during their entire workdays, and thus

27
28 ³ <https://www.dir.ca.gov/dlse/Overtime-for-Agricultural-Workers-FAQ.html>

1 were not always relieved of all duty to take a meal break. Second, Plaintiffs, the Class, and other
2 Aggrieved Employees were forced to forego duty-free meal breaks in order to perform assigned
3 duties, including remaining on Defendant's premises for their meals. Lastly, Defendant engaged in
4 a systematic, company-wide policy of not paying for mealtime that was on-premises and/or for
5 meal period premiums owed since a compliant meal period was never provided. Because of this
6 practice and/or policy, Plaintiffs, the Class, and other Aggrieved Employees did not ever receive
7 premium pay for missed meal periods during their employment for Defendant

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

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

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

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

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

5 30. Here, not only did Defendant fail to have a compliant rest period policy, but
6 Defendant in fact has a policy that effectively penalized and subjected Plaintiffs, the Class, and the
7 Aggrieved Employees to potential reprimand and/or discipline if Plaintiffs, the Class, and the
8 Aggrieved Employees took rest breaks off Defendant’s premises.

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

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

19 33. As set forth above, Defendant failed to pay Plaintiffs, the Class, and the aggrieved
20 employees: minimum wage for all off the clock work time, overtime pay, and premium pay for
21 each day with a non-compliant meal period or rest period.

22 34. Thus, Defendant has failed, and continues to fail, to timely pay Plaintiffs, the Class,
23 and the Aggrieved Employees all wages due within seven (7) days of the close of the payroll
24 period in accordance with Labor Code § 204 on a regular and consistent basis. *See Parson v.*
25 *Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May
26 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under
27 Labor Code §§ 203 and 204).

28 35. Section 210 of the Labor Code provides for statutory damages that can be obtained

1 where, as here, employers do not timely pay all wages due. Here, for every pay period, Defendant
2 failed to pay for all wages due. Accordingly, Plaintiffs, the Class, and the Aggrieved Employees
3 are entitled to the relief as set forth in Section 210, including an additional penalty of 25% of the
4 unpaid wages owed.

5 36. As a result of its failure to pay all wages due as set forth herein to Plaintiffs, the
6 Class, and the Aggrieved Employees who are no longer employed by it, Defendant has violated,
7 and continues to violate, Labor Code § 203.

8 37. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of
9 an employee who is discharged or who quits, the wages of the employee shall continue as a
10 penalty [for up to] 30 days.” Labor Code § 203; *Mamika v. Barca*, 68 Cal. App. 4th 487, 492
11 (1998).⁴

12 38. Due to its policies and practices as described herein, Defendant has failed, and
13 continues to fail, to compensate Plaintiffs, the Class, and the Aggrieved Employees whose
14 employment with Defendant has ended, including for off-the-clock time, overtime, and non-
15 compliant meal and rest breaks, which sums were certain, at the time of termination or within
16 seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days
17 thereafter.

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

20 40. Due to Defendant’s failure to pay Plaintiffs, the Class, and the Aggrieved
21

22 ⁴ Courts routinely find that employees who do not receive meal/rest periods premiums are entitled to waiting time
23 penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug.
24 10, 2016) (denying the defendant’s motion for summary judgment on the Plaintiff’s claim for waiting time penalties
25 based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in
26 *Ling vs. P.F. Chang’s China Bistro, Inc.* 245 Cal. App. 4th 1242 (2016) “concerned only whether ‘a section 203
27 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under
28 section 218.5’”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D.
Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code
§§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 (denying
defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be
considered “wages” for purposes of sections 203 and 226.”); *Abad v. Gen. Nutrition Centers, Inc.*, 2013 WL 4038617,
at *3-4 (C.D. Cal. Mar. 7, 2013) (distinguishing *Kirby*, and finding “Plaintiff’s section 203 claim for failure to pay
wages...can be based on amounts owed under section 226.7.”). The issue is currently before the California Supreme
Court in the *Naranjo* case.

