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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 16 2021

BY Brian Gutierrez
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10 ROBERT DE LA HOYA, an individual, on
11 behalf of himself and others similarly
12 situated, and as a private attorney general on
13 behalf of the State of California,

14 **PLAINTIFF,**

15 v.

16 SIERRA WEST FINISH, INC., a Delaware
17 Corporation, and DOES 1 thru 50, inclusive,

18 **DEFENDANTS.**

CASE NO.: **CIV SB 2107351**

**CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Minimum Wages In Violation of Labor Code §§ 1194 and 1194.2
2. Failure to Pay Overtime Wages In Violation of Labor Code § 510
3. Failure to Provide Lawful Meal Periods And Pay Meal Period Premiums Pursuant to Labor Code §§ 226.7 and 512
4. Failure to Provide Lawful Rest Periods And Pay Rest Period Premiums Pursuant to Labor Code § 226.7
5. Violations of Labor Code § 226(e)
6. Violation of Labor Code §§ 201-203
7. Failure to Reimburse Expenses in Violation of Labor Code § 2802
8. Violation of Business & Professions Code § 17200
9. Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1197, 1197.1, 1198, and 2802 as well as IWC Wage Order Nos. 1-2001 and 16-2001

SC-2021-18846 1/14/21

No Summons Issued

CLASS ACTION COMPLAINT

1 Plaintiff ROBERT DE LA HOYA, an individual, on behalf of himself and others similarly
2 situated, complains of Defendant SIERRA WEST FINISH, INC. and the Doe Defendants
3 (“Defendants”) and each of them, as follows:

4 I.

5 **INTRODUCTION AND FACTUAL BACKGROUND**

6 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of
7 Plaintiff and the following classes and subclasses:

- 8 (1) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt,
9 hourly employee in California for one or more pay periods from four (4) years
10 prior to the filing of this action and continuing into the present; (Non-Exempt
11 Class)
- 12 (2) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt,
13 hourly employee who worked in the field (aka away from the main facility) in
14 California during at least part of one or more pay periods from four (4) years
15 prior to the filing of this action and continuing into the present (“Field Non-
16 Exempt Class”);
- 17 (3) all individuals who were employed by Sierra West Finish, Inc or its predecessor
18 or merged entities in California as a non-exempt, hourly employee or other
19 similar position and who worked a shift of more than eight (8) hours in a day
20 and/or forty (40) hours in a week during a pay period from four (4) years prior
21 to the filing of this action and continuing into the present. (“Overtime Class”);
- 22 (4) all individuals who were employed by Sierra West Finish, Inc or its predecessor
23 or merged entities in California as a non-exempt, hourly employee or other
24 similar position and who worked a shift of more than eight (8) hours in a day
25 and/or forty (40) hours in a week during a pay period where they also worked on
26 a prevailing wage job from four (4) years prior to the filing of this action and
27 continuing into the present. (“Prevailing Wage Overtime Class”);
- 28 (5) all individuals who were employed by Sierra West Finish, Inc or its predecessor
or merged entities in California as a non-exempt, hourly employee or other
similar position and who worked a shift of more than eight (8) hours in a day
and received a non-discretionary bonus—including, but not limited to quarterly
bonuses and or production bonuses—and/or profit sharing bonuses from four (4)
years prior to the filing of this action and continuing into the present.
 (“Incentive Pay Overtime Class”);

Collectively, Classes three (3), four (4), and five (5) may be referred to as the “Overtime Classes.”

(6) all individuals who were employed by Sierra West Finish, Inc. or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt hourly employee or other similar position from four (4) years prior to the filing of this action and continuing into the present. (“First Meal Period Class”);

(7) all individuals who were employed by Sierra West Finish, Inc. or its predecessor, merged or related entities in California who worked one or more shifts of more than ten (10) hours as a non-exempt hourly employee or other similar position from four (4) years prior to the filing of this action and continuing into the present. (“Second Meal Period Class”);

Collectively, Classes six (6) and seven (7) may be referred to as the “Meal Period Classes.”

(8) all individuals who were employed by Sierra West Finish, Inc. or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from four (4) years prior to the filing of this action and continuing into the present. (“Rest Period Class”);

(9) all individuals who were employed by Sierra West Finish, Inc. or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position for one or more pay periods from one (1) year prior to the filing of this action and continuing into the present (“Wage Statement Class”);

(10) all individuals who were employed by Sierra West Finish, Inc. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between three (3) years prior to filing of this action and continuing into the present; (“General Late Payment Class”);

(11) all individuals who were employed by Sierra West Finish, Inc. or its predecessor, merged or related entities for one or more pay periods in California, who received sick pay, and whose employment concluded at any time between three (3) years prior to filing of this action and continuing into the present; (“Sick Pay Late Payment Class”);

Collectively, Classes ten (10) and eleven (11) may be referred to as the “Late Payment Classes.”

(12) all individuals who were employed by Sierra West Finish, Inc. or its predecessor or merged entities in California as a non-exempt, hourly employee from four (4) years prior to the filing of this action and to whom at least one of the following applies: 1) who worked one or more shifts of more than four (4) hours in length or major fraction; 2) who worked one of more shifts of more than six (6) hours in length; 3) who worked a shift of eight (8) hours in a day. (“Unfair Competition Class”).

Collectively, these groups may also all collectively be referred to herein as the Classes or Class Member(s).¹

2. This is also a representative action brought pursuant to Labor Code § 2698, *et seq.*, on behalf of the State of California and several groups of aggrieved employees defined as follows:

- (1) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt, hourly employee in California for one or more pay periods from March 5, 2020 and continuing into the present (“Non-Exempt Aggrieved Employees”);
- (2) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt, hourly employee who worked in the field (aka away from the main facility) in California during at least part of one or more pay periods from March 5, 2020 and continuing into the present (“Field Non-Exempt Aggrieved Employees”);
- (3) all individuals who were employed by Sierra West Finish, Inc. as an employee in California for one or more pay periods from March 5, 2020 and continuing into the present (“Wage Statement Aggrieved Employee”);
- (4) all individuals who were employed by Sierra West Finish, Inc. or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from March 5, 2020 and continuing into the present. (“Non-Exempt Overtime Aggrieved Employees”);
- (5) all individuals who were employed by Sierra West Finish, Inc. or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period where they also worked on

¹ Plaintiff reserves the right to redefine the Classes and Subclasses identified herein.

1 a prevailing wage job from March 5, 2020 and continuing into the present.
2 (“Prevailing Wage Non-Exempt Overtime Aggrieved Employees”);

- 3 (6) all individuals who were employed by Sierra West Finish, Inc. or its predecessor
4 or merged entities in California as a non-exempt, hourly employee or other
5 similar position and who worked a shift of more than eight (8) hours in a day
6 and received a non-discretionary bonus—including, but not limited to quarterly
7 bonuses and or production bonuses—and/or profit sharing bonuses from March
8 5, 2020 and continuing into the present. (“Incentive Pay Non-Exempt Overtime
9 Aggrieved Employees”);

10 Collectively, aggrieved employee groups four (4), five (5), and six (6) may be referred to
11 as the “Overtime Aggrieved Employees.”

- 12 (7) all individuals who were employed by Sierra West Finish, Inc. or its
13 predecessor, merged or related entities in California who worked one or more
14 shifts of more than six (6) hours as a non-exempt hourly employee or other
15 similar position from March 5, 2020 and continuing into the present. (“Meal
16 Period Aggrieved Employees”);

- 17 (8) all individuals who were employed by Sierra West Finish, Inc. or its
18 predecessor, merged or related entities in California who worked one or more
19 shifts of more than ten (10) hours as a non-exempt hourly employee or other
20 similar position from March 5, 2020 and continuing into the present. (“Second
21 Meal Period Aggrieved Employees”);

22 Collectively, aggrieved employee groups seven (7) and eight (8) may be referred to as the
23 “Meal Period Aggrieved Employees.”

- 24 (9) all individuals who were employed by Sierra West Finish, Inc., or its
25 predecessor, merged or related entities in California as a non-exempt hourly
26 employee, or other similar position, who worked one or more shifts of more
27 than four (4) hours in length or major fraction thereof from March 5, 2020 and
28 continuing into the present. (“Rest Period Aggrieved Employee”);

- (10) all individuals who were employed by Sierra West Finish, Inc. or its
predecessor, merged or related entities for one or more pay periods in California
as a non-exempt, hourly employee and whose employment concluded at any
time between March 5, 2020 and continuing into the present; (“General Late
Payment Aggrieved Employee”);

1 (11)all individuals who were employed by Sierra West Finish, Inc. or its
2 predecessor, merged or related entities for one or more pay periods in
3 California, who received sick pay, and whose employment concluded at any
4 time between March 5, 2020 and continuing into the present; (“Sick Pay Late
Payment Aggrieved Employee”);

5 Collectively, aggrieved employee groups ten (10) and eleven (11) may be referred to as the “Late
6 Payment Aggrieved Employees.”

7 Collectively, these groups, except for the Wage Statement Aggrieved Employees, may all
8 collectively be referred to herein as aggrieved employees and/or all aggrieved employees where
9 appropriate

10 3. Plaintiff, the Classes, and the aggrieved employees were employed by Defendant
11 Sierra West Finish, Inc., and any subsidiaries or affiliated companies and Does 1 through 50 (who
12 include individuals acting on behalf an employer within the meaning of Labor Code § 558.1)
13 within the State of California as a non-exempt, hourly employees within four (4) years of the
14 filing of the Complaint and continuing into the present.

15 4. Plaintiff is a recent former employee of Defendant Sierra West Finish, Inc. who
16 worked for Defendants in San Bernardino and Riverside County. At times throughout his
17 employment with Defendants during the past four (4) years and within the past year, Plaintiff, the
18 Classes, and the aggrieved employees worked shifts in excess of six (6) hours in a day, worked
19 shifts in excess of eight (8) hours in a day, and worked shifts in excess of ten (10) hours in a day.

20 5. At times throughout his employment with Defendants during the past four (4)
21 years and within the past year, Plaintiff, the Classes, and the aggrieved employees worked more
22 than forty (40) hours per week.

23 6. Defendants hire employees to work within the state of California who are covered
24 by California Industrial Welfare Commission Occupational Wage Order Nos. 1-2001 and 16-
25 2001. Based upon information and belief, Defendants classified Plaintiff, the Classes, and the
26 aggrieved employees as non-exempt for the purposes of overtime, meal periods, and rest periods.

27 7. Plaintiff and the Wage Statement Class received at least one wage statement
28 between one (1) year prior to the filing of this Complaint and continuing into the present.

1 8. Labor Code § 1197 states the California requirement that employees must be paid
2 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
3 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles
4 “any employee receiving less than the legal minimum wage...to recover in a civil action the
5 unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 1-2001 and 16-
6 2001 obligate employers to pay each employee minimum wages for all hours worked.

7 9. In addition, Labor Code § 1198 provides that “the maximum hours of work and the
8 standard conditions of labor fixed by the commission shall be the maximum hours of work and
9 the standard conditions of labor for employees. The employment of any employee for longer
10 hours than those fixed by the order or under conditions of labor prohibited by the order is
11 unlawful.”

12 10. At times during the four (4) years prior to the filing of the Complaint and within
13 the past year, Defendants adopted an automatic deduction policy and practice whereby it
14 automatically deducted thirty (30) minutes’ worth of Plaintiff, the Classes, and the aggrieved
15 employees’ pay regardless of whether or not the employee took a meal period and/or the full
16 amount of their meal period. While not limited to Plaintiff, the Field Non-Exempt Class, and the
17 Field Non-Exempt Aggrieved Employees, such conduct regularly and consistently occurred when
18 Plaintiff, the Classes, and the aggrieved employees worked in the field (aka away from the
19 company’s premises). As a result of Defendants’ policy and practice of automatically deducting
20 thirty (30) minutes’ worth of pay regardless of whether or not the employee took a meal period
21 and/or the length of the meal period, Defendants regularly failed to pay Plaintiff, the Class, and
22 the aggrieved employees for all hours worked in violation of Labor Code § 1194 and 1197
23 including hours that qualified as overtime hours pursuant to IWC Wage Order Nos. 1-2001 and
24 16-2001 and Labor Code § 510.

25 11. At times during the four (4) years prior to the filing of the Complaint and within
26 the past year, including within one (1) year of the filing of the Complaint, Defendant also
27 frequently required and/or suffered and permitted or expected Plaintiff, the Classes, and the
28 aggrieved employees to perform work-off-the-clock including responding to inquiries before the

1 start of their shifts. When Employees who clocked in early when they were asked such inquiries
2 received write-ups from Defendants on occasion for merely trying to get paid for the work that
3 they performed. Notably, Defendants and its supervisory employees knew that it was suffering
4 and permitting and requiring Plaintiff, the Classes, and the aggrieved employees to perform work
5 off-the-clock and without compensation and/or sufficient compensation.

6 12. Labor Code § 510 requires an employer to compensate an employee who works
7 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
8 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
9 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
10 employees at no less than twice the regular rate of pay when an employee works more than
11 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.
12 In accordance with Labor Code § 1194, Plaintiff, the other Class Members, and the other
13 aggrieved employees could not agree to work for a lesser wage.

14 13. In addition, Labor Code § 1197 states the California requirement that employees
15 must be paid at least the minimum wage fixed by the Commission or by any applicable state or
16 local law, and any payment of less than the minimum wage is unlawful.

17 14. Similarly, Labor Code § 1198 provides that “the maximum hours of work and the
18 standard conditions of labor fixed by the commission shall be the maximum hours of work and
19 the standard conditions of labor for employees. The employment of any employee for longer
20 hours than those fixed by the order or under conditions of labor prohibited by the order is
21 unlawful.”

22 15. At times during the four (4) years prior to the filing of this Action and within the
23 past year, Defendants paid Plaintiff, the Overtime Classes, and the Overtime Aggrieved
24 Employees with non-discretionary bonuses and incentive pay—including but not limited to
25 quarterly bonuses and/or production or gainshare bonuses—that it both failed to include when
26 calculating and paying overtime wages and failed to provide retroactive payments to cover the
27 overtime earned during the accrual period in violation of Labor Code section 510. Defendants
28 also failed to make retroactive overtime payments to Plaintiff, the Overtime Classes, and the

1 Overtime Aggrieved Employees based upon the additional incentive pay/non-discretionary
2 bonuses earned by all aggrieved employees—such as, but not limited to the quarterly bonuses—
3 despite the fact that they worked overtime hours during at least some of the periods where such
4 bonuses were earned.

5 16. At times during the four (4) years prior to the filing of this Action and within the
6 past year, Defendants failed to include additional compensation other than Plaintiff and the other
7 aggrieved employees' base rate, when calculating and paying overtime. As a result of
8 Defendants' failure to include such compensation when calculating the regular rate used for
9 overtime purposes and paying overtime wages, Defendants failed to pay Plaintiff, the Overtime
10 Class Members, and the Overtime Aggrieved Employees at one and one-half times their regular
11 rate.

12 17. In addition, at times during the four (4) years prior to the filing of this Action and
13 within the past year, Defendants adopted an automatic deduction policy and practice whereby it
14 automatically deducted thirty (30) minutes' worth of an employee's pay regardless of whether or
15 not the employee took a meal period and/or the full amount of their meal period. While not
16 limited to Plaintiff, the Field Non-Exempt Class and the Field Non-Exempt Aggrieved
17 Employees, such conduct regularly and consistently occurred when Plaintiff and the other
18 aggrieved employees worked in the field (aka away from the company's premises). As a result of
19 Defendants' policy and practice of automatically deducting thirty (30) minutes' worth of pay
20 regardless of whether or not the Plaintiff, the Classes, and the aggrieved employees took a meal
21 period and/or the length of the meal period, Defendants regularly failed to pay Plaintiff, the
22 Classes, and all aggrieved employees for all hours worked in violation of Labor Code § 1194 and
23 1197 including hours that qualified as overtime hours pursuant to IWC Wage Order Nos. 1-2001
24 and 16-2001 and Labor Code § 510.

25 18. Moreover, at times during the four (4) years prior to the filing of this Action and
26 including within one (1) year prior to the filing of this action, Defendants also frequently required
27 and/or suffered and permitted or expected Plaintiff, the Class, and the aggrieved employees to
28 perform work-off-the-clock including responding to inquiries before the start of their shifts. This

1 practice included regular hours, but also led to the misclassification of some overtime hours as
2 regular hours. Employees who clocked in early when they were asked such inquiries received
3 write-ups from Defendants on occasion for merely trying to get paid for the work that they
4 performed. Notably, Defendant and its supervisory employees knew that they were suffering and
5 permitting and requiring Plaintiff, the Class Members, and the aggrieved employees to perform
6 work off-the-clock and without compensation and/or sufficient compensation including for
7 overtime hours.

8 19. Labor Code § 512 requires employers to provide employees with thirty (30)
9 minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover,
10 an employee who works more than ten (10) hours per day is entitled to receive a second thirty
11 (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer
12 may not employ an employee for a work period of more than ten (10) hours, without providing
13 the employee with a second meal period of not less than thirty (30) minutes. Moreover, the
14 second meal period may not be waived if the total hours worked is more than twelve (12) hours.

15 20. Similarly, IWC Wage Order No. 1-2001, 16-2001 prohibit an employer from
16 “employ[ing] any person for a work period of more than five (5) hours without a meal period of
17 not less than 30 minutes. IWC Wage Order No. 1-2001 and 16-2001 further obligate employers to
18 provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate of
19 compensation for each workday that the meal period is not provided. Labor Code section 1198
20 prohibits an employer from requiring an employee to work beyond the “standard conditions of
21 labor fixed by the commission...or under conditions of labor prohibited by the order.”

22 21. At times during the four (4) years prior to the filing of this Action and within the
23 past year, Defendants failed to authorize and permit Plaintiff, the Class Members, and the
24 aggrieved employees to receive lawful meal periods, failed to advise them of their right to such
25 meal periods, failed to authorize and permit them to take timely first meal periods within the first
26 five hours of their shift, and failed to authorize and permit Plaintiff, the Class Members, and the
27 aggrieved employees to take second meal periods when they worked shifts in excess of ten (10)
28 hours in a day.

1 22. At times during the four (4) years prior to the filing of this Action and within the
2 past year, Defendants’ meal period policies and practices disincentivized and discouraged
3 Plaintiff, the Class Members, and the aggrieved employees from taking timely first meal periods
4 within the first five (5) hours of their shift. This includes, but is not limited to, requiring Plaintiff
5 and the other aggrieved employees to take their lunch at noon regardless of the start time of their
6 shift while working the day shift. However, Defendant also failed to authorize and permit
7 Plaintiff, the Class Members, and the aggrieved employees to take timely first meal periods when
8 they worked evening shifts. Defendants’ understaffing policies and practices also pressured,
9 coerced, and forced employees to take untimely first meal periods due to a lack of sufficient
10 coverage.

11 23. Defendants also failed to pay Plaintiff, the Class, and the aggrieved employees
12 meal period premiums for each workday that the employees did not receive a compliant meal
13 period. Labor Code § 226.7 provides “an employer shall not require an employee to work during
14 a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
15 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). IWC Wage Order
16 Nos. 1-2001 and 9-2001 prohibits an employer from “employ[ing] any person for a work period
17 of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order
18 Nos. 1-2001 and 9-2001 further obligates employers to provide an employee to “pay the
19 employee one (1) hour of pay at the employee’s regular rate of compensation for each workday
20 that the meal period is not provided.

21 24. Labor Code § 226.7 provides “an employer shall not require an employee to work
22 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
23 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
24 Order Nos. 1-2001 and 16-2001, an employer must authorize and permit all employees to take ten
25 (10) minute duty free rest periods for every major fraction of four hours worked.

26 25. Pursuant to Labor Code § 226.7 and IWC Wage Order Nos. 1-2001 and 16-2001,
27 Defendant failed to provide Plaintiff, the Class, and the aggrieved employees with rest periods of
28 not less than ten (10) minutes for every major fraction of four (4) hours worked. Instead,

1 Defendant regularly and consistently required Plaintiff, the Class, and the aggrieved employees to
2 forgo rest periods and/or made it impossible for them to complete their assignments and
3 deliveries and also take a rest period.

4 26. Moreover, as a result of its understaffing practices and policies with respect to
5 employees, it was not possible for Plaintiff, the Class, and the aggrieved employees to take rest
6 periods.

7 27. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the
8 Class, and the aggrieved employees were not compensated with one (1) hours' worth of pay at
9 their regular rate of compensation when they were not provided with a compliant rest period
10 and/or their rest period was interrupted in accordance with Labor Code § 226.7(b).

11 28. As to Plaintiff, the Wage Statement Class, and the aggrieved employees,
12 Defendants also failed to provide accurate itemized wage statements in accordance with Labor
13 Code § 226(a)(1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time
14 of each payment to furnish an itemized wage statement in writing showing:

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

Similarly, Labor Code § 226(e) provides:

- 24 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
25 employer to comply with subdivision (a) is entitled to recover the greater of all actual
26 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
27 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
28 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
award of costs and reasonable attorney's fees.
(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide a wage statement.
(B) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide accurate and complete information as required by any one or

1 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
2 and easily determine from the wage statement alone one or more of the following:

3 (i) The amount of the gross wages or net wages paid to the employee during the
4 pay period or any of the other information required to be provided on the itemized
5 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
6 (a).

7 (ii) Which deductions the employer made from gross wages to determine the net
8 wages paid to the employee during the pay period. Nothing in this subdivision
9 alters the ability of the employer to aggregate deductions consistent with the
10 requirements of item (4) of subdivision (a).

11 (iii) The name and address of the employer and, if the employer is a farm labor
12 contractor, as defined in subdivision (b) of Section 1682, the name and address of
13 the legal entity that secured the services of the employer during the pay period.

14 (iv) The name of the employee and only the last four digits of his or her social
15 security number or an employee identification number other than a social security
16 number.

17 29. Due to Defendants' failure to pay Plaintiff, the Classes, and the aggrieved
18 employees all minimum wages, all overtime wages, all rest period premiums, meal period
19 premiums, the wage statements issued by Defendant do not indicate the correct amount of gross
20 wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect
21 during the pay period and the corresponding number of hours worked at each hourly rate. Thus,
22 Defendant has violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff, the
23 Wage Statement Class, and the aggrieved employees.

24 30. Moreover, the wage statements issued to the Non-Exempt Aggrieved Employees,
25 the Field Non-Exempt Aggrieved Employees, the Overtime Aggrieved Employees, and the
26 Prevailing Wage Non-Exempt Aggrieved Employees and Wage Statement Class, also improperly
27 conflated the rates in effect such that they could not determine from their wage statements alone
28 all applicable hourly rates in effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee. This issue was particularly acute, but not limited to,
instances where such aggrieved employees worked a prevailing wage and non-prevailing wage
assignments during the same period. When this occurred, Defendants failed to make any
distinction between the rates in effect and instead lumped together all "regular compensation" and
"overtime compensation" instead of distinguishing between the rates. Thus, Defendants violated
Labor Code § 226(a)(9).

1 31. Defendants also knowingly and intentionally failed to pay Plaintiff and the Classes
2 minimum wages, overtime wages owed, meal period premiums, and rest periods premiums.
3 Moreover, Plaintiff and the Wage Statement Class also suffered legal “injury” for purposes of
4 Labor Code section 226(e) insofar as they were unable to readily and easily determine from the
5 wage statements themselves the information required to be set forth by Section 226(a), the
6 information provided by Defendants was confusing and inaccurate, Plaintiff, the Wage Statement
7 Class, and the aggrieved employees were unable to determine at all the total hours worked by the
8 employee, the gross wages earned, the net wages earned, and all applicable hourly rates in effect
9 during the pay period and the corresponding number of hours worked at each hourly rate by the
10 employee for the reasons discussed above.

11 32. As described in detail above, Defendants failed to pay Plaintiff and the other Class
12 Members whose employment concluded all wages owed, including but not limited to overtime
13 wages, meal period premiums, and rest period premiums within the time constraints proscribed in
14 Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants’
15 faulty policies described above, Plaintiff and all Class Members’ left their employment with
16 Defendants without being compensated for each and every hour worked at the appropriate rate in
17 violation of Labor Code §§ 201, 202, and 203.

18 33. Separate and independent of the foregoing, Plaintiff and all Sick Pay Late Pay
19 Class left their employment with Defendants without having received compensation for sick pay
20 at the correct rate throughout the duration of their employment. Labor Code § 246 requires
21 employer to calculate sick leave pay based upon one of the following formulas:

22 (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the
23 regular rate of pay for the workweek in which the employee uses paid sick time, whether
24 or not the employee actually works overtime in that workweek.

25 (2) Paid sick time for nonexempt employees shall be calculated by dividing the
26 employee’s total wages, not including overtime premium pay, by the employee’s total
27 hours worked in the full pay periods of the prior 90 days of employment.

28 (3) Paid sick time for exempt employees shall be calculated in the same manner as the
employer calculates wages for other forms of paid leave time.

1
2 Lab. Code § 246.

3 34. Throughout Plaintiff and the Sick Pay Late Payment Members employment,
4 Defendants failed to include the incentive pay and other non-discretionary bonuses--including but
5 not limited to quarterly bonuses, incentive pay, gainshare, and production bonuses—profit
6 sharing pay, and wages earned at prevailing wage rates when calculating and paying sick pay. As
7 a result, when Plaintiff, the Sick Pay Late Payment Class, and the Sick Pay Late Pay Aggrieved
8 Employees ended their employment, they left their employment without having received
9 compensation for all of their sick pay that they were owed under Labor Code § 246 and resulting
10 in a violation of Labor Code §§ 201-203. As a result of Defendants’ willful underpayment of sick
11 pay, Plaintiff, the Sick Pay Late Payment Class, and the Sick Pay Late Pay Aggrieved Employees
12 experienced a violation of Labor Code §§ 201-202 upon separation from Defendants. *See Powell*
13 *v. Walmart Inc.*, No. 3:20-cv-2412-BEN-LL, 2021 U.S. Dist. LEXIS 20777, at *6 (S.D. Cal. Feb.
14 2, 2021) (denying a motion to dismiss claims under Labor Code section 203 based upon the
15 employer’s alleged failure to include incentive pay when calculating and paying sick pay); *accord*
16 *Flores v. Dart Container Corp.*, No. 2:19-cv-00083 WBS EFB, 2020 U.S. Dist. LEXIS 93524, at
17 *7 (E.D. Cal. May 27, 2020).

18 35. As discussed above, Defendants willfully failed to pay Plaintiff and other members
19 of the Class who are no longer employed by Defendants, the General Late Payment Class, the
20 Sick Pay Late Payment Class, and the Late Payment Aggrieved Employees all minimum wages,
21 overtime wages, meal period premiums, rest period premiums, and underpaid sick pay prior to or
22 upon termination or separation from employment with Defendants as required by California
23 Labor Code §§ 201 and 202. At the time of Plaintiff, the other members of the Class, and the Late
24 Payment Aggrieved Employees’ separation from Defendants, these sums were certain and known
25 to Defendants.

26 36. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
27 any employment are due and payable twice during each calendar month, on days designated in
28

1 advance by the employer as the regular paydays.” Defendants pay Plaintiff and all aggrieved
2 employees on a weekly basis.

3 37. Due to Defendants’ failure to pay Plaintiff and all aggrieved employees all
4 minimum wages, all overtime wages, meal period premiums, and rest period premiums,
5 Defendants failed to timely pay Plaintiff and all aggrieved employees all wages owed within
6 seven (7) days of the close of the payroll period in accordance with Labor Code § 204(d) on a
7 regular and consistent basis.

8 38. Labor Code § 1174 provides that each employer shall keep “payroll records
9 showing the hours worked daily by and the wages paid to...employees employed
10 at...establishments.” An employer who fails to maintain the records proscribed by Labor Code §
11 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

12 39. As explained in detail above, Defendants failed to maintain accurate records of the
13 hours worked by Plaintiff and the other aggrieved employees within the past four (4) years,
14 including the past year, as required by Labor Code § 1174. Thus, Defendants violated Labor Code
15 §§ 1174 and 1174.5.

16 40. Labor Code § 2802 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, or of his or her obedience to the directions of the employer,
19 even though unlawful, unless the employee, at the time of obeying the directions, believed them
20 to be unlawful.”

21 41. California law prohibits an employer from failing to reimburse employees from
22 losses incurred through the use of their own electronic devices even if the use would not cause the
23 employee to exceed their data limit. See *Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App.
24 4th 113 (2014) (“We hold that when employees must use their personal cell phones for work-
25 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
26 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement
27 owed is a reasonable percentage of their cell phone bills.”).

42. At times during the four (4) years prior to the filing of this Action and/or within the past year, Defendants required and/or expected Plaintiff, the Field Non-Exempt Class, and the Field Non-Exempt Aggrieved Employees to use their cell phones in the normal course of their job duties. This includes requiring the Field Non-Exempt Aggrieved Employees to use their cell phones to record time entries.

43. Defendants' conduct in requiring Plaintiff, the Field Non-Exempt Class, the Field Non-Exempt Aggrieved Employees Field to engage in the above described activities caused them to incur losses as a direct consequence of their duties in violation of Labor Code § 2802. Although Plaintiff, the Field Non-Exempt Class, and the Field Non-Exempt Aggrieved Employees were regularly required to and/or ordered/directed to use their own personal communication devices for work purposes, the Field Non-Exempt Aggrieved Employees were not provided with any reimbursement for the use of their personal cell phones.

II.

JURISDICTION AND VENUE

44. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

45. This Court has personal jurisdiction over Defendant Sierra West Finish, Inc. because Defendant has caused injuries in the County of San Bernardino and State of California through their acts, and by their violation of the California Labor Code and California law in San Bernardino County.

46. During the statutory period applicable to the claims at issue in this action, Defendants were headquartered for at least part of the time at 654 S. Lincoln Ave, San Bernardino, CA 92408. Plaintiff also performed work in the field (aka away from the main facility) in other locations in San Bernardino. *Battaglia Enterprises, Inc. v. Sup. Ct.*, 215 Cal.App.4th 309, 313 (2013) (holding that if “venue is proper in more than one county, a plaintiff

1 may choose among the available options.”); accord *Crestwood Behavioral Health, Inc. v. Sup.*
2 *Ct.*, No. A160523, 2021 Cal. App. LEXIS 137, at *5 (Ct. App. Feb. 17, 2021).

3 47. Venue is also proper in a case involving a PAGA claim in any county where the
4 defendant conducts any business regardless of where the named Plaintiff worked. *Crestwood*
5 *Behavioral Health, Inc. v. Sup. Ct.*, No. A160523, 2021 Cal. App. LEXIS 137, at *5 (Ct. App.
6 Feb. 17, 2021) (affirming that the Plaintiff’s choice of venue was proper in Alameda County even
7 though the employee only worked for the defendant in Solano County and the defendant’s
8 principal office was in Sacramento County).

9 48. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
10 Civil Procedure §395. Defendants operates within California and do business within San
11 Bernardino County. The unlawful acts alleged herein have a direct effect on Plaintiff and the
12 Classes within the State of California and the County of San Bernardino.

13 49. This case should be classified as complex according to Rule 3.400 of the
14 California Rules of Court, and assigned to a complex litigation judge and department, as it will
15 involve substantial documentary evidence, and is likely to involve extensive motion practice
16 raising difficult or novel issues that will be time-consuming to resolve and would require
17 substantial post judgment judicial supervision.

18 III.

19 PARTIES

20 A. PLAINTIFF

21 50. Plaintiff ROBERT DE LA HOYA is a former employee of Defendants who
22 worked for Defendants in San Bernardino County within the past four (4) years, including within
23 the past year.

24 51. Plaintiff and the Class were regularly required to:

25 a. Work without receiving any compensation for hours worked and/or
26 minimum wages for all hours worked;

27 b. Work overtime hours without receiving the proper amount of
28 compensation, and/or the proper amount of overtime compensation;

- 1 c. Work without being provided lawful meal periods;
- 2 d. Work without being provided lawful rest periods;
- 3 e. Work without being provided an accurate itemized wage statement that
- 4 accurately indicate the gross wages earned, total hours worked by the employee, the net wages
- 5 earned, as well as all applicable hourly rates in effect during the pay period and the corresponding
- 6 number of hours worked at each hourly rate by the employee;
- 7 f. Were deprived of wages that Defendants knew were due and owing, yet
- 8 failed to pay at the time of termination and/or within 72 hours of resignation for those former
- 9 employees who did not provide advance notice.
- 10 g. Work without being reimbursed for expenses incurred in direct
- 11 consequence of the discharge of his or her duties;

12 **B. DEFENDANTS**

13 52. Defendant SIERRA WEST FINISH, INC., is a Delaware corporation, with a

14 current principal place of business of 678 Parkridge Ave, Norco, CA 92691 and whose principal

15 place of business during part of the Class Period was 654 S. Lincoln Ave, San Bernardino, CA

16 92408. Upon information and belief, Defendant employed Plaintiff and the Classes within

17 California and in San Bernardino County, including in San Bernardino, California. Defendant has

18 done and does business throughout the State of California and in San Bernardino County.

19 53. The true names and capacities, whether individual, corporate, associate, or

20 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to

21 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure

22 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants

23 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred

24 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and

25 capacities of the Defendants designated hereinafter as DOES when such identities become

26 known.

27 54. Plaintiff is informed and believes, and based thereon alleges, that each Defendant

28 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 and the Class and/or as alter egos of each other.

IV.

CLASS ACTION ALLEGATIONS

55. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent several Classes and Subclasses composed of and defined as follows:

- (1) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt, hourly employee in California for one or more pay periods from four (4) years prior to the filing of this action and continuing into the present; (Non-Exempt Class)
- (2) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt, hourly employee who worked in the field (aka away from the main facility) in California during at least part of one or more pay periods from four (4) years prior to the filing of this action and continuing into the present (“Field Non-Exempt Class”);
- (3) all individuals who were employed by Sierra West Finish, Inc or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from four (4) years prior to the filing of this action and continuing into the present. (“Overtime Class”);
- (4) all individuals who were employed by Sierra West Finish, Inc or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period where they also worked on a prevailing wage job from four (4) years prior to the filing of this action and continuing into the present. (“Prevailing Wage Overtime Class”);
- (5) all individuals who were employed by Sierra West Finish, Inc or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and received a non-discretionary bonus—including, but not limited to quarterly bonuses and or production bonuses—and/or profit sharing bonuses from four (4)

1 years prior to the filing of this action and continuing into the present.
2 (“Incentive Pay Overtime Class”);

3 Collectively, Classes three (3), four (4), and five (5) may be referred to as the “Overtime
4 Classes.”

5 (6) all individuals who were employed by Sierra West Finish, Inc. or its
6 predecessor, merged or related entities in California who worked one or more
7 shifts of more than six (6) hours as a non-exempt hourly employee or other
8 similar position from four (4) years prior to the filing of this action and
continuing into the present. (“First Meal Period Class”);

9 (7) all individuals who were employed by Sierra West Finish, Inc. or its
10 predecessor, merged or related entities in California who worked one or more
11 shifts of more than ten (10) hours as a non-exempt hourly employee or other
12 similar position from four (4) years prior to the filing of this action and
continuing into the present. (“Second Meal Period Class”);

13 Collectively, Classes six (6) and seven (7) may be referred to as the “Meal Period Classes.”

14 (8) all individuals who were employed by Sierra West Finish, Inc. or its
15 predecessor, merged or related entities in California as a non-exempt hourly
16 employee, or other similar position, who worked one or more shifts of more
17 than four (4) hours in length or major fraction thereof from four (4) years prior
to the filing of this action and continuing into the present. (“Rest Period Class”);

18 (9) all individuals who were employed by Sierra West Finish, Inc. or its
19 predecessor, merged or related entities in California as a non-exempt, hourly
20 employee or other similar position for one or more pay periods from one (1)
21 year prior to the filing of this action and continuing into the present (“Wage
Statement Class”);

22 (10) all individuals who were employed by Sierra West Finish, Inc. or its
23 predecessor, merged or related entities for one or more pay periods in California
24 as a non-exempt, hourly employee and whose employment concluded at any
25 time between three (3) years prior to filing of this action and continuing into the
present; (“General Late Payment Class”);

26 (11) all individuals who were employed by Sierra West Finish, Inc. or its
27 predecessor, merged or related entities for one or more pay periods in
28 California, who received sick pay, and whose employment concluded at any

time between three (3) years prior to filing of this action and continuing into the present; (“Sick Pay Late Payment Class”);

Collectively, Classes ten (10) and eleven (11) may be referred to as the “Late Payment Classes.”

(12) all individuals who were employed by Sierra West Finish, Inc. or its predecessor or merged entities in California as a non-exempt, hourly employee from four (4) years prior to the filing of this action and to whom at least one of the following applies: 1) who worked one or more shifts of more than four (4) hours in length or major fraction; 2) who worked one of more shifts of more than six (6) hours in length; 3) who worked a shift of eight (8) hours in a day. (“Unfair Competition Class”).