1 Employees all wages due, including for off-the-clock time, overtime, on-premises meal time, and
2 premiums for non-compliant meal and rest breaks, the wage statements issued by Defendant do not
3 state the correct amount of gross wages earned, the correct total hours worked, the correct net
4 wages earned, or the applicable and/or correct hourly and overtime rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate in violation of Labor
6 Code § 226(a)(1), (2) and (5).

7 41. Moreover, by failing to maintain accurate records, or any records, pertaining to
8 Class Members' and Aggrieved Employees' meal breaks or premium pay in lieu thereof,
9 Defendant further violates Labor Code § 1198 which requires employers to maintain payroll
10 records. Defendant is also violating Section 7 of the IWC Wage Order 14, which requires that an
11 employer maintain "[t]ime records showing when the employee begins and ends each work
12 period." Wage Order 14 specifically requires that "[m]eal periods, split shift intervals and total
13 daily hours worked shall also be recorded." IWC Wage Order 14, §7(A)(3). Defendant never
14 provided duty free meal periods, and thus never recorded when Class Members and Aggrieved
15 Employees took meal breaks in violation of the Labor Code and applicable wage order.

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

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

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

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

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

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

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

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

20 48. Under Labor Code § 2802, if an employer requires employees to use their cell
21 phone for work, as is the case where Defendant occasionally communicated with Class Members
22 and Aggrieved Employees by calling their personal cell phones, then Defendant must reimburse
23 employees for a reasonable portion of their monthly cell phone bills.

24 49. Accordingly, Defendant violated Labor Code § 2802 and continue to do so by
25 failing to reimburse the Class Members and Aggrieved Employees for all work-related cell phone
26 charges they incurred in connection with their job duties.

27 50. The administrative prerequisites of PAGA were satisfied after 65 days have elapsed
28 from March 18, 2020 (i.e., 65 days since Plaintiffs’ mailing of the PAGA notice with no further

1 communication from the LWDA to Plaintiffs' counsel). Plaintiffs have also paid the \$75.00 fee
2 and have otherwise satisfied the administrative prerequisites of PAGA, as amended. The parties
3 also entered into a pre-suit tolling agreement to allow the parties to mediate before filing.

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

9 CLASS ACTION ALLEGATIONS

10 52. Plaintiffs bring this action, on behalf of themselves and all others similarly situated,
11 as a class action pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent a Class
12 composed of and defined as: Plaintiffs and all other hourly-paid non-exempt employees who are or
13 were employed by Defendant in the State of California during the Class Period (hereinafter "Class
14 Members"). All such Class Members were subject to Defendant's unlawful policies including,
15 Defendant's failure to pay for all hours worked, Defendant's failure to pay overtime, and
16 Defendant's failure to provide code-compliant meal or rest breaks.

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

21 a. Numerosity: The potential members of the Class as defined are so
22 numerous that joinder of all the members of the Class is impracticable. Defendant has indicated
23 that they have employed approximately 61 hourly-paid non-exempt employees who were subject
24 to Defendant's unlawful compensation and meal and rest break policies during the Class Period.
25 The Class Members are dispersed throughout California. Joinder of all members of the proposed
26 classes is therefore not practicable.

27 b. Commonality: There are questions of law and fact common to Plaintiffs and
28 the Class that predominate over any questions affecting only individual members of the Class.

1 These common questions of law and fact include, without limitation:

2 i. Whether Defendant violated sections 1194 and 1194.2 of the Labor Code by
3 failing to pay Plaintiffs and the members of the Class all minimum wages owed during the Class
4 Period;

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

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

11 iv. Whether Defendant violated Labor Code section 226.7 and section 12 of
12 IWC Wage Order No. 14 by failing to pay one hour of premium pay to each member of the Class for
13 each day that a compliant rest break was not provided during the Class Period;

14 v. Whether Defendant violated Labor Code section 226.7 by failing to provide
15 compliant meal periods to Plaintiffs and the Class Members in California during the Class Period;

16 vi. Whether Defendant violated Labor Code sections 512 and 226.7, and
17 section 11 of IWC Wage Order No. 14 by failing to pay one hour of premium pay to each member
18 of the Class for each day that a compliant meal break was not provided during the Class Period;

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

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

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

27 x. Whether Defendant violated 2802 of the Labor Code and section 17203 of
28 the California Business and Professions Code during the Class Period by failing to reimburse

1 Plaintiff and the Class Members for their work-related expenses including personal cell phone
2 expenses;

3 xi. Whether Defendant engaged in an unfair practice and violated section 17200
4 of the California Business and Professions Code by failing to pay Plaintiffs and the members of the
5 Class all minimum wages and overtime wages owed during the Class Period;

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

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

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

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

18 xvi. Whether Defendant engaged in an unfair practice and violated section 17200
19 of the California Business and Professions Code by failing to reimburse Plaintiff and the Class for
20 fair business-related expenses including phone expenses during the Class Period;

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

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

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

26 c. Typicality: Plaintiffs' claims are typical of the claims of the Class. Both
27 Plaintiffs and Class Members sustained injuries and damages, and were deprived of property
28 rightly belonging to them, arising out of and caused by Defendant's common course of conduct in

1 violation of law as alleged herein, in similar ways and for the same types of unpaid wages.

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

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

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

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

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

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

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

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

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

15 58. During the Class Period, Plaintiffs and Class Members were not paid minimum
16 wages for all hours worked as a result of Defendant's unlawful policy of auto-deducting thirty
17 minutes as if a meal break had been taken by Plaintiffs and the Class which resulted in thirty
18 minutes of uncompensated off-the-clock work time in violation of Labor Code § 1194.
19 Accordingly, during the Class Period, Plaintiffs and the members of the Class did not receive
20 minimum wages for all work time.

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

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

27 **SECOND CAUSE OF ACTION**
28 **FAILURE TO PAY OVERTIME WAGES**
 [Cal. Labor Code §§ 510; 857, *et seq.*, and Section 3 of IWC Wage Order No. 14]
 On behalf of Plaintiffs and the Class

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

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

63. 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.

64. Before January 1, 2019, the applicable Wage Order 14-2001 § 3 defined “overtime” as over ten (10) hours a day or more than six (6) days in any workweek. Further, Assembly Bill No. 1066, codified as Labor Code § 857, *et seq.*, created a timetable for agricultural workers to receive overtime pay so that they will gradually receive overtime pay on the same basis as would other industries.⁵ Per the timetable, effective January 1, 2020, overtime pay is required when an agricultural worker works over nine (9) hours in a day or fifty (50) hours in a workweek. In accordance with Labor Code § 1194, Plaintiffs and the Class could not then and cannot now agree to work for a lesser wage than the amount proscribed by Labor Code §§ 510 and 1194 and the applicable Wage Order

65. Here, as a result of Defendant’s unlawful automatic meal deduction policy, Plaintiffs and the Class worked over nine hours in a day or fifty hours in a workweek and did not receive any overtime compensation for the hours that they worked beyond nine hours per day or fifty hours in a week.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE COMPLIANT MEAL BREAKS AND FAILURE
TO PAY MISSED MEAL BREAK PREMIUMS
[Cal. Labor Code §§ 226.7; 512; and Section 11 of IWC Wage Order No. 14]
On behalf of Plaintiffs and the Class

66. Plaintiffs re-allege and incorporate by reference each and every allegation set forth

⁵ <https://www.dir.ca.gov/dlse/Overtime-for-Agricultural-Workers-FAQ.html>.

1 in the preceding paragraphs.

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

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

7 69. Section 11(A) and (B) of IWC Wage Order No. 14 provide that:

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

18 70. Section 11(C) of IWC Wage Order No. 14 provides that:

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

26 71. Finally, Section 11(D) of IWC Wage Order No. 14 provides that:

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

29 72. Here, by failing to provide them with compliant 30-minute meal breaks, on their
30 shifts greater than 5 hours in length, Defendant has violated California Labor Code § 226.7 and
31 IWC Wage Order No. 14, and is liable to Plaintiffs and the Class.