Collectively, these groups may also all collectively be referred to herein as the Classes or Class Member(s).²

56. This is also a representative action brought pursuant to Labor Code § 2698, *et seq.*, on behalf of the State of California and several groups of aggrieved employees defined as follows:

- (1) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt, hourly employee in California for one or more pay periods from March 5, 2020 and continuing into the present (“Non-Exempt Aggrieved Employees”);
- (2) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt, hourly employee who worked in the field (aka away from the main facility) in California during at least part of one or more pay periods from March 5, 2020 and continuing into the present (“Field Non-Exempt Aggrieved Employees”);
- (3) all individuals who were employed by Sierra West Finish, Inc. as an employee in California for one or more pay periods from March 5, 2020 and continuing into the present (“Wage Statement Aggrieved Employee”);
- (4) all individuals who were employed by Sierra West Finish, Inc. or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from March 5, 2020 and continuing into the present. (“Non-Exempt Overtime Aggrieved Employees”);

² Plaintiff reserves the right to redefine the Classes and Subclasses identified herein.

1 (5) all individuals who were employed by Sierra West Finish, Inc. or its predecessor
2 or merged entities in California as a non-exempt, hourly employee or other
3 similar position and who worked a shift of more than eight (8) hours in a day
4 and/or forty (40) hours in a week during a pay period where they also worked on
5 a prevailing wage job from March 5, 2020 and continuing into the present.
6 (“Prevailing Wage Non-Exempt Overtime Aggrieved Employees”);

7 (6) all individuals who were employed by Sierra West Finish, Inc. or its predecessor
8 or merged entities in California as a non-exempt, hourly employee or other
9 similar position and who worked a shift of more than eight (8) hours in a day
10 and received a non-discretionary bonus—including, but not limited to quarterly
11 bonuses and or production bonuses—and/or profit sharing bonuses from March
12 5, 2020 and continuing into the present. (“Incentive Pay Non-Exempt Overtime
13 Aggrieved Employees”);

14 Collectively, aggrieved employee groups four (4), five (5), and six (6) may be referred to
15 as the “Overtime Aggrieved Employees.”

16 (7) all individuals who were employed by Sierra West Finish, Inc. or its
17 predecessor, merged or related entities in California who worked one or more
18 shifts of more than six (6) hours as a non-exempt hourly employee or other
19 similar position from March 5, 2020 and continuing into the present. (“Meal
20 Period Aggrieved Employees”);

21 (8) all individuals who were employed by Sierra West Finish, Inc. or its
22 predecessor, merged or related entities in California who worked one or more
23 shifts of more than ten (10) hours as a non-exempt hourly employee or other
24 similar position from March 5, 2020 and continuing into the present. (“Second
25 Meal Period Aggrieved Employees”);

26 Collectively, aggrieved employee groups seven (7) and eight (8) may be referred to as the
27 “Meal Period Aggrieved Employees.”

28 (9) all individuals who were employed by Sierra West Finish, Inc., or its
predecessor, merged or related entities in California as a non-exempt hourly
employee, or other similar position, who worked one or more shifts of more
than four (4) hours in length or major fraction thereof from March 5, 2020 and
continuing into the present. (“Rest Period Aggrieved Employee”);

(10) all individuals who were employed by Sierra West Finish, Inc. or its
predecessor, merged or related entities for one or more pay periods in California
as a non-exempt, hourly employee and whose employment concluded at any

1 time between March 5, 2020 and continuing into the present; (“General Late
2 Payment Aggrieved Employee”);

3 (11)all individuals who were employed by Sierra West Finish, Inc. or its
4 predecessor, merged or related entities for one or more pay periods in
5 California, who received sick pay, and whose employment concluded at any
6 time between March 5, 2020 and continuing into the present; (“Sick Pay Late
Payment Aggrieved Employee”);

7 Collectively, aggrieved employee groups ten (10) and eleven (11) may be referred to as the “Late
8 Payment Aggrieved Employees.”

9 Collectively, these groups, except for the Wage Statement Aggrieved Employees, may all
10 collectively be referred to herein as aggrieved employees and/or all aggrieved employees where
11 appropriate.

12 57. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
13 amend or modify the class description with greater specificity, by division into subclasses, or by
14 limitation to particular issues.

15 58. This action has been brought and may properly be maintained as a class action
16 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
17 community of interest in the litigation and the Proposed Classes are easily ascertainable.

18 **A. Numerosity**

19 59. The potential members of the Proposed Classes as defined are each so numerous
20 that joinder of all the members of the Proposed Classes is impracticable. While the precise
21 number of proposed Class Members in each Class has not been determined at this time, Plaintiff
22 is informed and believes that Defendants currently employ, and during the relevant time periods
23 employed to be more than 100 members or more of the Proposed Class and Subclasses at any
24 given time.

25 60. Plaintiff alleges that Defendants’ employment records would provide information
26 as to the number and location of all Proposed Class members. Joinder of all members of the
27 Proposed Class and Subclasses is not practicable.

28 **B. Commonality**

1 61. There are questions of law and fact common to the Proposed Classes³ that
2 predominate over any questions affecting only individual Proposed Class Members. These
3 common questions of law and fact include, without limitation:

4 a. Whether Defendants failed to pay minimum wages for all hours worked as
5 required by Labor Code §§ 1194, 1194.2, and 1197 as well as IWC Wage Order Nos. 1-2001 and
6 16-2001 to the Non-Exempt Class, the Field Non-Exempt Class, and the Unfair Competition
7 Class;

8 b. Whether Defendants failed to pay wages and/or overtime compensation
9 and at the correct rate as required by Labor Code § 510 to the Overtime Classes and the Unfair
10 Competition Class;

11 c. Whether Defendants violated Labor Code §§ 226.7 and IWC Wage Order
12 Nos. 1-2001, 4-2001, and 9-2001, by failing to authorize and permit First Meal Period Class
13 Members and Unfair Competition Class Members to take a timely meal period within the first
14 five (5) hours of their shift, failure to provide second meal periods for shifts worked in excess of
15 ten (10) hours to the Second Meal Period Class and the Unfair Competition Class as well as their
16 failure to pay the Meal Period Classes and the Unfair Competition Class one additional hour of
17 pay at the employees' at their regular rate of compensation when they did not receive a compliant
18 meal period;

19 d. Whether Defendants violated Labor Code § 226.7 and IWC Nos. 1-2001
20 and 9-2001, by failing to inform Plaintiff and the Proposed Rest Period Class and the Unfair
21 Competition Class of their right to receive a ten (10) minute duty-free rest period for every four
22 hours of work or major fraction thereof, failing to authorize and permit employees' to leave the
23 premises during rest periods and/or relieve employees of all control during rest periods, and by
24 failing to compensate said employees one (1) additional hour of pay at the employee's regular
25 rate of compensation in lieu of rest periods;

26
27
28 ³ Plaintiff reserves his right to designate subclasses within the Classes including designating an Unfair Competition subclass for each class.

1 e. Whether Defendants violated Labor Code § 226(a) and (e) as well as IWC
2 Wage Order Nos. 1-2001 and 16-2001 by failing to provide an accurate itemized wage statements
3 that accurately indicate, the gross wages earned, all deductions from wages, the net wages earned,
4 as well as all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee to the Wage Statement Class;

6 f. Whether Defendants violated §§ 201-203 of the Labor Code by failing to
7 pay compensation due and owing at the time that the Late Payment Classes employment with
8 Defendants concluded;

9 g. Whether Defendants violated Labor Code § 2802 by failing to provide
10 Plaintiff, the Non-Exempt Class, the Field Non-Exempt Class, and the Unfair Competition Class
11 with all tools and implements needed to discharge his or her duties;

12 h. Whether Defendants violated § 17200 et seq. of the Business & Professions
13 Code by engaging in the acts previously alleged against the Unfair Competition Class;

14 **C. Typicality**

15 62. The claims of Plaintiff are typical of the claims of the Proposed Class and
16 Subclasses. Plaintiff and all members of the Proposed Class and Subclasses sustained injuries
17 and damages arising out of and caused by Defendants' common course of conduct in violation of
18 laws, regulations that have the force and effect of law, and statutes as alleged herein.

19 **D. Adequacy of Representation**

20 63. Plaintiff will fairly and adequately represent and protect the interests of the
21 members of the proposed Classes. Counsel who represents Plaintiff and the Proposed Classes is
22 competent and experienced in litigating large employment class actions, and have the financial
23 resources to litigate the claims at issue.

24 **E. Superiority of Class Action**

25 64. A class action is superior to other available means for the fair and efficient
26 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
27 practicable, and questions of law and fact common to the Proposed Class predominate over any
28 questions affecting only individual members of the Proposed Class. Each member of the

1 Proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal
2 policy and/or practice of failing to pay all wages due, failing to provide meal periods, failing to
3 provide rest periods, failing to provide accurate itemized wage statements, and failing to pay all
4 wages upon resignation or termination.

5 65. Class action treatment will allow those similarly situated persons to litigate their
6 claims in the manner that is most efficient and economical for the parties and the judicial system.
7 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
8 action that would preclude its maintenance as a class action.

9 **V.**

10 **FIRST CAUSE OF ACTION**
11 **FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§**
12 **1194, 1194.2 AND IWC WAGE ORDER NOS. 1-2001 and 16-2001**
13 **[Against All Defendants by Plaintiff, the Non-Exempt Class, and the Field Non-**
14 **Exempt Class]**

15 66. Plaintiff, on behalf of himself, the Non-Exempt Class, and the Field Non-Exempt
16 Class re-alleges and incorporates by reference all previous paragraphs.

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

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

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

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

28 69. As set forth above, during the three (3) years preceding the filing of this action and
continuing into the present, Plaintiff, the Non-Exempt Class, and the Field Non-Exempt Class
were not compensated for all hours worked as a result of Defendants' policies and practices
described in detail above.

70. In failing to pay Plaintiff, the Non-Exempt Class, and the Field Non-Exempt Class
for all hours worked, for the reasons described above, Defendants willfully and intentionally

1 violated Labor Code § 1194 and acted in bad faith. Accordingly, pursuant to sections 1194 and
2 1194.2 of the California Labor Code, Plaintiff, the Non-Exempt Class, and the Field Non-Exempt
3 Class are entitled to recover, either their unpaid hourly wages due, or minimum wage plus interest
4 and/or liquidated damages in an additional amount equal to the total amount of wages unlawfully
5 withheld during the Class Period.

6 **VI.**

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

9 **LABOR CODE §§ 510, 1194, and 1199**

10 **[Against All Defendants by Plaintiff, the Non-Exempt Class, the Field Non-Exempt Class,**
11 **the Overtime Class, the Prevailing Wage Overtime Class, and the Incentive Pay Overtime**
12 **Class]**

13 71. Plaintiff, on behalf of himself, the Class, the Non-Exempt Class, the Field Non-
14 Exempt Class, the Overtime Class, the Prevailing Wage Overtime Class, and the Incentive Pay
15 Overtime Class realleges and incorporates by reference all previous paragraphs.

16 72. Labor Code § 510 requires an employer to compensate an employee who works
17 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
18 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
19 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
20 employees at no less than twice the regular rate of pay when an employee works more than
21 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.
22 In accordance with Labor Code § 1194, Plaintiff and the Non-Exempt Class, the Field Non-
23 Exempt Class, the Overtime Class, the Prevailing Wage Overtime Class, and the Incentive Pay
24 Overtime Class could not agree to work for a lesser wage.

25 73. In addition, Labor Code § 1197 states the California requirement that employees
26 must be paid at least the minimum wage fixed by the Commission or by any applicable state or
27 local law, and any payment of less than the minimum wage is unlawful.

28 74. Similarly, Labor Code § 1198 provides that “the maximum hours of work and the
standard conditions of labor fixed by the commission shall be the maximum hours of work and
the standard conditions of labor for employees. The employment of any employee for longer

1 hours than those fixed by the order or under conditions of labor prohibited by the order is
2 unlawful.”

3 75. By their common policy of requiring Plaintiffs and members of the Proposed the
4 Non-Exempt Class, the Field Non-Exempt Class, the Overtime Class, the Prevailing Wage
5 Overtime Class, and the Incentive Pay Overtime Class to work in excess of eight (8) hours in a
6 workday and/or forty (40) hours in a workweek without compensating them at all for such hours
7 and/or at the rate of one-half (1 1/2) their regular rate of pay, Defendants willfully violated the
8 provisions of Labor Code § 510.

9 76. As a result of the unlawful acts of Defendants, the Non-Exempt Class, the Field
10 Non-Exempt Class, the Overtime Class, the Prevailing Wage Overtime Class, and the Incentive
11 Pay Overtime Class have been deprived of wages and/or overtime in amounts to be determined at
12 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’
13 fees, and costs.

14 VII.

15 THIRD CAUSE OF ACTION

16 **FAILURE TO PROVIDE LAWFUL MEAL PERIODS PURSUANT TO LABOR CODE** 17 **§§ 226.7 and 512; IWC WAGE ORDER NOS. 1-2001 and 16-2001 § 11** **[Against All Defendants by Plaintiff, the Non-Exempt Class, the Field Non-Exempt Class,** **the First Meal Period Class, and the Second Meal Period Class]**

18 77. Plaintiff, on behalf of himself, realleges and incorporates by reference all previous
19 paragraphs.

20 78. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
21 compensation for each non-compliant meal period an employer fails to provide. Employees are
22 entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be
23 provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30)
24 minutes for shifts over ten (10) hours.

25 79. At points within the past four (4) years including within the past year, Plaintiff and
26 the First Meal Period Class consistently worked shifts over six (6) hours and did not receive
27 timely first meal periods within the first five (5) hours of their shifts.

80. Plaintiff and the Proposed Second Meal Period Subclass did not receive a second thirty (30) minute meal period when working shifts in excess of ten (10) hours in a day during the statutory period applicable to their claims;

81. During the statutory period applicable to their claims, Plaintiffs and the Proposed Meal Period were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant meal period or at the proper rate based upon Defendants' unlawful compensation policies detailed above.

82. Pursuant to Labor Code §226.7, Plaintiffs and the Proposed Meal Period Classes are entitled to damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum to be proven at trial.

VIII.
FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE LAWFUL REST PERIODS AND PAY NON-COMPLIANT
REST PERIOD PREMIUMS PURSUANT TO LABOR CODE § 226.7 AND IWC WAGE
ORDER NOS. 1-2001 AND 16-2001, § 12
[Against All Defendants by Plaintiff, the Non-Exempt Class, the Field Non-Exempt Class,
and the Rest Period Class]

83. Plaintiff, on behalf of himself and the Non-Exempt Class, the Field Non-Exempt Class, and the Rest Period Class, realleges and incorporates by reference all previous paragraphs.

84. Plaintiff, the Non-Exempt Class, the Field Non-Exempt Class, and the Rest Period Class, consistently worked shifts more than four (4) hours or a major fraction thereof, including shifts of more than ten (10) hours in a day without receiving rest periods and/or the proper amount of rest periods during the statutory period applicable to their claims.

85. Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage Order Nos. 1-2001 and 16-2001 an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.

86. Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage

Order No. 1-2001 and 16-2001 an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.

87. Defendants failed to provide Plaintiff, the Non-Exempt Class, the Field Non-Exempt Class, and the Rest Period Class, with rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. Instead, Defendants regularly and consistently required Plaintiff, the Non-Exempt Class, the Field Non-Exempt Class, and the Rest Period Class, to forgo rest periods and/or made it impossible for them to complete their assignments and deliveries and also take a rest period.

88. Moreover, Defendants' understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods due to a lack of sufficient coverage.

89. Based upon the foregoing, at all times pertinent hereto, Defendants failed to authorize and permit Plaintiff, the Non-Exempt Class, the Field Non-Exempt Class, and the Rest Period Class to take duty-free rest periods of not less than ten (10) minutes net for every major fraction of four (4) hours worked. For the same reasons, Defendants also failed to provide such breaks.

90. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the Non-Exempt Class, the Field Non-Exempt Class, and the Rest Period Class, were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant rest period and/or their rest period was interrupted in accordance with Labor Code § 226.7(b).

91. Pursuant to Labor Code § 226.7, Plaintiff the Non-Exempt Class, the Field Non-Exempt Class, and the Rest Period Class are entitled to damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven at trial.

IX.

FIFTH CAUSE OF ACTION

VIOLATIONS OF LABOR CODE § 226(e)

[Against all Defendants on behalf of Plaintiff and the Wage Statement Class]

92. Plaintiff, on behalf of himself and the Wage Statement Class, realleges and incorporates by reference all previous paragraphs and all subsequent paragraphs.

1 93. From one (1) year prior to the filing of this action and continuing into the present,
2 Defendants knowing and intentionally failed to provide accurate itemized wage statements to
3 Plaintiff and the Wage Statement Class in accordance with Labor Code § 226(a)(1, 2, 5, and 9).
4 Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an
5 itemized wage statement in writing showing:

- 6
- 7 (1) gross wages earned;
 - 8 (2) total hours worked by the employee;
 - 9 (3) the number of piece-rate units earned and any applicable piece rate if the
10 employee is paid on a piece rate;
 - 11 (4) all deductions, provided that all deductions made on written orders of the employee
12 may be aggregated and shown as one item;
 - 13 (5) net wages earned;
 - 14 (6) the inclusive dates of the period for which the employee is paid;
 - 15 (7) the name of the employee and only the last four digits of his or her social security
16 number or an employee identification number other than a social security number;
 - 17 (8) the name and address of the legal entity that is the employer...;
 - 18 (9) all applicable hourly rates in effect during the pay period and the corresponding
19 number of hours worked at each hourly rate by the employee...

20 Similarly, Labor Code § 226(e) provides:

21 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
22 employer to comply with subdivision (a) is entitled to recover the greater of all actual
23 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
24 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
25 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
26 award of costs and reasonable attorney's fees.

27 (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
28 employer fails to provide a wage statement.

 (B) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide accurate and complete information as required by any one or
more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
and easily determine from the wage statement alone one or more of the following:

 (i) The amount of the gross wages or net wages paid to the employee during the
pay period or any of the other information required to be provided on the itemized
wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
(a).

 (ii) Which deductions the employer made from gross wages to determine the net
wages paid to the employee during the pay period. Nothing in this subdivision
alters the ability of the employer to aggregate deductions consistent with the
requirements of item (4) of subdivision (a).

 (iii) The name and address of the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682, the name and address of
the legal entity that secured the services of the employer during the pay period.

 (iv) The name of the employee and only the last four digits of his or her social
security number or an employee identification number other than a social security
number.

1 94. Due to Defendants' failure to pay Plaintiff and the Wage Statement Class all
2 minimum wages, all overtime wages, all rest period premiums, meal period premiums, the wage
3 statements issued by Defendant do not indicate the correct amount of gross wages earned, the
4 total hours worked, the net wages earned, all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate. Thus, Defendant has
6 violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and the Wage Statement
7 Class.

8 95. Moreover, the wage statements issued to the Plaintiff and the Wage Statement
9 Class, also improperly conflated the rates in effect such that they could not determine from their
10 wage statements alone all applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate by the employee. This issue was
12 particularly acute, but not limited to, instances where such aggrieved employees worked a
13 prevailing wage and non-prevailing wage assignments during the same period. When this
14 occurred, Defendants failed to make any distinction between the rates in effect and instead
15 lumped together all "regular compensation" and "overtime compensation" instead of
16 distinguishing between the rates. Thus, Defendants violated Labor Code § 226(a)(9).

17 96. Defendants also knowingly and intentionally failed to pay Plaintiff and the Classes
18 minimum wages, overtime wages owed, meal period premiums, and rest periods premiums.
19 Moreover, Plaintiff and the Wage Statement Class also suffered legal "injury" for purposes of
20 Labor Code section 226(e) insofar as they were unable to readily and easily determine from the
21 wage statements themselves the information required to be set forth by Section 226(a), the
22 information provided by Defendants was confusing and inaccurate, Plaintiff and the Itemized
23 Wage Statement Class were unable to determine at all the total hours worked by the employee,
24 the gross wages earned, the net wages earned, and all applicable hourly rates in effect during the
25 pay period and the corresponding number of hours worked at each hourly rate by the employee
26 for the reasons discussed above.

27 97. Moreover, Defendants undeniably knew when paying that the wage statements it
28 issued did not include the gross wages earned, the net wages earned, and all applicable hourly

1 rates in effect during the pay period and the corresponding number of hours worked at each
2 hourly rate by the employee for the reasons discussed above. *See Garnett v. ADT LLC* 139 F.
3 Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and
4 intentionally violated Labor Code § 226 because the “[d]efendant knew that it was not providing
5 total hours worked to plaintiff or other employees paid on commission” even though it believed
6 that employees paid solely on commission or commission and salary “are exempt and therefore
7 we do not record hours on a wage statement.”).

8 98. Defendants also failed to both comply with and create a policy that complied with
9 Labor Code § 226 prior to the filing of this lawsuit. Labor Code § 226(e)(3) provides that when
10 determining whether or not an employer’s violation of Labor Code § 226(a) was knowing and
11 intentional, “the relevant factor [is] whether the employer, prior to an alleged violation, has
12 adopted and is in compliance with a set of policies, procedures, and practices that fully comply
13 with this section.” Accordingly, Defendants’ conduct was knowing and intentional within the
14 meaning of Labor Code § 226(e).

15 99. An employee suffering injury as a result of a knowing and intentional failure by an
16 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
17 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
18 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
19 an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
20 reasonable attorneys’ fees. *See* Lab. Code § 226(e). Plaintiff and the Wage Statement seek
21 penalties under Labor Code § 226(e) in amounts to be determined at trial, and are entitled to
22 recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs.

23 **X.**

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES PURSUANT TO LABOR CODE §§201-203

24 **[Against all Defendants on behalf of Plaintiff, The General Late Payment Class, and the**
25 **Sick Pay Late Payment Class]**

26 100. Plaintiffs on behalf of himself, the General Late Payment Class, and the Sick Pay
27 Late Payment Class re-alleges and incorporates by reference each and every allegation set forth in
28 the preceding paragraphs.

1 101. Sections 201 and 202 of the California Labor Code requires Defendants to pay all
2 compensation due and owing to former employees in the Class during the actionable period for
3 this cause of action, at or around the time that their employment is terminated.

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

8 103. As described in detail above, Defendants failed to pay Plaintiff and the other Class
9 Members whose employment concluded all wages owed, including but not limited to minimum
10 wages, overtime wages, meal period premiums, and rest period premiums within the time
11 constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus,
12 as result of Defendants' faulty policies described above, Plaintiff and all Class Members' left
13 their employment with Defendants without being compensated for each and every hour worked at
14 the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

15 104. Separate and independent of the foregoing, Plaintiff and all Sick Pay Late Payment
16 Class left their employment with Defendants without having received compensation for sick pay
17 at the correct rate throughout the duration of their employment. Labor Code § 246 requires
18 employer to calculate sick leave pay based upon one of the following formulas:

19 (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the
20 regular rate of pay for the workweek in which the employee uses paid sick time, whether
21 or not the employee actually works overtime in that workweek.

22 (2) Paid sick time for nonexempt employees shall be calculated by dividing the
23 employee's total wages, not including overtime premium pay, by the employee's total
24 hours worked in the full pay periods of the prior 90 days of employment.

25 (3) Paid sick time for exempt employees shall be calculated in the same manner as the
26 employer calculates wages for other forms of paid leave time.

27 Lab. Code § 246.

1 105. Throughout Plaintiff and the Sick Pay Late Payment Class Members' employment,
2 Defendants failed to include the incentive pay and other non-discretionary bonuses--including but
3 not limited to quarterly bonuses, incentive pay, gainshare, and production bonuses—profit
4 sharing pay, and wages earned at prevailing wage rates when calculating and paying sick pay. As
5 a result, when Plaintiff, the Sick Pay Late Payment Class, and the Sick Pay Late Pay Aggrieved
6 Employees ended their employment, they left their employment without having received
7 compensation for all of their sick pay that they were owed under Labor Code § 246 and resulting
8 in a violation of Labor Code §§ 201-203. As a result of Defendants' willful underpayment of sick
9 pay, Plaintiff, the Sick Pay Late Payment Class, and the Sick Pay Late Pay Aggrieved Employees
10 experienced a violation of Labor Code §§ 201-202 upon separation from Defendants. *See Powell*
11 *v. Walmart Inc.*, No. 3:20-cv-2412-BEN-LL, 2021 U.S. Dist. LEXIS 20777, at *6 (S.D. Cal. Feb.
12 2, 2021) (denying a motion to dismiss claims under Labor Code section 203 based upon the
13 employer's alleged failure to include incentive pay when calculating and paying sick pay); *accord*
14 *Flores v. Dart Container Corp.*, No. 2:19-cv-00083 WBS EFB, 2020 U.S. Dist. LEXIS 93524, at
15 *7 (E.D. Cal. May 27, 2020).

16 106. As discussed above, Defendants willfully failed to pay Plaintiff and other members
17 of the Class who are no longer employed by Defendants, and the Late Payment Aggrieved
18 Employees all minimum wages, overtime wages, meal period premiums, rest period premiums,
19 and underpaid sick pay prior to or upon termination or separation from employment with
20 Defendants as required by California Labor Code §§ 201 and 202. At the time of Plaintiff, the
21 other members of the General Late Payment Class and the Sick Pay Late Payment Class'
22 separation from Defendants, these sums were certain and known to Defendants.

23 107. As a result, Defendants are liable to Plaintiffs, the General Late Payment Class,
24 and the Sick Pay Late Payment Class who are no longer employed by Defendants for waiting
25 time penalties amounting to thirty (30) days wages for Plaintiff and each Class Member pursuant
26 to California Labor Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages
27 due upon termination entitles an employee to recover waiting time penalties).

28 ///

XI.
SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
(LABOR CODE § 2802)

[Against all Defendants on behalf of Plaintiff, the Non-Exempt Class and the Field Non-Exempt Class]

108. Plaintiffs on behalf of himself, the Non-Exempt Class and the Field Non-Exempt Class re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

109. Labor Code § 2802 provides that “[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.”

110. California law prohibits an employer from failing to reimburse employees from losses incurred through the use of their own electronic devices even if the use would not cause the employee to exceed their data limit. *See Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App. 4th 113 (2014) (“We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”).

111. At times during the four (4) years prior to the filing of this Action and/or within the past year, Defendants required and/or expected Plaintiff and the Field Non-Exempt Class to use their cell phones in the normal course of their job duties. This includes requiring the Field Non-Exempt Class to use their cell phones to record time entries.

112. Defendants’ conduct in requiring Plaintiff and the Field Non-Exempt Class to engage in the above described activities caused them to incur losses as a direct consequence of their duties in violation of Labor Code § 2802. Although Plaintiff and the Field Non-Exempt Class were regularly required to and/or ordered/directed to use their own personal communication devices for work purposes, the Field Non-Exempt Class were not provided with any reimbursement for the use of their personal cell phones.

113. Defendants failure to pay for or reimburse the work-related business expenses of Plaintiff and Class Members violated non-waivable rights secured to Plaintiff and Field Non-Exempt Class by Labor Code §2802. *See* Labor Code §2804. Plaintiff and the Field Non-Exempt Class are entitled to reimbursement for these necessary expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802.

XII.
EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200
[Against all Defendants on behalf of Plaintiff, the Classes, and the Unfair Competition
Class]

114. Plaintiff, on behalf of herself, the Classes, and the Unfair Competition Class, realleges and incorporates by reference all previous paragraphs.

115. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself, on behalf of the general public, and on behalf of the Proposed Classes, bring this claim pursuant to Business & Professions Code § 17200, et seq. The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and the Proposed Classes. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

116. Defendants have engaged in unlawful and unfair business practices that violate fundamental public policies of the state of California and the United States of America As a result of its unlawful and unfair business practices, Defendants have forced employees to work under substandard and unlawful conditions in an effort to gain a competitive advantage over law-abiding employers who comply with California's Labor Code.

117. Defendants have violated statutes and public policies as alleged herein. Through the conduct alleged in this Complaint, Defendants have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving

1 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
2 privileges guaranteed to all employees under law.

3 118. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
4 violation of § 17200 et seq. of the Business & Professions Code.

5 119. Defendants, by engaging in the conduct herein alleged, either knew or in the
6 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
7 violation of § 17200 et seq. of the Business & Professions Code.

8 120. As a proximate result of the above-mentioned acts of Defendants, Plaintiff, the
9 Unfair Competition Class, others similarly situated, other businesses, and the general public have
10 been damaged in a sum as may be proven.

11 121. As part of their claims against Defendant Galleria Market, LP, Plaintiffs seek not
12 only the unpaid wages, but also the market value of the loss of the statutory protections and the
13 cost to other employers of providing proper pay, breaks, reimbursement/tools, and wages for all
14 hours worked. *See e.g. Safeway, Inc. v. Sup. Ct.*, 238 Cal.App.4th 1138, 1162 (2015).

15 122. Unless restrained, Defendants will continue to engage in the unlawful conduct as
16 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
17 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
18 employment by Defendants, its agents, or employees, of any unlawful or deceptive practices
19 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
20 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
21 Proposed Classes the money Defendants have unlawfully failed to pay.

22 XIII.

23 NINTH CAUSE OF ACTION

24 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
25 **FOR PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS**
OF LABOR CODE §§ 1. 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174,
1174.5, 1197, 1197.1, 1198, and 2802 as well as IWC Wage Order Nos. 1-2001 and 16-2001

26 123. Plaintiff, on behalf of the State of California, realleges and incorporates by
27 reference all previous paragraphs.
28

1 124. Plaintiff filed his PAGA Notice online with the Labor Workforce Development
2 Agency (“LWDA”) and sent a letter by certified mail to Defendants setting forth the facts and
3 theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.*
4 **Exhs. A and B.** As required by PAGA, Plaintiff submitted the \$75.00 filing fee to the LWDA.
5 Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received and/or will have been received
6 by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar
7 days of the postmark date of the PAGA notice. Plaintiff is therefore, entitled to commence and
8 proceed with a civil action pursuant to Labor Code § 2699.

9 125. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
10 § 2698, *et seq.* because of Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 210, 226,
11 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1197, 1197.1, 1198, and 2802 as well as IWC Wage
12 Order Nos. 1-2001 and 16-2001.

13 126. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
14 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of
15 trial subject to the following formula unless a civil penalty is already proscribed under the Labor
16 Code:

17 \$100 for the initial violation per employee per pay period; and

18 \$200 for each subsequent violation per employee per pay period.

19 127. These penalties will be allocated 75% to the Labor Workforce Development
20 Agency and 25% to the affected employees. These penalties may be stacked separately for each
21 of Defendants violations of the California Labor Code. *See e.g. Kaanaana v. Barrett Business*
22 *Services, Inc.*, 29 Cal.App.5th 778, 808 (2018) (acknowledging that the employees could get
23 separate PAGA penalties for interrupted meal periods because interrupted meal periods violated
24 Labor Code sections 1194 and 512 and remanding to the trial court to determine the amount of
25 PAGA penalties to award); *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017)
26 (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section
27 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section
28 226(e)(1) and acknowledging that a Plaintiff could recover separately under PAGA for violations

1 of Labor Code §§ 226(a) and 226(e)); *Magadia vs. Wal-Mart*, No. 17-CV-00062-LHK, 2019 U.S.
2 Dist. LEXIS 91792 (N.D. Cal. May 31, 2019) (awarding three sets of PAGA penalties including
3 several during the same pay period); *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM
4 (JCGx) 2012 U.S. Dist. LEXIS 86975, at *59, fn. 77 (C.D. Cal. June 22, 2012) (holding that
5 although the plaintiff did not seek stacked PAGA penalties, that “PAGA penalties can be
6 ‘stacked,’ *i.e.*, multiple PAGA penalties can be assessed for the same pay period for different
7 Labor Code violations.”); *accord Schiller v. David’s Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO)
8 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-
9 cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at * 2-3 (E.D. Cal.
10 Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS
11 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

12 128. In addition, Plaintiff and the aggrieved employees seek the default penalty
13 provided by Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates
14 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred
15 fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars
16 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to
17 provide the employee a wage deduction statement or fails to keep the required in subdivision (a)
18 of Section 226.”

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

25 130. As a result of the faulty compensation policies and practices described in detail
26 above, the State of California is entitled to recover penalties under Labor Code § 210 through
27 PAGA.
28

131. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid...” Based upon the above factual allegations related to overtime, meal period, and rest period violations, Plaintiff and the aggrieved employees are entitled to recover civil penalties under Labor Code § 558 and not any underpaid wages under PAGA. *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

132. Labor Code § 1174 provides that each employer shall keep “payroll records showing the hours worked daily by and the wages paid to...employees employed at...establishments.” An employer who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

133. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil penalties for violations of Labor Code § 1197.1.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1 1. An Order that this action may proceed and be maintained as a Class Action on
2 behalf of the Classes;

3 2. For compensatory damages in the amount of unpaid wages not paid to Plaintiff and
4 the Classes and from four (4) years prior to the filing of this action and continuing into the present
5 as may be proven;

6 3. For compensatory damages in the amount of unpaid overtime wages not paid to
7 Plaintiff, each Class Member from four (4) years prior to the filing of this action and continuing
8 into the present as may be proven;

9 4. For compensatory damages in the amount of Plaintiff and each Class Members
10 unpaid meal period premiums from four (4) years prior to the filing of this action and continuing
11 into the present as may be proven;

12 5. For compensatory damages in the amount of Plaintiff, each Class Members'
13 unpaid rest period premiums from four (4) years prior to the filing of this action and continuing
14 into the present as may be proven;

15 6. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
16 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
17 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
18 exceeding an aggregate penalty of four thousand dollars (\$4,000) for the inaccurate itemized
19 wage statements issued to Plaintiff and the Wage Statement Class from one (1) year prior to the
20 filing of this action and continuing into the present;

21 7. An award to Plaintiff, the General Late Payment Class, and the Sick Pay Late
22 Payment Class of waiting time penalties in the amount of up to 30 days' wages;

23 8. For restitution for unfair competition pursuant to Business & Professions Code
24 § 17200 to Plaintiff and the Unfair Competition Class for actions, including disgorgement of
25 profits, in an amount as may be proven;

26 9. An order enjoining Defendant and its agents, servants, and employees, and all
27 persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class
28 Members proper compensation for overtime hours worked, meal period premiums, rest period

1 premiums, from failing to provide timely first meal periods within the first five (5) hours of an
2 employees shift and second meal periods when employees work more than ten (10) hours in a
3 day;

4 10. For penalties under Labor Code § 2698, *et seq.* for Plaintiff and all aggrieved
5 employees because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226,
6 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1197, 1197.1, 1198, and 2802 as well as IWC Wage
7 Order Nos. 1-2001 and 16-2001;

8 11. An award of prejudgment and post judgment interest;

9 12. An award providing for payment of costs of suit;

10 13. An award of attorneys' fees; and

11 14. Such other and further relief as this Court may deem proper and just.

12
13 DATED: March 16, 2021

WINSTON LAW GROUP, P.C.

14
15 By: David Winston
16 DAVID S. WINSTON
17 Attorneys for Plaintiff and the Proposed
18 Class
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Exhibit A

WINSTON LAW GROUP, P.C.

1180 S BEVERLY DR., SUITE 610 ♦ LOS ANGELES, CA 90035 ♦ (424) 288-4568

March 5, 2021

Via Online Filing with the LWDA & by Certified Mail to Defendant

Sierra West Finish, Inc.
678 Parkridge Ave
Norco, CA 92691

Re: *Robert De La Hoya vs. Sierra West Finish, Inc. - California Labor Code § 2699 Penalties*

Gentlepersons:

This firm represents Robert De La Hoya (“Plaintiff” or “Mr. De La Hoya”) and a proposed group of current and former employees working for Sierra West Finish, Inc. and/or any businesses or entities doing business as Sierra West Finish, Inc. (“Defendant” or “Sierra West Finish”) in California for violations of California Labor Code §§ 201, 202, 203 (underpayment of sick pay wages, derivative minimum wages, overtime wages, and meal/rest period premiums), 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1197, 1197.1, 1198, and 2802 as well as IWC Wage Order Nos. 1-2001 and 16-2001.

Mr. De La Hoya wishes to bring a representative action on behalf of the State of California based upon alleged improper acts committed against him and several groups of aggrieved employees defined as:

- (1) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt, hourly employee for one or more pay periods from one (1) year prior to the date of this letter and continuing into the present (“Non-Exempt Aggrieved Employees”);
- (2) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt, hourly employee who worked in the field (aka away from the main facility) during at least part of one or more pay periods from one (1) year prior to the date of this letter and continuing into the present (“Field Non-Exempt Aggrieved Employees”);
- (3) all individuals who were employed by Sierra West Finish, Inc. as an employee for one or more pay periods from one (1) year prior to the date of this letter and continuing into the present (“Wage Statement Aggrieved Employee”);

- (4) all individuals who were employed by Sierra West Finish, Inc or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from one (1) year prior to the date of this letter and continuing into the present. (“Non-Exempt Overtime Aggrieved Employees”);
- (5) all individuals who were employed by Sierra West Finish, Inc or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period where they also worked on a prevailing wage job from one (1) year prior to the date of this letter and continuing into the present. (“Prevailing Wage Non-Exempt Overtime Aggrieved Employees”);
- (6) all individuals who were employed by Sierra West Finish, Inc or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and received a non-discretionary bonus—including, but not limited to quarterly bonuses and or production bonuses—and/or profit sharing bonuses from one (1) year prior to the date of this letter and continuing into the present. (“Incentive Pay Non-Exempt Overtime Aggrieved Employees”);

Collectively, aggrieved employee groups four (4), five (5), and six (6) may be referred to as the “Overtime Aggrieved Employees.”