32 73. As a result of the unlawful acts of Defendant, Plaintiffs and the Class were not
33 provided compliant meal breaks, and are entitled to recovery under Cal. Labor Code §226.7 in the

1 amount of one additional hour of pay at the employee's regular rate of compensation for each work
2 period greater than 5 hours in California during each day in which Defendant failed to provide
3 compliant meal periods as required by California law.

4 **FOURTH CAUSE OF ACTION**
5 **FAILURE TO PROVIDE COMPLIANT REST PERIODS**
6 **AND PAY MISSED REST BREAK PREMIUMS**
7 **[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order No. 14]**
8 **On behalf of Plaintiffs and the Class**

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

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

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

17 77. Section 12 of IWC Wage Order No. 14 provides: "(A) Every employer shall
18 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
19 middle of each work period. The authorized rest period time shall be based on the total hours
20 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
21 thereof. However, a rest period need not be authorized for employees whose total daily work time
22 is less than three and one-half (3 1/2) hours. *Authorized rest period time shall be counted as hours
23 worked for which there shall be no deduction from wages.*" (emphasis added).

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

27 79. As a result of the unlawful acts of Defendant, Plaintiffs and the Class were not
28 provided compliant rest breaks, and are entitled to recovery under Cal. Labor Code §226.7 in the
amount of one additional hour of pay at the employee's regular rate of compensation for each work

1 period during each day in which Defendant failed to provide compliant rest periods as required by
2 California law.

3 **FIFTH CAUSE OF ACTION**
4 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
5 **[Cal. Labor Code §§ 204, 210]**
6 **On behalf of Plaintiffs and the Class**

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

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

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

21 83. Labor Code § 210 provides that “in addition to, an entirely independent and apart

22 ⁶ Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting
23 time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal.
24 Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time
25 penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals
26 decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a
27 section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages
28 under section 218.5’”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5
(N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor
Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying
defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be
considered “wages” for purposes of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7,
2013) 2013 WL 4038617, at *3–4 [distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay
wages...can be based on amounts owed under section 226.7.”). The issue is currently before the California Supreme
Court in the *Naranjo* case. *See Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No. S258966.

1 from, any other penalty provided in this article, every person who fails to pay the wages of each
2 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
3 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
4 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
5 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
6 faulty compensation policies and practices described in detail above, Plaintiff and the Class are
7 entitled to recover penalties under Labor Code § 210.

8 **SIXTH CAUSE OF ACTION**
9 **WAITING TIME PENALTIES FOR**
10 **FAILURE TO PAY WAGES DUE ON TERMINATION**
11 **[Cal. Labor Code §§ 201-203]**
12 **On Behalf of Plaintiffs and the Waiting Time Penalty Subclass**

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

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

18 86. Sections 201 and 202 of the California Labor Code require Defendant to pay all
19 compensation due and owing to former workers in the Class during the actionable period for this
20 cause of action, at or around the time that their employment is terminated.

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

25 88. Defendant willfully failed to pay Plaintiffs and other members of the waiting time
26 penalty Class (i.e., those members of the Class whose employment with Defendant ended the
27 actionable period for this cause of action) who are no longer employed by Defendant all minimum
28 wages owed prior to or upon termination or separation from employment with Defendant as
required by California Labor Code §§ 201 and 202, as well as overtime wages and meal and rest

1 break premiums.

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

7 **SEVENTH CAUSE OF ACTION**
8 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
9 **[Cal. Labor Code § 226(a) and (e)]**
10 **On behalf of Plaintiffs and the Wage Statement and Penalty Subclass**

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

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

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

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

93. As set forth above, during the Class Period Defendant failed to issue wage
statements to its workers in California, including Plaintiffs, that complied with Labor Code Section
226(a). Defendant's wage statements were inadequate. Defendant's wage statements also did not
state the correct amount of gross wages earned, the correct total hours worked, the correct net

1 wages earned, or the applicable and/or correct hourly and overtime rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate in violation of Labor
3 Code § 226(a)(1), (2) and (5).