- (7) all individuals who were employed by Sierra West Finish, Inc. or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt hourly employee or other similar position from one (1) year prior to the date of this letter and continuing into the present. (“Meal Period Aggrieved Employees”);
- (8) all individuals who were employed by Sierra West Finish, Inc. or its predecessor, merged or related entities in California who worked one or more shifts of more than ten (10) hours as a non-exempt hourly employee or other similar position from one (1) year prior to the date of this letter and continuing into the present. (“Second Meal Period Aggrieved Employees”);

Collectively, aggrieved employee groups seven (7) and eight (8) may be referred to as the “Meal Period Aggrieved Employees.”

- (9) all individuals who were employed by Sierra West Finish, Inc., or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from one year prior to the date of this letter and continuing into the present. (“Rest Period Aggrieved Employee”);
- (10) all individuals who were employed by BASF Corporation or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between one (1) year prior to the submission of this letter and continuing into the present; (“General Late Payment Aggrieved Employee”);
- (11) all individuals who were employed by BASF Corporation or its predecessor, merged or related entities for one or more pay periods in California, who received sick pay, and whose employment concluded at any time between one (1) year prior to the submission of this letter and continuing into the present; (“Sick Pay Late Payment Aggrieved Employee”);

Collectively, aggrieved employee groups ten (10) and eleven (11) may be referred to as the “Late Payment Aggrieved Employees.”

These groups, except for the Wage Statement Aggrieved Employees, may all collectively be referred to herein as aggrieved employees and/or all aggrieved employees where appropriate. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* We herein set forth some of the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and all aggrieved employees.¹

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 1194, 1197, 1197.1, 1198 AND IWC WAGE ORDER NOS. 1-2001 AND 16-2001

Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee

¹ See *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. Jul. 8, 2011) 796 F. Supp. 2d 1246, 1261; *Moua v. Int'l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) No. 5:10-CV-01070 EJD, 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *4.

receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 1-2001 and 16-2001 obligate employers to pay each employee minimum wages for all hours worked.

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

In addition, Labor Code § 1198 provides that “the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Defendant adopted an automatic deduction policy and practice whereby it automatically deducted thirty (30) minutes’ worth of an employee’s pay regardless of whether or not the employee took a meal period and/or the full amount of their meal period. While not limited to Plaintiff and the Field Aggrieved Employees, such conduct regularly and consistently occurred when Plaintiff and the other aggrieved employees worked in the field (aka away from the company’s premises). As a result of Defendant’s policy and practice of automatically deducting thirty (30) minutes’ worth of pay regardless of whether or not the aggrieved employee took a meal period and/or the length of the meal period, Defendant regularly failed to pay Plaintiff and all aggrieved employees for all hours worked in violation of Labor Code § 1194 and 1197 including hours that qualified as overtime hours pursuant to IWC Wage Order Nos. 1-2001 and 16-2001 and Labor Code § 510.

Defendant also frequently required and/or suffered and permitted or expected Plaintiff and the other aggrieved employees to perform work-off-the-clock including responding to inquiries before the start of their shifts. Employees who clocked in early when they were asked such inquiries received write-ups from Defendant on occasion for merely trying to get paid for the work that they performed. Notably, Defendant and its supervisory employees knew that it was suffering and permitting and requiring Plaintiff and the other aggrieved employees to perform work off-the-clock and without compensation and/or sufficient compensation. Defendant is legally responsible for ensuring the accuracy of its time records and cannot rely upon time records that it knew were false and/or statements by employees as the California Supreme Court explained. *Donohue v. Amn Servs.*, No. S253677, 2021 Cal. LEXIS 1294, at *45 (Feb. 25, 2021) (“It is the employer’s duty to maintain accurate time records” and that the employer could not rely upon certifications from employees where the information provided to the employees was inaccurate and/or incomplete); accord *Feaver v. Kaiser Found. Health Plan, Inc.*, No. 15-cv-00890-EMC, 2016 U.S. Dist. LEXIS

9778, at *8 (N.D. Cal. Jan. 27, 2016) (conditionally certifying a class under the Fair Labor Standards Act where the employees could show that they received and/or sent emails off-the-clock despite the fact that the employer had a policy requiring all time to be recorded.); *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018). As such Defendant violated Labor Code §§ 1194, 1197, 1198 and IWC Wage Order Nos. 1-2001 and 16-2001.

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendant failed to compensate Plaintiff and all aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil penalties for violations of Labor Code § 1197.1.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 510, 558, 1197, 1197.1, and 1198 AND WAGE ORDER NO. 5-2001

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. In accordance with Labor Code § 1194, Plaintiff and the other aggrieved employees could not agree to work for a lesser wage.

In addition, Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful.

Similarly, Labor Code § 1198 provides that “the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

When calculating an employee's regular rate, California and federal courts, with limited

exceptions, look to the federal Fair Labor Standards Act (“FLSA”). *Huntington Mem'l Hosp. v. Sup. Ct.*, 131 Cal. App. 4th 893, 902 (2005).²³ Under the FLSA, the regular rate of pay includes all forms of remuneration. *See* 29 U.S.C. § 207(e); *Huntington Mem'l*, 131 Cal. App. 4th at 90 (holding that shift differential must be included in the regular rate when calculating and paying overtime). “Under [29 C.F.R.] § 778.224(a), a payment may not be excluded from the regular rate of pay pursuant to § 207(e)(2) if it is generally understood as compensation for work, even though the payment is not tied to specific hours worked by an employee.” *Id.* (emphasis added). The Ninth Circuit recently summarized in *Flores v. City of San Gabriel*, 824 F.3d 890, 895 (9th Cir. 2016) that “the question of whether a particular payment falls within the ‘other similar payments’ clause does not turn on whether the payment is tied to an hourly wage, but instead turns on whether the payment is a form of compensation for performing work.” *Id.* Nor as the Ninth Circuit explained need compensation paid be measured by the number of hours worked. *Id.* (explaining “that the key point is whether payment is ‘compensation for work’” and that “even if payments to employees are not measured by the number of hours spent at work, that fact does not qualify for them for exclusion under section 207(e)(2).” *Id.* (citing *Local 246 Utility Workers Union of America v. Southern California Edison, Co.*, 83 F.3d 295.

Here, Defendant paid Plaintiff and the other aggrieved employees’ with non-discretionary bonuses and incentive pay—including but not limited to quarterly bonuses and/or production or gainshare bonuses—that it both failed to include when calculating and paying overtime wages and failed to provide retroactive payments to cover the overtime earned during the accrual period in violation of Labor Code section 510. Defendant also failed to make retroactive overtime payments to Plaintiff and the other aggrieved employees based upon the additional incentive

2 *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1129 (C.D. Cal. 2011) (using FLSA standards to determine the regular rate of pay in a Cal. Labor Code § 510 overtime claim); *Advanced—Tech Sec. Servs., Inc. v. Sup. Ct.*, 163 Cal. App. 4th 700, 707 (2008). The DLSE routinely “takes the position that the failure of the [IWC] to define the term ‘regular rate’ indicates the Commission’s intent that in determining what payments are to be included in or excluded from the calculation of the regular rate of pay, California will adhere to the standards adopted by the U.S.” (*Huntington Mem’l*, *supra*, 131 Cal. App. 4th at p. 902-903; *Advanced—Tech*, *supra*, 163 Cal.App.4th at p. 707; *see also*, Division of Labor Standards Enforcement, Enforcement and Interpretations Manual, § 49.1.2 [noting “in not defining the term ‘regular rate of pay’, the Industrial Welfare Commission has manifest its intent to adopt the definition of regular rate of pay set out in the Fair Labor Standards Act.”].) In addition, numerous DLSE opinion letters take the position California will adhere to the standards adopted by the U.S. Dept. of Labor when determining an employee’s regular rate. (*See also*, Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Calculation of Regular Rate of Pay (Jan. 29, 2003) pp. 2, fn. 1, 3, Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Calculation of Regular Rate of Pay in Cases Involving Piece Rate (Feb. 22, 1993) p. 2 & fn. 2; Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Explicit Wage Agreements (Jan 29, 1992) p. 1, Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Calculation of Regular Rate of Pay (Mar. 6, 1991) p. 1.)

3 *Cf. Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542, 568 (2018) (explaining that for the purposes of calculating the per hour value of an employer’s flat sum attendance bonuses that California, unlike the FLSA, uses the non-overtime hours worked during the pay period as the divisor instead of all hours worked during the pay period).

pay/non-discretionary bonuses earned by all aggrieved employees—such as, but not limited to the quarterly bonuses—despite the fact that they worked overtime hours during at least some of the periods where such bonuses were earned.

Defendant also failed to include additional compensation other than Plaintiff and the other aggrieved employees' base rate, when calculating and paying overtime. As a result of Defendant's failure to include such compensation when calculating the regular rate used for overtime purposes and paying overtime wages, Defendant failed to pay Plaintiff and all aggrieved employees overtime wages at one and one-half times their regular rate.

In addition, Defendant adopted an automatic deduction policy and practice whereby it automatically deducted thirty (30) minutes' worth of an employee's pay regardless of whether or not the employee took a meal period and/or the full amount of their meal period. While not limited to Plaintiff and the Field Aggrieved Employees such conduct regularly and consistently occurred when Plaintiff and the other aggrieved employees worked in the field (aka away from the company's premises). As a result of Defendant's policy and practice of automatically deducting thirty (30) minutes' worth of pay regardless of whether or not the aggrieved employee took a meal period and/or the length of the meal period, Defendant regularly failed to pay Plaintiff and all aggrieved employees for all hours worked in violation of Labor Code § 1194 and 1197 including hours that qualified as overtime hours pursuant to IWC Wage Order Nos. 1-2001 and 16-2001 and Labor Code § 510.

Moreover, Defendant also frequently required and/or suffered and permitted or expected Plaintiff and the other aggrieved employees to perform work-off-the-clock including responding to inquiries before the start of their shifts. This practice included regular hours, but also led to the misclassification of some overtime hours to be improperly classified as regular hours. Employees who clocked in early when they were asked such inquiries received write-ups from Defendant on occasion for merely trying to get paid for the work that they performed. Notably, Defendant and its supervisory employees knew that it was suffering and permitting and requiring Plaintiff and the other aggrieved employees to perform work off-the-clock and without compensation and/or sufficient compensation including for overtime hours. Defendant is legally responsible for ensuring the accuracy of its time records and cannot rely upon time records that it knew were false and/or statements by employees as the California Supreme Court explained. *Donohue v. Amn Servs.*, No. S253677, 2021 Cal. LEXIS 1294, at *45 (Feb. 25, 2021) ("It is the employer's duty to maintain accurate time records" and that the employer could not rely upon certifications from employees where the information provided to the employees was inaccurate and/or incomplete); *accord Feaver v. Kaiser Found. Health Plan, Inc.*, No. 15-cv-00890-EMC, 2016 U.S. Dist. LEXIS 9778, at *8 (N.D. Cal. Jan. 27, 2016) (conditionally certifying a class under the Fair Labor Standards Act where

the employees could show that they received and/or sent emails off-the-clock despite the fact that the employer had a policy requiring all time to be recorded.); *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018). As such Defendant violated Labor Code §§ 510, 558, and 1198 as well as IWC Wage Order Nos. 1-2001 and 16-2001.

Based upon the foregoing, Defendant violated Labor Code § 510 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experience a violation of Labor Code § 510 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendant failed to compensate Plaintiff and all aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil penalties for violations of Labor Code § 1197.1.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 226.7, 512, 558, and 1198 AS WELL AS IWC WAGE ORDER NOS. 1-2001, 4-2001 AND 9-2001

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a second meal period of not less than thirty (30) minutes. Moreover, the second

meal period may not be waived if the total hours worked is more than twelve (12) hours.

Similarly, IWC Wage Order Nos. 1-2001, 4-2001, and 9-2001 prohibit an employer from “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 1-2001, 4-2001, and 9-2001 further obligate employers to provide an employee to “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. Labor Code section 1198 prohibits an employer from requiring an employee to work beyond the “standard conditions of labor fixed by the commission...or under conditions of labor prohibited by the order.”

Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004, 1033 (2012) [emphasis added].

Following *Brinker*, the Courts of Appeal have confirmed that liability for meal period violations arise when an employer adopts a uniform policy that fails to provide off-duty breaks. For example, in *Faulkinbury vs. Boyd & Associates, Inc.*, the California Court of Appeal explained: “the employer’s liability arises by adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was able to take the required break goes to damages” *Ibid.* (citations omitted); *see also Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 728 (2013).

In *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015), the California Court of Appeal emphatically held that a meal period policy must specifically advise employees of the proper timing of meal periods. In *Alberts*, the meal break policy stated employees are entitled to “an unpaid thirty-minute break for a meal period, approximately half way between the beginning and ending of the employee’s shift.” *Id.* The court, in accordance with *Brinker*, found the defendant’s meal break policy violated California law because it did not specify “that a meal break be provided during the first five hours of an employee’s shift.” *Id.* (citing *Brinker*,

supra, 53 Cal.4th at 1048–1049.⁴ An employee who is not advised of their to receive proper meal periods cannot waive their meal period. *Brinker* 53 Cal. 4th at 1033 (“No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.”); *Bradley*, 211 Cal.App.4th at 1151 (“an employer is obligated to provide the rest and meal breaks, and if an employer does not do so, the fact that an employee did not take the break cannot reasonably be considered a waiver.”). Similarly, recently in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018), the California Court of Appeal affirmed a judgment in favor of employees who had signed first meal period waivers and did not take meal periods by the 5th hour when they were scheduled to work less than six (6) hours, but ultimately worked 6.01 hours or more.

Here, Defendant failed to authorize and permit Plaintiff and the other aggrieved employees to receive lawful meal periods, failed to advise them of their right to such meal periods, failed to authorize and permit them to take timely first meal periods within the first five hours of their shift, and failed to authorize and permit Plaintiff and the other aggrieved employees to take second meal periods when they worked shifts in excess of ten (10) hours in a day. Defendant’s meal period policies and practices disincentivized and discouraged Plaintiff and the other aggrieved employees from taking timely first meal periods within the first five (5) hours of their shift. This includes, but is not limited to, requiring Plaintiff and the other aggrieved employees to take their lunch at noon regardless of the start time of their shift while working the day shift. However, Defendant also failed to authorize and permit Plaintiff and the other aggrieved employees to take timely first meal periods when they worked evening shifts. Defendant’s understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods due to a lack of sufficient coverage.

Defendant also failed to pay Plaintiff and the other meal period premiums for each workday that the employees did not receive a compliant meal period and/or at the proper rate. Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”).

⁴ Assuming *arguendo* Defendants had a compliant meal period—which it did not—even a formal written policy cannot save an employer where an employer or its supervisory employees interfered with meal periods or created a culture which makes taking a 30-minute break during the day infeasible. (*Chand v. Burlington Coat Factory of California, LLC*, No. CV F 13-2008 LJO JLT, 2014 WL 726837, at *5 (E.D. Cal. Feb. 24, 2014) (“The wage orders and governing statute do not countenance an employer’s exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.”) (citing *Brinker*, 53 Cal.4th at 1040); accord *Boyd v. Bank of Am. Corp.* C.D. Cal. May 6, 2015) No. SA CV 13-0056-DOC, 2015 WL 3650207, at *31; *Ricaldai v. U.S. Investigations Servs. LLC* (C.D. Cal. 2012) 878 F. Supp. 2d 1038, 1045; *Campbell v. Vitran Express Inc.* (C.D. Cal. Nov. 12, 2015) No. CV 11-5029 RGK (SHX), 2015 WL 7176110, at *8.)

Similarly, IWC Wage Order Nos. 1-2001, 4-2001, and 9-2001 prohibit an employer from “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order Nos. 1-2001, 4-2001, and 9-2001 further obligate employers to provide an employee to “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. Accordingly, for each day that Plaintiff and all aggrieved employees did not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and IWC Wage Order Nos. 1-2001, 4-2001, and 9-2001. Unfortunately, Plaintiff and the Meal Period Aggrieved Employees were not compensated with one (1) hours’ worth of pay at their regular rate of compensation when they were not provided with a compliant meal period in violation of Labor Code § 226.7 and IWC Wage Order No. Nos. 1-2001, 4-2001, and 9-2001.

Based upon the foregoing, Defendant violated Labor Code §§ 226.7, 512, 558, and 1198 as well as IWC Wage Order Nos. 1-2001, 4-2001 and 9-2001 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experience a violation of Labor Code §§ 226.7 and 512 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 226.7, 512, 558, and 1198 AS WELL AS IWC WAGE ORDER NOS. 1-2001 AND 16-2001

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a second meal period of not less than thirty (30) minutes. Moreover, the second meal period may not be waived if the total hours worked is more than twelve (12) hours.

Similarly, IWC Wage Order Nos. 1-2001 and 16-2001 prohibit an employer from

“employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 5-2001 further obligates employers to provide an employee to “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. Labor Code section 1198 prohibits an employer from requiring an employee to work beyond the “standard conditions of labor fixed by the commission...or under conditions of labor prohibited by the order.”

Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004, 1033 (2012) [emphasis added].

Following *Brinker*, the Courts of Appeal have confirmed that liability for meal period violations arise when an employer adopts a uniform policy that fails to provide off-duty breaks. For example, in *Faulkinbury vs. Boyd & Associates, Inc.*, the California Court of Appeal explained: “the employer’s liability arises by adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was able to take the required break goes to damages” *Ibid.* (citations omitted); see also *Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 728 (2013).

In *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015), the California Court of Appeal emphatically held that a meal period policy must specifically advise employees of the proper timing of meal periods. In *Alberts*, the meal break policy stated employees are entitled to “an unpaid thirty-minute break for a meal period, approximately half way between the beginning and ending of the employee’s shift.” *Id.* The court, in accordance with *Brinker*, found the defendant’s meal break policy violated California law because it did not specify “that a meal break be provided during the first five hours of an employee’s shift.” *Id.* (citing *Brinker*, *supra*, 53 Cal.4th at 1048–1049.⁵ The California Supreme Court recently held in *Donohue v. Amn*

⁵ Assuming *arguendo* Defendants had a compliant meal period—which it did not—even a formal written policy cannot save an employer where an employer or its supervisory employees interfered with meal periods or created a culture which makes taking a 30-minute break during the day infeasible. (*Chand v. Burlington Coat Factory of California*,

Servs., No. S253677, 2021 Cal. LEXIS 1294, at *30 (Feb. 25, 2021) that “time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations.” In order to defeat this presumption, an employer must show not only that it advised employees “of his or her legal right to take a meal period and has knowingly and voluntarily decided not to take the meal period.” *Id.* at *33 This presumption applies not only to missed meal periods, but also “to records showing short and delayed meal periods as well.” *Id.* at *34.