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

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

18 **EIGHTH CAUSE OF ACTION**
19 **UNFAIR COMPETITION LAW VIOLATIONS**
20 **(BUS. & PROF. CODE § 17200, ET SEQ.)**
21 **On Behalf of Plaintiffs and the Class**

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

24 97. Section 17200 of the California Business & Professions Code prohibits any
25 unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows
26 "any person who has suffered injury in fact and has lost money or property" to prosecute a civil
27 action for violation of the UCL. Such a person may bring such an action on behalf of himself and
28 others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

98. Under section 17208 of the California Business and Professions Code, the statute of

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

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

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

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

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

24 103. Defendant engaged in unfair competition in violation of sections 17200 et seq. of
25 the California Business & Professions Code by violating Section 1194 of the California Labor
26 Code, and Sections 11 and 12 of the IWC Wage Order No. 14.

27 104. Defendant's course of conduct, act and practice in violation of the California laws
28 mentioned above constitute independent violations of sections 17200 et seq. of the California

1 Business and Professions Code.

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

4 106. Plaintiffs have assumed the responsibility of enforcement of the laws and public
5 policies specified herein by suing on behalf of themselves and other similarly situated Class
6 Members previously or presently employed by Defendants in California. Plaintiffs' success in this
7 action will enforce important rights affecting the public interest. Plaintiffs will incur a financial
8 burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'
9 fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5, and Labor Code §§
10 1194 and 2802.

11 **NINTH CAUSE OF ACTION**
12 **FAILURE TO MAINTAIN RECORDS**
13 **[Cal. Labor Code § 1198 and Section 7 of IWC Wage Order 14]**
On behalf of Plaintiffs and the Class

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

16 108. By failing to maintain accurate records, or any records, pertaining to Class
17 Members' meal breaks or premium pay in lieu thereof, Defendant further violates Labor Code §
18 1198 which requires employers to maintain payroll records. Defendant is also violating Section 7
19 of the IWC Wage Order 14, which requires that an employer maintain "[t]ime records showing
20 when the employee begins and ends each work period." Wage Order 14 specifically requires that
21 "[m]eal periods, split shift intervals and total daily hours worked shall also be recorded." IWC
22 Wage Order 14, §7(A)(3). Defendant never provided duty free meal periods, and thus never
23 recorded when Class Members took meal breaks in violation of the Labor Code and applicable
24 wage order.

25 109. As a result of the faulty practices described in detail above, Plaintiff and the Class
26 are entitled to recover PAGA penalties for violations of Labor Code section 1198 and section 7 of
27 IWC Wage Order No. 14.

28 ///

TENTH CAUSE OF ACTION
FAILURE TO REIMBURSE BUSINESS EXPENSES
[Cal. Labor Code § 2802]
On Behalf of Plaintiffs and the Class Against Defendant

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

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

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

1 *Cochran*).

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

8 114. Under Labor Code § 2802, if an employer requires employees to use their cell
9 phone for work, as is the case here where Defendant occasionally communicated with Class
10 Members and Aggrieved Employees by calling their personal cell phones, then Defendant must
11 reimburse employees for a reasonable portion of their monthly cell phone bills.

12 115. Accordingly, Defendant violated Labor Code § 2802 and continues to do so by
13 failing to reimburse the Class Members for all work-related cell phone charges they incurred in
14 connection with their job duties.