Moreover, an employee who is not advised of their right to receive proper meal periods cannot waive their meal period. *Brinker* 53 Cal. 4th at 1033 (“No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.”); *Bradley*, 211 Cal.App.4th at 1151 (“an employer is obligated to provide the rest and meal breaks, and if an employer does not do so, the fact that an employee did not take the break cannot reasonably be considered a waiver.”). Similarly, recently in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018), the California Court of Appeal affirmed a judgment in favor of employees who had signed first meal period waivers and did not take meal periods by the 5th hour when they were scheduled to work less than six (6) hours, but ultimately worked 6.01 hours or more.

Here, Defendant failed to authorize and permit Plaintiff and the other aggrieved employees to receive lawful meal periods, failed to advise them of their right to such meal periods, failed to authorize and permit them to take timely first meal periods, and failed to authorize and permit second meal periods when Plaintiff and the other aggrieved employees worked more than ten (10) hours in a day. As a result of Defendant’s failure to authorize and permit meal periods, Defendant regularly and consistently required Plaintiff and the other aggrieved employees to take meal periods later than the fifth hour of work in violation of IWC Wage Order Nos. 1-2001 and 16-2001 as well as Labor Code §§ 226.7 and 512. For instance, every single meal period in the embedded time sheets shows a late meal period:

6/22/2020	Work		5:51 AM	11:05 AM	11:35 AM	1:52 PM	7.52	0.00		7.52	0.50
6/23/2020	Work		5:49 AM	11:10 AM	11:40 AM	3:11 PM	8.00	0.87		8.87	0.50
6/24/2020	Work		5:50 AM	11:05 AM	11:35 AM	2:42 PM	8.00	0.37		8.37	0.50
6/25/2020	Work		5:51 AM	11:05 AM	11:35 AM	2:24 PM	8.00	0.05		8.05	0.50
6/26/2020	Work		5:49 AM	11:05 AM	11:35 AM	3:24 PM	8.00	1.08		9.08	0.50
6/27/2020											

LLC, No. CV F 13-2008 LJO JLT, 2014 WL 726837, at *5 (E.D. Cal. Feb. 24, 2014) (“The wage orders and governing statute do not countenance an employer’s exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.”) (*citing Brinker*, 53 Cal.4th at 1040); *accord Boyd v. Bank of Am. Corp.* C.D. Cal. May 6, 2015) No. SA CV 13-0056-DOC, 2015 WL 3650207, at *31; *Ricaldai v. U.S. Investigations Servs. LLC* (C.D. Cal. 2012) 878 F. Supp. 2d 1038, 1045; *Campbell v. Vitran Express Inc.* (C.D. Cal. Nov. 12, 2015) No. CV 11-5029 RGK (SHX), 2015 WL 7176110, at *8.)

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[illegible]

Week Begin: 07/19/2020

Employee: De La Hoya, Robert			ID: DELA3470									
Date	Type	Scheduled	Work Start	Lunch In	Lunch Out	Work End	Reg	OT	NON-WKD	Total Paid HRS	Unpaid	
7/19/2020												
7/20/2020	No Show											
7/21/2020	Work		5:51 AM	11:05 AM	11:35 AM	3:26 PM	8.00	1.08		9.08	0.50	
7/22/2020	Work		6:00 AM	11:35 AM	12:05 PM	2:41 PM	8.00	0.18		8.18	0.50	
7/23/2020	Work		5:52 AM	11:05 AM	11:35 AM	3:02 PM	8.00	0.67		8.67	0.50	
7/24/2020	Work		5:52 AM	11:05 AM	11:35 AM	12:33 PM	6.18	0.00		6.18	0.50	
7/25/2020												
							Break Down	Reg	OT	NON-WKD	Total Paid HRS	Unpaid
								30.18	1.93	0.00	32.12	2.00

Week Begin: 07/26/2020

Employee: De La Hoya, Robert			ID: DELA3470									
Date	Type	Scheduled	Work Start	Lunch In	Lunch Out	Work End	Reg	OT	NON-WKD	Total Paid HRS	Unpaid	
7/26/2020												
7/27/2020	Work		5:53 AM	11:05 AM	11:35 AM	2:31 PM	8.00	0.13		8.13	0.50	
7/28/2020	Work		5:52 AM	11:05 AM	11:35 AM	2:10 PM	7.80	0.00		7.80	0.50	
7/29/2020	Work		5:51 AM	11:00 AM	11:35 AM	2:34 PM	8.00	0.13		8.13	0.58	
7/30/2020	Work		5:53 AM	11:35 AM	12:05 PM	2:20 PM	7.95	0.00		7.95	0.50	
7/31/2020	Work		5:51 AM	10:55 AM	11:25 AM	2:40 PM	8.00	0.32		8.32	0.50	
8/01/2020												
							Break Down	Reg	OT	NON-WKD	Total Paid HRS	Unpaid
								39.75	0.58	0.00	40.33	2.58

week Begin: 08/02/2020

Employee: De La Hoya, Robert			ID: DELA3470									
Date	Type	Scheduled	Work Start	Lunch In	Lunch Out	Work End	Reg	OT	NON-WKD	Total Paid HRS	Unpaid	
8/02/2020												
8/03/2020	Work		5:48 AM	11:05 AM	11:35 AM	2:26 PM	8.00	0.13		8.13	0.50	
8/04/2020	Work		5:54 AM	11:00 AM	11:35 AM	2:19 PM	7.83	0.00		7.83	0.58	
8/05/2020	Work		5:49 AM	11:45 AM	12:20 PM	3:05 PM	8.00	0.68		8.68	0.58	
8/06/2020	Work		5:52 AM	11:05 AM	11:35 AM	2:03 PM	7.68	0.00		7.68	0.50	
8/07/2020		NO SHOW										
8/08/2020												
							Break Down	Reg	OT	NON-WKD	Total Paid HRS	Unpaid
								31.52	0.82	0.00	32.33	2.17

[illegible]

Defendant engaged in the same conduct with respect to Plaintiff, the other aggrieved employees, all Non-Exempt Aggrieved Employees, all Field Aggrieved Employees, and all First Meal Period Aggrieved Employees. The California Supreme Court conclusively held in *Donohue v. AMN Servs., LLC*, No. S253677, 2021 Cal. LEXIS 1294, at *30 (Feb. 25, 2021) that “time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations at summary judgment.”). The California Supreme Court went onto explain that—as with Plaintiff and the other aggrieved employees time records here—“the presumption applies to records showing short and delayed meal periods as well.” *Id.* at *34.

Defendant’s meal period policies and practices also disincentivized and discouraged Plaintiff and the other aggrieved employees from taking timely first meal periods within the first five (5) hours of their shift, from receiving meal periods, and/or receiving second meal periods on shifts where they worked more than ten (10) hours per day. Defendant’s understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods and forgo meal periods due to a lack of sufficient coverage. This includes instances when Plaintiff and the other aggrieved employees worked on Defendant’s premises and in the field. When aggrieved employees worked in the field, it often was not possible for them to take lawful and/or timely meal periods due to the time constraints associated with deliveries.

As discussed in detail above, Defendant adopted an automatic deduction policy and practice whereby it automatically deducted thirty (30) minutes’ worth of an employee’s pay regardless of whether or not the employee took a meal period and/or the full amount of their meal period instead of paying them for the time worked and/or providing them with a meal period premium.

Defendant also failed to pay Plaintiff and the other meal period premiums for each workday that the employees did not receive a compliant meal period and/or at the proper rate. Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). In fact, Defendant failed to provide Plaintiff with a single meal period premium for any of the above identified meal period violations. Defendant engaged in the same and/or similar practices with respect to Plaintiff and all aggrieved employees.

However, even when Defendant paid Plaintiff and the other aggrieved employees meal period premiums, Defendant still violated Labor Code §§ 226.7, 512, and 1198 by failing to comply with California’s meal period laws. *See e.g. Kim v. Reins International California, Inc.*, 9 Cal.5th 73, 84 (2020) (“employers can pay an additional hour of wages as a remedy for failing to

provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a section 226.7 violation.’”) (*quoting Kirby v. Immoos Fire Protection, Inc.*, 53 Cal.4th 1244, 1256 (2012)). Thus, Defendant is still liable for PAGA penalties even if it paid them a meal period premium because Plaintiff and the aggrieved employees were regularly not authorized and permitted to take a timely first meal period, an uninterrupted meal period, discouraged and/or impeded duty-free meal periods by continuing to exercise control over employees through their security and bag check policies and/or provide lawful second meal periods.

Based upon the foregoing, Defendant violated Labor Code §§ 226.7, 512, 558, and 1198 as well as IWC Wage Order Nos. 1-2001 and 16-2001 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experience a violation of Labor Code §§ 226.7 and 512 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE § 226.7 AND IWC WAGE ORDER Nos. 1-2001 and 5-2001

Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage Order Nos. 1-2001 and 16-2001, an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.

The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour

shift when two are required—*it has violated the wage order and is liable.*

Brinker Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004, 1033 (2012) (emphasis added).

Pursuant to Labor Code § 226.7 and IWC Wage Order Nos. 1-2001 and 16-2001, Defendant failed to provide Plaintiff and all Rest Period Aggrieved Employees with rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. Instead, Defendant regularly and consistently required Field Aggrieved Employees to forgo rest periods and/or made impossible for them to complete their assignments and deliveries and also take a rest period.

Based upon the foregoing, Defendant violated Labor Code § 226.7 and 1198 as well as IWC Wage Order No. 16-2001 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experienced a violation of Labor Code § 226.7 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 226(a), 226(e), and 226.3

As to Plaintiff and all aggrieved employees, Defendant also failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, 8, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;

- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (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...

Similarly, Labor Code § 226(e) provides:

- (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.
- (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.
- (B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:
 - (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).
 - (ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).
 - (iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682,

The itemized wage statements issued to Plaintiff and the aggrieved employees, including all Itemized Wage Statement Aggrieved Employees, did not include the address of the legal entity that is the employer on the wage statements issued to Plaintiff and the other aggrieved employees in violation of Labor Code § 226(a)(8) and (e). Here, the wage statements issued to Plaintiff and the Wage Statement Aggrieved Employees do not include the address of the legal entity that is the employer. Some, but not necessarily all, contained the City, State, and Zipcode of Defendant, but completely omitted any reference to the street number or name such that it was not possible to determine from the wage statement alone Defendant's address. Nor does it matter whether or not such information appeared, if at all, on the checks attached to the wage statements. *See Noori v. Countrywide Payroll & HR Solutions, Inc.*, 43 Cal.App.5th 957, 966 (2019) (holding that an employer violated Labor Code § 226(a)(8) even though the correct name of the employer appeared on

“the checks physically attached to the wage statements,” which the defendant contended made the check a “part of them.” The Court explained that its conclusion that the employer violated Labor Code § 226(a)(8) “was not altered by the fact that the full name appears on the checks. Indeed, in its appellate brief, Countrywide notes that ‘Countrywide Staffing Solutions Group’ appears on checks attached to wage statements...But Countrywide’s argument is based upon an erroneous premise. **The paycheck is not part of the wage statement.**”).

The wage statements issued to the Non-Exempt Aggrieved Employees, the Field Non-Exempt Aggrieved Employees, the Overtime Aggrieved Employees, and the Prevailing Wage Non-Exempt Aggrieved Employees, also improperly conflated the rates in effect such that they could not determine from their wage statements alone all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. This issue was particularly acute, but not limited to, instances where such aggrieved employees worked a prevailing wage and non-prevailing wage assignments during the same period. When this occurred, Defendant failed to make any distinction between the rates in effect and instead lumped together all “regular compensation” and “overtime compensation” instead of distinguishing between the rates. Thus, Defendant violated Labor Code § 226(a)(9).

Further, due to Defendant’s failure to pay Plaintiff and all aggrieved employees all minimum wages, overtime wages, meal period premiums, and rest period premiums, the wage statements issued by Defendant do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and all aggrieved employees.

Plaintiff and the aggrieved employees will prevail on their claim for PAGA penalties under Labor Code § 226(a). See *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”); *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the “requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section 226(a).”).

Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage

deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendant failed to provide Plaintiff and the other aggrieved employees with lawful itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant’s violations of Labor Code § 226(a).

DEFENDANT VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 204 AND 210

Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Defendant pays Plaintiff and all aggrieved employees on a weekly basis.

Due to Defendant’s failure to pay Plaintiff and all aggrieved employees all minimum wages, all overtime wages, meal period premiums, and rest period premiums, Defendant failed to timely pay Plaintiff and all aggrieved employees all wages owed within seven (7) days of the close of the payroll period in accordance with Labor Code § 204(d) on a regular and consistent basis.

Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above and Defendant’s failure to pay Plaintiff all aggrieved employees within seven (7) days of the close of the payroll period, the State of California is entitled to recover penalties under Labor Code § 210 through PAGA. *See Amaral v. Cintas Corp. No. 2, 163 Cal.App.4th 1157, 1209 (2008)* (affirming an award of Labor Code section 210 penalties under PAGA due to the employer’s failure to timely pay wages at the proper rate in accordance with a local wage ordinance).

DEFENDANT VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 201-203

Under Labor Code §§ 201-202, an employer must provide an employee wages at the time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

As described in detail above, Defendant failed to pay Plaintiff and other aggrieved employees whose employment concluded all wages owed, including but not limited to overtime wages, meal period premiums, and rest period premiums within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants' faulty policies described above, Plaintiff and all aggrieved employees left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

Separate and independent of the foregoing, Plaintiff and all Late Payment Aggrieved Employees left their employment with Defendants without having received compensation for sick pay at the correct rate throughout the duration of their employment. Labor Code § 246 requires employer to calculate sick leave pay based upon one of the following formulas:

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.
- (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.
- (3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

Lab. Code § 246.

Throughout Plaintiff and the aggrieved employees' employment, Defendants failed to include the incentive pay and other non-discretionary bonuses—including but not limited to quarterly bonuses, incentive pay, gainshare, and production bonuses—profit sharing pay, and wages earned at prevailing wage rates when calculating and paying sick pay. As a result when Plaintiff and the Sick Pay Late Pay Aggrieved Employees ended, they left their employment without having received compensation for all of their sick pay that they were owed under Labor Code § 246 and resulting in a violation of Labor Code §§ 201-203. As a result of Defendant's underpayment of sick pay, Plaintiff and the other Late Payment Aggrieved Employees experienced a violation of Labor Code §§ 201-202 upon separation from Defendant. *See Powell v. Walmart Inc.*, No. 3:20-cv-2412-BEN-LL, 2021 U.S. Dist. LEXIS 20777, at *6 (S.D. Cal. Feb. 2, 2021) (denying a motion to dismiss claims under Labor Code section 203 based upon the employer's alleged failure to include incentive pay when calculating and paying sick pay); *accord Flores v. Dart Container*

Corp., No. 2:19-cv-00083 WBS EFB, 2020 U.S. Dist. LEXIS 93524, at *7 (E.D. Cal. May 27, 2020).

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 1174 and 1174.5

Labor Code § 1174 provides that each employer shall keep “payroll records showing the hours worked daily by and the wages paid to...employees employed at...establishments.” An employer who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

As explained in detail above, Defendant failed to maintain accurate records of the hours worked by Plaintiff and the other aggrieved employees as required by Labor Code § 1174. Thus, Defendant violated Labor Code §§ 1174 and 1174.5.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE § 2802

Labor Code §2802 provides that “[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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Defendant required and/or expected the Field Non-Exempt Aggrieved Employees to use their cell phones in the normal course of their job duties. The Field Non-Exempt Aggrieved Employees were required to use their cell phones to record time entries.

Defendant’s conduct in requiring the Field Non-Exempt Aggrieved Employees to engage in the above described activities caused them to incur losses as a direct consequence of their duties in violation of Labor Code § 2802. Although the Field Non-Exempt Aggrieved Employees were regularly required to and/or ordered/directed to use their own personal communication devices for work purposes, the Field Non-Exempt Aggrieved Employees were not provided with any reimbursement for the use of their personal cell phones. California law prohibits an employer from failing to reimburse employees from losses incurred through the use of their own electronic devices even if the use would not cause the employee to exceed their data limit. *See Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App. 4th 113 (2014) (“We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”).

March 5, 2021
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CONCLUSION

Plaintiff submits this PAGA notice as required by Labor Code § 2699.3.

Very truly yours,

WINSTON LAW GROUP, P.C.

By: David Winston
DAVID S. WINSTON

Certified Mail #: 7020 1810 0000 4230 5179

Exhibit B

WINSTON LAW GROUP, P.C.

1180 S BEVERLY DR., SUITE 610 ♦ LOS ANGELES, CA 90035 ♦ (424) 288-4568

March 5, 2021

Via Online Filing with the LWDA & by Certified Mail to Defendant

Sierra West Finish, Inc.
678 Parkridge Ave
Norco, CA 92860

Sierra West Finish, Inc.
678 Parkridge Ave
Mission Viejo, CA 92691

Christal Richardson
754 N San Benito Ave
San Bernardino, CA 92410

Re: *Robert De La Hoya vs. Sierra West Finish, Inc. - California Labor Code § 2699
Penalties – Amended PAGA Notice, LWDA Case No. LWDA-CM-823768-21*

Gentlepersons:

This PAGA Notice is identical to the one sent earlier today except that it includes additional addresses because Defendant improperly identified a non-existent address as its address with the California Secretary of State.

As you know, this firm represents Robert De La Hoya (“Plaintiff” or “Mr. De La Hoya”) and a proposed group of current and former employees working for Sierra West Finish, Inc. and/or any businesses or entities doing business as Sierra West Finish, Inc. (“Defendant” or “Sierra West Finish”) in California for violations of California Labor Code §§ 201, 202, 203 (underpayment of sick pay wages, derivative minimum wages, overtime wages, and meal/rest period premiums), 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1197, 1197.1, 1198, and 2802 as well as IWC Wage Order Nos. 1-2001 and 16-2001.

Mr. De La Hoya wishes to bring a representative action on behalf of the State of California based upon alleged improper acts committed against him and several groups of aggrieved employees defined as:

- (1) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt, hourly employee for one or more pay periods from one (1) year prior to the date of this letter and continuing into the present (“Non-Exempt Aggrieved Employees”);

- (2) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt, hourly employee who worked in the field (aka away from the main facility) during at least part of one or more pay periods from one (1) year prior to the date of this letter and continuing into the present (“Field Non-Exempt Aggrieved Employees”);
- (3) all individuals who were employed by Sierra West Finish, Inc. as an employee for one or more pay periods from one (1) year prior to the date of this letter and continuing into the present (“Wage Statement Aggrieved Employee”);
- (4) all individuals who were employed by Sierra West Finish, Inc or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from one (1) year prior to the date of this letter and continuing into the present. (“Non-Exempt Overtime Aggrieved Employees”);
- (5) all individuals who were employed by Sierra West Finish, Inc or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period where they also worked on a prevailing wage job from one (1) year prior to the date of this letter and continuing into the present. (“Prevailing Wage Non-Exempt Overtime Aggrieved Employees”);
- (6) all individuals who were employed by Sierra West Finish, Inc or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and received a non-discretionary bonus—including, but not limited to quarterly bonuses and or production bonuses—and/or profit sharing bonuses from one (1) year prior to the date of this letter and continuing into the present. (“Incentive Pay Non-Exempt Overtime Aggrieved Employees”);

Collectively, aggrieved employee groups four (4), five (5), and six (6) may be referred to as the “Overtime Aggrieved Employees.”

- (7) all individuals who were employed by Sierra West Finish, Inc. or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt hourly employee or other similar position from one (1) year prior to the date of this letter and continuing into the present. (“Meal Period Aggrieved Employees”);

- (8) all individuals who were employed by Sierra West Finish, Inc. or its predecessor, merged or related entities in California who worked one or more shifts of more than ten (10) hours as a non-exempt hourly employee or other similar position from one (1) year prior to the date of this letter and continuing into the present. (“Second Meal Period Aggrieved Employees”);

Collectively, aggrieved employee groups seven (7) and eight (8) may be referred to as the “Meal Period Aggrieved Employees.”

- (9) all individuals who were employed by Sierra West Finish, Inc., or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from one year prior to the date of this letter and continuing into the present. (“Rest Period Aggrieved Employee”);

- (10) all individuals who were employed by BASF Corporation or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between one (1) year prior to the submission of this letter and continuing into the present; (“General Late Payment Aggrieved Employee”);

- (11) all individuals who were employed by BASF Corporation or its predecessor, merged or related entities for one or more pay periods in California, who received sick pay, and whose employment concluded at any time between one (1) year prior to the submission of this letter and continuing into the present; (“Sick Pay Late Payment Aggrieved Employee”);

Collectively, aggrieved employee groups ten (10) and eleven (11) may be referred to as the “Late Payment Aggrieved Employees.”

These groups, except for the Wage Statement Aggrieved Employees, may all collectively be referred to herein as aggrieved employees and/or all aggrieved employees where appropriate. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* We herein set forth some of the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client

and all aggrieved employees.¹

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 1194, 1197, 1197.1, 1198 AND IWC WAGE ORDER NOS. 1-2001 AND 16-2001

Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 1-2001 and 16-2001 obligate employers to pay each employee minimum wages for all hours worked.

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

In addition, Labor Code § 1198 provides that “the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Defendant adopted an automatic deduction policy and practice whereby it automatically deducted thirty (30) minutes’ worth of an employee’s pay regardless of whether or not the employee took a meal period and/or the full amount of their meal period. While not limited to Plaintiff and the Field Aggrieved Employees, such conduct regularly and consistently occurred when Plaintiff and the other aggrieved employees worked in the field (aka away from the company’s premises). As a result of Defendant’s policy and practice of automatically deducting thirty (30) minutes’ worth of pay regardless of whether or not the aggrieved employee took a meal period and/or the length of the meal period, Defendant regularly failed to pay Plaintiff and all aggrieved employees for all hours worked in violation of Labor Code § 1194 and 1197 including hours that qualified as overtime hours pursuant to IWC Wage Order Nos. 1-2001 and 16-2001 and Labor Code § 510.

Defendant also frequently required and/or suffered and permitted or expected Plaintiff and the other aggrieved employees to perform work-off-the-clock including responding to inquiries

¹ See *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. Jul. 8, 2011) 796 F. Supp. 2d 1246, 1261; *Moua v. Int’l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) No. 5:10-CV-01070 EJD, 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *4.

before the start of their shifts. Employees who clocked in early when they were asked such inquiries received write-ups from Defendant on occasion for merely trying to get paid for the work that they performed. Notably, Defendant and its supervisory employees knew that it was suffering and permitting and requiring Plaintiff and the other aggrieved employees to perform work off-the-clock and without compensation and/or sufficient compensation. Defendant is legally responsible for ensuring the accuracy of its time records and cannot rely upon time records that it knew were false and/or statements by employees as the California Supreme Court explained. *Donohue v. Amn Servs.*, No. S253677, 2021 Cal. LEXIS 1294, at *45 (Feb. 25, 2021) (“It is the employer’s duty to maintain accurate time records” and that the employer could not rely upon certifications from employees where the information provided to the employees was inaccurate and/or incomplete); *accord Feaver v. Kaiser Found. Health Plan, Inc.*, No. 15-cv-00890-EMC, 2016 U.S. Dist. LEXIS 9778, at *8 (N.D. Cal. Jan. 27, 2016) (conditionally certifying a class under the Fair Labor Standards Act where the employees could show that they received and/or sent emails off-the-clock despite the fact that the employer had a policy requiring all time to be recorded.); *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018). As such Defendant violated Labor Code §§ 1194, 1197, 1198 and IWC Wage Order Nos. 1-2001 and 16-2001.

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendant failed to compensate Plaintiff and all aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil penalties for violations of Labor Code § 1197.1.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 510, 558, 1197, 1197.1, and 1198 AND WAGE ORDER NO. 5-2001

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. In accordance with Labor Code § 1194, Plaintiff and the other aggrieved employees could not agree to work for a lesser wage.

In addition, Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful.

Similarly, Labor Code § 1198 provides that “the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

When calculating an employee's regular rate, California and federal courts, with limited exceptions, look to the federal Fair Labor Standards Act (“FLSA”). *Huntington Mem'l Hosp. v. Sup. Ct.*, 131 Cal. App. 4th 893, 902 (2005).²³ Under the FLSA, the regular rate of pay includes all forms of remuneration. *See* 29 U.S.C. § 207(e); *Huntington Mem'l*, 131 Cal. App. 4th at 90 (holding that shift differential must be included in the regular rate when calculating and paying overtime). “Under [29 C.F.R.] § 778.224(a), a payment may **not** be excluded from the regular rate of pay pursuant to § 207(e)(2) if it is generally understood as compensation for work, even though the payment is not tied to specific hours worked by an employee.” *Id.* (emphasis added). The Ninth Circuit recently summarized in *Flores v. City of San Gabriel*, 824 F.3d 890, 895 (9th Cir. 2016) that “the question of whether a particular payment falls within the ‘other similar payments’ clause does not turn on whether the payment is tied to an hourly wage, but instead turns on whether the payment is a form of compensation for performing work.” *Id.* Nor as the Ninth Circuit explained need compensation paid be measured by the number of hours worked. *Id.* (explaining “that the key point

2 *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1129 (C.D. Cal. 2011) (using FLSA standards to determine the regular rate of pay in a Cal. Labor Code § 510 overtime claim); *Advanced—Tech Sec. Servs., Inc. v. Sup. Ct.*, 163 Cal. App. 4th 700, 707 (2008). The DLSE routinely “takes the position that the failure of the [IWC] to define the term ‘regular rate’ indicates the Commission's intent that in determining what payments are to be included in or excluded from the calculation of the regular rate of pay, California will adhere to the standards adopted by the U.S.” (*Huntington Mem'l*, *supra*, 131 Cal. App. 4th at p. 902-903; *Advanced—Tech*, *supra*, 163 Cal.App.4th at p. 707; *see also*, Division of Labor Standards Enforcement, Enforcement and Interpretations Manual, § 49.1.2 [noting “in not defining the term ‘regular rate of pay’, the Industrial Welfare Commission has manifest its intent to adopt the definition of regular rate of pay set out in the Fair Labor Standards Act.”].) In addition, numerous DLSE opinion letters take the position California will adhere to the standards adopted by the U.S. Dept. of Labor when determining an employee’s regular rate. (*See also*, Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Calculation of Regular Rate of Pay (Jan. 29, 2003) pp. 2, fn. 1, 3, Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Calculation of Regular Rate of Pay in Cases Involving Piece Rate (Feb. 22, 1993) p. 2 & fn. 2; Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Explicit Wage Agreements (Jan 29, 1992) p. 1, Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Calculation of Regular Rate of Pay (Mar. 6, 1991) p. 1.)

3 *Cf. Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542, 568 (2018) (explaining that for the purposes of calculating the per hour value of an employer’s flat sum attendance bonuses that California, unlike the FLSA, uses the non-overtime hours worked during the pay period as the divisor instead of all hours worked during the pay period).

is whether payment is ‘compensation for work’” and that “even if payments to employees are not measured by the number of hours spent at work, that fact does not qualify for them for exclusion under section 207(e)(2).” *Id.* (citing *Local 246 Utility Workers Union of America v. Southern California Edison, Co.*, 83 F.3d 295).

Here, Defendant paid Plaintiff and the other aggrieved employees’ with non-discretionary bonuses and incentive pay—including but not limited to quarterly bonuses and/or production or gainshare bonuses—that it both failed to include when calculating and paying overtime wages and failed to provide retroactive payments to cover the overtime earned during the accrual period in violation of Labor Code section 510. Defendant also failed to make retroactive overtime payments to Plaintiff and the other aggrieved employees based upon the additional incentive pay/non-discretionary bonuses earned by all aggrieved employees—such as, but not limited to the quarterly bonuses—despite the fact that they worked overtime hours during at least some of the periods where such bonuses were earned.

Defendant also failed to include additional compensation other than Plaintiff and the other aggrieved employees’ base rate, when calculating and paying overtime. As a result of Defendant’s failure to include such compensation when calculating the regular rate used for overtime purposes and paying overtime wages, Defendant failed to pay Plaintiff and all aggrieved employees overtime wages at one and one-half times their regular rate.

In addition, Defendant adopted an automatic deduction policy and practice whereby it automatically deducted thirty (30) minutes’ worth of an employee’s pay regardless of whether or not the employee took a meal period and/or the full amount of their meal period. While not limited to Plaintiff and the Field Aggrieved Employees such conduct regularly and consistently occurred when Plaintiff and the other aggrieved employees worked in the field (aka away from the company’s premises). As a result of Defendant’s policy and practice of automatically deducting thirty (30) minutes’ worth of pay regardless of whether or not the aggrieved employee took a meal period and/or the length of the meal period, Defendant regularly failed to pay Plaintiff and all aggrieved employees for all hours worked in violation of Labor Code § 1194 and 1197 including hours that qualified as overtime hours pursuant to IWC Wage Order Nos. 1-2001 and 16-2001 and Labor Code § 510.

Moreover, Defendant also frequently required and/or suffered and permitted or expected Plaintiff and the other aggrieved employees to perform work-off-the-clock including responding to inquiries before the start of their shifts. This practice included regular hours, but also led to the misclassification of some overtime hours to be improperly classified as regular hours. Employees who clocked in early when they were asked such inquiries received write-ups from Defendant on

occasion for merely trying to get paid for the work that they performed. Notably, Defendant and its supervisory employees knew that it was suffering and permitting and requiring Plaintiff and the other aggrieved employees to perform work off-the-clock and without compensation and/or sufficient compensation including for overtime hours. Defendant is legally responsible for ensuring the accuracy of its time records and cannot rely upon time records that it knew were false and/or statements by employees as the California Supreme Court explained. *Donohue v. Amn Servs.*, No. S253677, 2021 Cal. LEXIS 1294, at *45 (Feb. 25, 2021) (“It is the employer’s duty to maintain accurate time records” and that the employer could not rely upon certifications from employees where the information provided to the employees was inaccurate and/or incomplete); *accord Feaver v. Kaiser Found. Health Plan, Inc.*, No. 15-cv-00890-EMC, 2016 U.S. Dist. LEXIS 9778, at *8 (N.D. Cal. Jan. 27, 2016) (conditionally certifying a class under the Fair Labor Standards Act where the employees could show that they received and/or sent emails off-the-clock despite the fact that the employer had a policy requiring all time to be recorded.); *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018). As such Defendant violated Labor Code §§ 510, 558, and 1198 as well as IWC Wage Order Nos. 1-2001 and 16-2001.

Based upon the foregoing, Defendant violated Labor Code § 510 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experience a violation of Labor Code § 510 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendant failed to compensate Plaintiff and all aggrieved employees for all overtime wages at the

proper rates. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil penalties for violations of Labor Code § 1197.1.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 226.7, 512, 558, and 1198 AS WELL AS IWC WAGE ORDER NOS. 1-2001, 4-2001 AND 9-2001

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period ***within*** the first five (5) hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a second meal period of not less than thirty (30) minutes. Moreover, the second meal period may not be waived if the total hours worked is more than twelve (12) hours.

Similarly, IWC Wage Order Nos. 1-2001, 4-2001, and 9-2001 prohibit an employer from “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 1-2001, 4-2001, and 9-2001 further obligate employers to provide an employee to “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. Labor Code section 1198 prohibits an employer from requiring an employee to work beyond the “standard conditions of labor fixed by the commission...or under conditions of labor prohibited by the order.”

Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004, 1033 (2012) [emphasis added].

Following *Brinker*, the Courts of Appeal have confirmed that liability for meal period violations arise when an employer adopts a uniform policy that fails to provide off-duty breaks. For example, in *Faulkinbury vs. Boyd & Associates, Inc.*, the California Court of Appeal explained: “the employer’s liability arises by adopting a uniform policy that violates the wage and hour laws.

Whether or not the employee was able to take the required break goes to damages” *Ibid.* (citations omitted); *see also Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 728 (2013).

In *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015), the California Court of Appeal emphatically held that a meal period policy must specifically advise employees of the proper timing of meal periods. In *Alberts*, the meal break policy stated employees are entitled to “an unpaid thirty-minute break for a meal period, approximately half way between the beginning and ending of the employee’s shift.” *Id.* The court, in accordance with *Brinker*, found the defendant’s meal break policy violated California law because it did not specify “that a meal break be provided during the first five hours of an employee’s shift.” *Id.* (citing *Brinker*, *supra*, 53 Cal.4th at 1048–1049.⁴ An employee who is not advised of their to receive proper meal periods cannot waive their meal period. *Brinker* 53 Cal. 4th at 1033 (“No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.”); *Bradley*, 211 Cal.App.4th at 1151 (“an employer is obligated to provide the rest and meal breaks, and if an employer does not do so, the fact that an employee did not take the break cannot reasonably be considered a waiver.”). Similarly, recently in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018), the California Court of Appeal affirmed a judgment in favor of employees who had signed first meal period waivers and did not take meal periods by the 5th hour when they were scheduled to work less than six (6) hours, but ultimately worked 6.01 hours or more.

Here, Defendant failed to authorize and permit Plaintiff and the other aggrieved employees to receive lawful meal periods, failed to advise them of their right to such meal periods, failed to authorize and permit them to take timely first meal periods within the first five hours of their shift, and failed to authorize and permit Plaintiff and the other aggrieved employees to take second meal periods when they worked shifts in excess of ten (10) hours in a day. Defendant’s meal period policies and practices disincentivized and discouraged Plaintiff and the other aggrieved employees from taking timely first meal periods within the first five (5) hours of their shift. This includes, but is not limited to, requiring Plaintiff and the other aggrieved employees to take their lunch at noon regardless of the start time of their shift while working the day shift. However, Defendant also

⁴ Assuming *arguendo* Defendants had a compliant meal period—which it did not—even a formal written policy cannot save an employer where an employer or its supervisory employees interfered with meal periods or created a culture which makes taking a 30-minute break during the day infeasible. (*Chand v. Burlington Coat Factory of California, LLC*, No. CV F 13-2008 LJO JLT, 2014 WL 726837, at *5 (E.D. Cal. Feb. 24, 2014) (“The wage orders and governing statute do not countenance an employer’s exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.”) (citing *Brinker*, 53 Cal.4th at 1040); accord *Boyd v. Bank of Am. Corp.* C.D. Cal. May 6, 2015) No. SA CV 13-0056-DOC, 2015 WL 3650207, at *31; *Ricaldai v. U.S. Investigations Servs. LLC* (C.D. Cal. 2012) 878 F. Supp. 2d 1038, 1045; *Campbell v. Vitran Express Inc.* (C.D. Cal. Nov. 12, 2015) No. CV 11-5029 RGK (SHX), 2015 WL 7176110, at *8.)

failed to authorize and permit Plaintiff and the other aggrieved employees to take timely first meal periods when they worked evening shifts. Defendant's understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods due to a lack of sufficient coverage.

Defendant also failed to pay Plaintiff and the other meal period premiums for each workday that the employees did not receive a compliant meal period and/or at the proper rate. Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC").

Similarly, IWC Wage Order Nos. 1-2001, 4-2001, and 9-2001 prohibit an employer from "employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order Nos. 1-2001, 4-2001, and 9-2001 further obligate employers to provide an employee to "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. Accordingly, for each day that Plaintiff and all aggrieved employees did not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and IWC Wage Order Nos. 1-2001, 4-2001, and 9-2001. Unfortunately, Plaintiff and the Meal Period Aggrieved Employees were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant meal period in violation of Labor Code § 226.7 and IWC Wage Order No. Nos. 1-2001, 4-2001, and 9-2001.

Based upon the foregoing, Defendant violated Labor Code §§ 226.7, 512, 558, and 1198 as well as IWC Wage Order Nos. 1-2001, 4-2001 and 9-2001 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experience a violation of Labor Code §§ 226.7 and 512 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers "who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee." For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 226.7, 512, 558, and 1198 AS WELL AS IWC WAGE ORDER NOS. 1-2001 AND 16-2001

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period ***within*** the first five (5) hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a second meal period of not less than thirty (30) minutes. Moreover, the second meal period may not be waived if the total hours worked is more than twelve (12) hours.

Similarly, IWC Wage Order Nos. 1-2001 and 16-2001 prohibit an employer from “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 5-2001 further obligates employers to provide an employee to “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. Labor Code section 1198 prohibits an employer from requiring an employee to work beyond the “standard conditions of labor fixed by the commission...or under conditions of labor prohibited by the order.”

Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004, 1033 (2012) [emphasis added].

Following *Brinker*, the Courts of Appeal have confirmed that liability for meal period violations arise when an employer adopts a uniform policy that fails to provide off-duty breaks. For example, in *Faulkinbury vs. Boyd & Associates, Inc.*, the California Court of Appeal explained: “the employer's liability arises by adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was able to take the required break goes to damages” *Ibid.* (citations omitted); see also *Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 728 (2013).