15 **ELEVENTH CAUSE OF ACTION**
16 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
17 **PAGA PENALTIES FOR LABOR CODE VIOLATIONS**
(Labor Code §§ 2698-2699.5)
18 **On Behalf of Plaintiffs and the Aggrieved Employees**

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

21 117. Plaintiffs and the "Aggrieved Employees" under PAGA, i.e., those employees who,
22 during the PAGA Period, suffered the Labor Code violations alleged herein; specifically,
23 violations of §§ 1194, 1194.2, 1197, 226, 226.3, 226.7, 510, 512, 201-203, 204, and 210 of the
24 Labor Code bring claims under PAGA. Plaintiffs were employed by Defendant during the one
25 year preceding the submission of a PAGA letter to the LDWA on or around March 18, 2020. As
26 such, they seek to recover, on behalf of themselves and all other current and former aggrieved
27 employees of Defendant, the civil penalties provided by PAGA.

28 118. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiffs and

1 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial
2 subject to the following formula:

3 \$100 for the initial violation per employee per pay period; and

4 \$200 for each subsequent violation per employee per pay period.

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

7 119. The aggrieved employees are Plaintiffs and all other hourly-paid non-exempt
8 individuals, who are or were employed by Defendant in the State of California during the PAGA
9 Period. These employees were subject to the aforementioned Labor Code violations, during the
10 period of time from one year prior to the submission of Plaintiffs' letter to the LDWA on March
11 18, 2020 through the present and on-going.

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

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

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

123. Pursuant to Labor Code § 2699.3 (a), on March 18, 2020, Plaintiffs gave written notice by certified mail to Defendant, and to the Labor and Workforce Development Agency (“LWDA”) of their claims, including the facts and theories supporting all claims outlined in this Complaint. Accordingly, Plaintiffs will have fulfilled all administrative prerequisites to the pursuit of his PAGA claim on behalf of themselves and all other current and former aggrieved employees of Defendant after 65 days have elapsed from March 18, 2020.

JURY DEMAND

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

PRAYER FOR RELIEF

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

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

2. On the First Cause of Action:

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

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

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

3. On the Second Cause of Action:

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

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

4 4. On the Third Cause of Action:

5 a. A declaratory judgment that Defendant has violated California Labor Code
6 §§ 226.7, 510, and Section 11 of IWC Wage Order No. 14-2001 as to Plaintiffs, the Class and the
7 Aggrieved Employees;

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

11 5. On the Fourth Cause of Action:

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

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

18 6. On the Fifth Cause of Action:

19 a. A declaratory judgment that Defendant violated California Labor Code §§
20 204 and 210;

21 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiffs and the Class
22 for penalties pursuant to Labor Code § 210

23 7. On the Sixth Cause of Action:

24 a. A declaratory judgment that Defendant violated California Labor Code
25 §§201 through 203 as to former employees in the Class who are the waiting time penalty subclass
26 members;

27 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiffs and
28 the waiting time penalty subclass members for waiting time penalties in the amount of 30 days'

wages per waiting time penalty subclass Class Member

8. On the Seventh Cause of Action:

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

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

9. On the Eighth Cause of Action:

a. That the Court find and declare that Defendants have violated the UCL and committed unfair and unlawful business practices by failing to pay Plaintiffs and Class Members all minimum wages owed, by failing to pay overtime, and by failing to pay missed meal and rest break premiums;

b. Restitution, including, but not limited to, the relief permitted by section 1194 of the California Labor Code (i.e., unpaid minimum wages owed and unpaid overtime wages owed to Plaintiffs and the members of the Class during the Class Period);

10. On the Ninth Cause of Action:

a. A declaratory judgment that Defendant violated Labor Code section 1198 and section 7 of IWC Wage Order No. 14.

11. On the Tenth Cause of Action:

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

b. Pursuant to 2802 (a)-(c), reimbursement for all the unreimbursed business-related expenses including cell phones bills, plus interest and attorney's fees.

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12. On the Eleventh Cause of Action:

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

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

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

13. All other relief as this Court deems proper.

Dated: August 31, 2021

Respectfully,

ACKERMANN & TILAJEF, P.C.
LAW OFFICE OF TATIANA HERNANDEZ P.C.

By:



Craig Ackermann, Esq.

Tatiana Hernandez, Esq.

*Attorneys for Plaintiffs, the Class, the LWDA, and
the Aggrieved Employees*