In *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015), the California Court of Appeal emphatically held that a meal period policy must specifically advise employees of the proper timing of meal periods. In *Alberts*, the meal break policy stated employees are entitled to “an unpaid thirty-minute break for a meal period, approximately half way between the beginning and ending of the employee's shift.” *Id.* The court, in accordance with *Brinker*, found the defendant’s meal break policy violated California law because it did not specify “that a meal break be provided during the first five hours of an employee’s shift.” *Id.* (citing *Brinker*, *supra*, 53 Cal.4th at 1048–1049.⁵ The California Supreme Court recently held in *Donohue v. Amn Servs.*, No. S253677, 2021 Cal. LEXIS 1294, at *30 (Feb. 25, 2021) that “time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations.” In order to defeat this presumption, an employer must show not only that it advised employees “of his or her legal right to take a meal period and has knowingly and voluntarily decided not to take the meal period.” *Id.* at *33 This presumption applies not only to missed meal periods, but also “to records showing short and delayed meal periods as well.” *Id.* at *34.

Moreover, an employee who is not advised of their right to receive proper meal periods cannot waive their meal period. *Brinker* 53 Cal. 4th at 1033 (“No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.”); *Bradley*, 211 Cal.App.4th at 1151 (“an employer is obligated to provide the rest and meal breaks, and if an employer does not do so, the fact that an employee did not take the break cannot reasonably be considered a waiver.”). Similarly, recently in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018), the California Court of Appeal affirmed a judgment in favor of employees who had signed first meal period waivers and did not take meal periods by the 5th hour when they were scheduled to work less than six (6) hours, but ultimately worked 6.01 hours or more.

Here, Defendant failed to authorize and permit Plaintiff and the other aggrieved employees to receive lawful meal periods, failed to advise them of their right to such meal periods, failed to authorize and permit them to take timely first meal periods, and failed to authorize and permit second meal periods when Plaintiff and the other aggrieved employees worked more than ten (10) hours in a day. As a result of Defendant’s failure to authorize and permit meal periods, Defendant

⁵ Assuming *arguendo* Defendants had a compliant meal period—which it did not—even a formal written policy cannot save an employer where an employer or its supervisory employees interfered with meal periods or created a culture which makes taking a 30-minute break during the day infeasible. (*Chand v. Burlington Coat Factory of California, LLC*, No. CV F 13-2008 LJO JLT, 2014 WL 726837, at *5 (E.D. Cal. Feb. 24, 2014) (“The wage orders and governing statute do not countenance an employer's exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.”) (citing *Brinker*, 53 Cal.4th at 1040); accord *Boyd v. Bank of Am. Corp.* C.D. Cal. May 6, 2015) No. SA CV 13-0056-DOC, 2015 WL 3650207, at *31; *Ricaldai v. U.S. Investigations Servs. LLC* (C.D. Cal. 2012) 878 F. Supp. 2d 1038, 1045; *Campbell v. Vitran Express Inc.* (C.D. Cal. Nov. 12, 2015) No. CV 11-5029 RGK (SHX), 2015 WL 7176110, at *8.)

regularly and consistently required Plaintiff and the other aggrieved employees to take meal periods later than the fifth hour of work in violation of IWC Wage Order Nos. 1-2001 and 16-2001 as well as Labor Code §§ 226.7 and 512. For instance, every single meal period in the embedded time sheets shows a late meal period:

6/22/2020	Work		5:51 AM	11:05 AM	11:35 AM	1:52 PM	7.52	0.00		7.52	0.50
6/23/2020	Work		5:49 AM	11:10 AM	11:40 AM	3:11 PM	8.00	0.87		8.87	0.50
6/24/2020	Work		5:50 AM	11:05 AM	11:35 AM	2:42 PM	8.00	0.37		8.37	0.50
6/25/2020	Work		5:51 AM	11:05 AM	11:35 AM	2:24 PM	8.00	0.05		8.05	0.50
6/26/2020	Work		5:49 AM	11:05 AM	11:35 AM	3:24 PM	8.00	1.08		9.08	0.50
6/27/2020											

Date	Type	Scheduled	Work Start	Lunch In	Lunch Out	Work End	Reg	OT	NON-WKD	Total Paid HRS	Unpaid
7/05/2020											
7/06/2020	Work		5:52 AM	11:05 AM	11:35 AM	2:29 PM	8.00	0.12		8.12	0.50
7/07/2020	Work		5:46 AM	11:05 AM	11:35 AM	2:58 PM	8.00	0.70		8.70	0.50
7/08/2020	Work		5:49 AM	11:05 AM	11:35 AM	3:25 PM	8.00	1.10		9.10	0.50
7/09/2020	Work		5:50 AM	11:00 AM	11:30 AM	2:31 PM	8.00	0.18		8.18	0.50
7/10/2020	Work		5:50 AM	11:00 AM	11:35 AM	2:47 PM	8.00	0.37		8.37	0.58
7/11/2020											

Week Begin: 07/19/2020

Employee: De La Hoya, Robert			ID: DELA3470								
Date	Type	Scheduled	Work Start	Lunch In	Lunch Out	Work End	Reg	OT	NON-WKD	Total Paid HRS	Unpaid
7/19/2020											
7/20/2020											
7/21/2020	Work		5:51 AM	11:05 AM	11:35 AM	3:26 PM	8.00	1.08		9.08	0.50
7/22/2020	Work		6:00 AM	11:35 AM	12:05 PM	2:41 PM	8.00	0.18		8.18	0.50
7/23/2020	Work		5:52 AM	11:05 AM	11:35 AM	3:02 PM	8.00	0.67		8.67	0.50
7/24/2020	Work		5:52 AM	11:05 AM	11:35 AM	12:33 PM	6.18	0.00		6.18	0.50
7/25/2020											
Break Down							Reg	OT	NON-WKD	Total Paid HRS	Unpaid
							30.18	1.93	0.00	32.12	2.00

Week Begin: 07/26/2020

Employee: De La Hoya, Robert			ID: DELA3470								
Date	Type	Scheduled	Work Start	Lunch In	Lunch Out	Work End	Reg	OT	NON-WKD	Total Paid HRS	Unpaid
7/26/2020											
7/27/2020	Work		5:53 AM	11:05 AM	11:35 AM	2:31 PM	8.00	0.13		8.13	0.50
7/28/2020	Work		5:52 AM	11:05 AM	11:35 AM	2:10 PM	7.80	0.00		7.80	0.50
7/29/2020	Work		5:51 AM	11:00 AM	11:35 AM	2:34 PM	8.00	0.13		8.13	0.58
7/30/2020	Work		5:53 AM	11:35 AM	12:05 PM	2:20 PM	7.95	0.00		7.95	0.50
7/31/2020	Work		5:51 AM	10:55 AM	11:25 AM	2:40 PM	8.00	0.32		8.32	0.50
8/01/2020											
Break Down							Reg	OT	NON-WKD	Total Paid HRS	Unpaid
							39.75	0.58	0.00	40.33	2.58

Week Begin: 08/02/2020

Employee: De La Hoya, Robert ID: DELA3470											
Date	Type	Scheduled	Work Start	Lunch In	Lunch Out	Work End	Reg	OT	NON-WKD	Total Paid HRS	Unpaid
8/02/2020											
8/03/2020	Work		5:48 AM	11:05 AM	11:35 AM	2:26 PM	8.00	0.13		8.13	0.50
8/04/2020	Work		5:54 AM	11:00 AM	11:35 AM	2:19 PM	7.83	0.00		7.83	0.58
8/05/2020	Work		5:49 AM	11:45 AM	12:20 PM	3:05 PM	8.00	0.68		8.68	0.58
8/06/2020	Work		5:52 AM	11:05 AM	11:35 AM	2:03 PM	7.68	0.00		7.68	0.50
8/07/2020		NO SHOW									
8/08/2020											
Break Down							Reg	OT	NON-WKD	Total Paid HRS	Unpaid
							31.52	0.82	0.00	32.33	2.17

Employee: De La Hoya, Robert ID: DELA3470											
Date	Type	Scheduled	Work Start	Lunch In	Lunch Out	Work End	Reg	OT	NON-WKD	Total Paid HRS	Unpaid
8/09/2020											
8/10/2020		NO SHOW									
8/11/2020		NO SHOW									
8/12/2020	Work		5:50 AM	11:00 AM	11:30 AM	2:45 PM	8.00	0.42		8.42	0.50
8/13/2020	Work		5:50 AM	11:00 AM	11:30 AM	3:45 PM	8.00	1.42		9.42	0.50
8/14/2020		NO SHOW									
8/15/2020											

Defendant engaged in the same conduct with respect to Plaintiff, the other aggrieved employees, all Non-Exempt Aggrieved Employees, all Field Aggrieved Employees, and all First Meal Period Aggrieved Employees. The California Supreme Court conclusively held in *Donohue v. AMN Servs., LLC*, No. S253677, 2021 Cal. LEXIS 1294, at *30 (Feb. 25, 2021) that “time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations at summary judgment.”). The California Supreme Court went onto explain that—as with Plaintiff and the other aggrieved employees time records here—“the presumption applies to records showing short and delayed meal periods as well.” *Id.* at *34.

Defendant’s meal period policies and practices also disincentivized and discouraged Plaintiff and the other aggrieved employees from taking timely first meal periods within the first five (5) hours of their shift, from receiving meal periods, and/or receiving second meal periods on shifts where they worked more than ten (10) hours per day. Defendant’s understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods and forgo meal periods due to a lack of sufficient coverage. This includes instances when Plaintiff and the other aggrieved employees worked on Defendant’s premises and in the field. When aggrieved employees worked in the field, it often was not possible for them to take lawful and/or timely meal periods due to the time constraints associated with deliveries.

As discussed in detail above, Defendant adopted an automatic deduction policy and practice whereby it automatically deducted thirty (30) minutes’ worth of an employee’s pay

regardless of whether or not the employee took a meal period and/or the full amount of their meal period instead of paying them for the time worked and/or providing them with a meal period premium.

Defendant also failed to pay Plaintiff and the other meal period premiums for each workday that the employees did not receive a compliant meal period and/or at the proper rate. Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). In fact, Defendant failed to provide Plaintiff with a single meal period premium for any of the above identified meal period violations. Defendant engaged in the same and/or similar practices with respect to Plaintiff and all aggrieved employees.

However, even when Defendant paid Plaintiff and the other aggrieved employees meal period premiums, Defendant still violated Labor Code §§ 226.7, 512, and 1198 by failing to comply with California’s meal period laws. *See e.g. Kim v. Reins International California, Inc.*, 9 Cal.5th 73, 84 (2020) (“employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a section 226.7 violation.’”) (*quoting Kirby v. Immoos Fire Protection, Inc.*, 53 Cal.4th 1244, 1256 (2012)). Thus, Defendant is still liable for PAGA penalties even if it paid them a meal period premium because Plaintiff and the aggrieved employees were regularly not authorized and permitted to take a timely first meal period, an uninterrupted meal period, discouraged and/or impeded duty-free meal periods by continuing to exercise control over employees through their security and bag check policies and/or provide lawful second meal periods.

Based upon the foregoing, Defendant violated Labor Code §§ 226.7, 512, 558, and 1198 as well as IWC Wage Order Nos. 1-2001 and 16-2001 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experience a violation of Labor Code §§ 226.7 and 512 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor

Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE § 226.7 AND IWC WAGE ORDER Nos. 1-2001 and 5-2001

Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage Order Nos. 1-2001 and 16-2001, an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.

The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004, 1033 (2012) (emphasis added).

Pursuant to Labor Code § 226.7 and IWC Wage Order Nos. 1-2001 and 16-2001, Defendant failed to provide Plaintiff and all Rest Period Aggrieved Employees with rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. Instead, Defendant regularly and consistently required Field Aggrieved Employees to forgo rest periods and/or made impossible for them to complete their assignments and deliveries and also take a rest period.

Based upon the foregoing, Defendant violated Labor Code § 226.7 and 1198 as well as IWC Wage Order No. 16-2001 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experienced a violation of Labor Code § 226.7 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section

shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 226(a), 226(e), and 226.3

As to Plaintiff and all aggrieved employees, Defendant also failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, 8, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

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

Similarly, Labor Code § 226(e) provides:

- (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.
- (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.
- (B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:
 - (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of

subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682,

The itemized wage statements issued to Plaintiff and the aggrieved employees, including all Itemized Wage Statement Aggrieved Employees, did not include the address of the legal entity that is the employer on the wage statements issued to Plaintiff and the other aggrieved employees in violation of Labor Code § 226(a)(8) and (e). Here, the wage statements issued to Plaintiff and the Wage Statement Aggrieved Employees do not include the address of the legal entity that is the employer. Some, but not necessarily all, contained the City, State, and Zipcode of Defendant, but completely omitted any reference to the street number or name such that it was not possible to determine from the wage statement alone Defendant's address. Nor does it matter whether or not such information appeared, if at all, on the checks attached to the wage statements. *See Noori v. Countrywide Payroll & HR Solutions, Inc.*, 43 Cal.App.5th 957, 966 (2019) (holding that an employer violated Labor Code § 226(a)(8) even though the correct name of the employer appeared on "the checks physically attached to the wage statements," which the defendant contended made the check a "part of them." The Court explained that its conclusion that the employer violated Labor Code § 226(a)(8) "was not altered by the fact that the full name appears on the checks. Indeed, in its appellate brief, Countrywide notes that 'Countrywide Staffing Solutions Group' appears on checks attached to wage statements...But Countrywide's argument is based upon an erroneous premise. **The paycheck is not part of the wage statement.**").

The wage statements issued to the Non-Exempt Aggrieved Employees, the Field Non-Exempt Aggrieved Employees, the Overtime Aggrieved Employees, and the Prevailing Wage Non-Exempt Aggrieved Employees, also improperly conflated the rates in effect such that they could not determine from their wage statements alone all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. This issue was particularly acute, but not limited to, instances where such aggrieved employees worked a prevailing wage and non-prevailing wage assignments during the same period. When this occurred, Defendant failed to make any distinction between the rates in effect and instead lumped together all "regular compensation" and "overtime compensation" instead of distinguishing between the rates. Thus, Defendant violated Labor Code § 226(a)(9).

Further, due to Defendant's failure to pay Plaintiff and all aggrieved employees all minimum wages, overtime wages, meal period premiums, and rest period premiums, the wage

statements issued by Defendant do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and all aggrieved employees.

Plaintiff and the aggrieved employees will prevail on their claim for PAGA penalties under Labor Code § 226(a). *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”); *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the “requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section 226(a).”).

Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendant failed to provide Plaintiff and the other aggrieved employees with lawful itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant’s violations of Labor Code § 226(a).

DEFENDANT VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 204 AND 210

Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Defendant pays Plaintiff and all aggrieved employees on a weekly basis.

Due to Defendant’s failure to pay Plaintiff and all aggrieved employees all minimum wages, all overtime wages, meal period premiums, and rest period premiums, Defendant failed to timely pay Plaintiff and all aggrieved employees all wages owed within seven (7) days of the close of the payroll period in accordance with Labor Code § 204(d) on a regular and consistent basis.

Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial

violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above and Defendant’s failure to pay Plaintiff all aggrieved employees within seven (7) days of the close of the payroll period, the State of California is entitled to recover penalties under Labor Code § 210 through PAGA. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of Labor Code section 210 penalties under PAGA due to the employer’s failure to timely pay wages at the proper rate in accordance with a local wage ordinance).

DEFENDANT VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 201-203

Under Labor Code §§ 201-202, an employer must provide an employee wages at the time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

As described in detail above, Defendant failed to pay Plaintiff and other aggrieved employees whose employment concluded all wages owed, including but not limited to overtime wages, meal period premiums, and rest period premiums within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants’ faulty policies described above, Plaintiff and all aggrieved employees left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

Separate and independent of the foregoing, Plaintiff and all Late Payment Aggrieved Employees left their employment with Defendants without having received compensation for sick pay at the correct rate throughout the duration of their employment. Labor Code § 246 requires employer to calculate sick leave pay based upon one of the following formulas:

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.
- (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

Lab. Code § 246.

Throughout Plaintiff and the aggrieved employees' employment, Defendants failed to include the incentive pay and other non-discretionary bonuses—including but not limited to quarterly bonuses, incentive pay, gainshare, and production bonuses—profit sharing pay, and wages earned at prevailing wage rates when calculating and paying sick pay. As a result when Plaintiff and the Sick Pay Late Pay Aggrieved Employees ended, they left their employment without having received compensation for all of their sick pay that they were owed under Labor Code § 246 and resulting in a violation of Labor Code §§ 201-203. As a result of Defendant's underpayment of sick pay, Plaintiff and the other Late Payment Aggrieved Employees experienced a violation of Labor Code §§ 201-202 upon separation from Defendant. *See Powell v. Walmart Inc.*, No. 3:20-cv-2412-BEN-LL, 2021 U.S. Dist. LEXIS 20777, at *6 (S.D. Cal. Feb. 2, 2021) (denying a motion to dismiss claims under Labor Code section 203 based upon the employer's alleged failure to include incentive pay when calculating and paying sick pay); *accord Flores v. Dart Container Corp.*, No. 2:19-cv-00083 WBS EFB, 2020 U.S. Dist. LEXIS 93524, at *7 (E.D. Cal. May 27, 2020).

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 1174 and 1174.5

Labor Code § 1174 provides that each employer shall keep “payroll records showing the hours worked daily by and the wages paid to...employees employed at...establishments.” An employer who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

As explained in detail above, Defendant failed to maintain accurate records of the hours worked by Plaintiff and the other aggrieved employees as required by Labor Code § 1174. Thus, Defendant violated Labor Code §§ 1174 and 1174.5.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE § 2802

Labor Code §2802 provides that “[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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Defendant required and/or expected the Field Non-Exempt Aggrieved Employees to use their cell phones in the normal course of their job duties. The Field Non-Exempt Aggrieved Employees were required to use their cell phones to record time entries.

Defendant's conduct in requiring the Field Non-Exempt Aggrieved Employees to engage in the above described activities caused them to incur losses as a direct consequence of their duties in violation of Labor Code § 2802. Although the Field Non-Exempt Aggrieved Employees were regularly required to and/or ordered/directed to use their own personal communication devices for work purposes, the Field Non-Exempt Aggrieved Employees were not provided with any reimbursement for the use of their personal cell phones. California law prohibits an employer from failing to reimburse employees from losses incurred through the use of their own electronic devices even if the use would not cause the employee to exceed their data limit. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 113 (2014) ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.").

CONCLUSION

Plaintiff submits this PAGA notice as required by Labor Code § 2699.3.

Very truly yours,

WINSTON LAW GROUP, P.C.

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