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Case #21CV378215
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

MONICA MELENDEZ, an individual, on
behalf of herself and others similarly situated,
and as a private attorney general on behalf of
the State of California,

PLAINTIFF,

v.

CAM-BAS, INC., a California Corporation,
WILLCO MANAGEMENT, INC., a
California Corporation and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO.: 21CV378215

**FIRST AMENDED 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. Failure to Reimburse Expenses in Violation of Labor Code § 2802
7. Violation of Business & Professions Code § 17200
8. Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226(e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802 and IWC Wage Order No. 5-2001
9. Waiting Time Penalties Pursuant to Labor Code § 203

1 Plaintiff MONICA MELENDEZ, an individual, on behalf of herself and others similarly
2 situated, complains of Defendant CAM-BAS, INC., Defendant WILLCO MANAGEMENT,
3 INC., and the Doe Defendants (“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 non-exempt, hourly employees who were employed by CAM-BAS, Inc. or
9 its predecessor, merged or related entities in California as an employee at any
10 point from August 31, 2016 and continuing into the present. (“CAM-BAS Non-
11 Exempt Class”);¹
- 12 (2) all non-exempt, hourly employees who were employed by Willco Management,
13 Inc. or its predecessor, merged or related entities in California as an employee at
14 any point from August 31, 2016 and continuing into the present. (“Willco Non-
Exempt Class”);

15 Collectively, groups one (1) and two (2) may be referred to as the “Non-Exempt Class.”

- 16 (3) all non-exempt, hourly employees who were employed by CAM-BAS, Inc. or
17 its predecessor, merged or related entities in California as a Shift Manager at
18 any point from August 31, 2016 and continuing into the present. (“CAM-BAS
19 Shift Manager Subclass”);
- 20 (4) all non-exempt, hourly employees who were employed by Willco Management,
21 Inc. or its predecessor, merged or related entities in California as a Shift
22 Manager at any point from August 31, 2016 and continuing into the present.
 (“Willco Shift Manager Subclass”);

23 Collectively, groups three (3) and four (4) may be referred to as the “Shift Manager Subclass.”

- 24 (5) all individuals who were employed by CAM-BAS, Inc. or its predecessor or
25 merged entities in California as a non-exempt, hourly employee or other similar
26 position and who worked a shift of more than eight (8) hours in a day and/or
27 forty (40) hours in a week during a pay period from August 31, 2016 and
continuing into the present. (“CAM-BAS Overtime Subclass”);

28 ¹ The statute of limitations were tolled for at least sixty (60) days due to Emergency Rule 9 of the California Rules of Court also referred to as the “Emergency Rules Related to COVID-19”).

1 (6) all individuals who were employed by Willco Management, Inc. or its
2 predecessor or merged entities in California as a non-exempt, hourly employee
3 or other similar position and who worked a shift of more than eight (8) hours in
4 a day and/or forty (40) hours in a week during a pay period from August 31,
2016 and continuing into the present. (“Willco Overtime Subclass”);

5 Collectively, groups five (5) and six (6) may be referred to as the “Overtime Subclass.”

6 (7) all individuals who were employed by CAM-BAS, Inc. or its predecessor,
7 merged or related entities in California who worked one or more shifts of more
8 than six (6) hours as a non-exempt hourly employee or other similar position
9 from August 31, 2016 and continuing into the present. (“CAM-BAS Meal
Period Subclass”);

10 (8) all individuals who were employed by Willco Management, Inc. or its
11 predecessor, merged or related entities in California who worked one or more
12 shifts of more than six (6) hours as a non-exempt hourly employee or other
13 similar position from August 31, 2016 and continuing into the present. (“Willco
Meal Period Subclass”);

14 Collectively, groups seven (7) and eight (8) may be referred to as the “Meal Period Subclass.”

15 (9) all individuals who were employed by CAM-BAS, Inc. or its predecessor,
16 merged or related entities in California as a non-exempt hourly employee, or
17 other similar position, who worked one or more shifts of more than four (4)
18 hours in length or major fraction thereof from August 31, 2016 and continuing
into the present. (“CAM-BAS Rest Period Subclass”);

19 (10) all individuals who were employed by Willco Management, Inc. or its
20 predecessor, merged or related entities in California as a non-exempt hourly
21 employee, or other similar position, who worked one or more shifts of more
22 than four (4) hours in length or major fraction thereof from August 31, 2016 and
continuing into the present. (“Willco Rest Period Subclass”);

23 Collectively, groups nine (9) and ten (10) may be referred to as the “Rest Period Subclass.”

24 (11) all individuals who were employed by CAM-BAS, Inc. or its predecessor,
25 merged or related entities in California as a non-exempt, hourly employee or
26 other similar position for one or more pay periods from August 31, 2019 and
27 continuing into the present (“CAM-BAS Wage Statement Subclass”);

1 (12) all individuals who were employed by Willco Management, Inc. or its
2 predecessor, merged or related entities in California as a non-exempt, hourly
3 employee or other similar position for one or more pay periods from August 31,
2019 and continuing into the present (“Willco Wage Statement Subclass”);

4 Collectively, groups eleven (11) and twelve (12) may be referred to as the “Wage Statement
5 Subclass.”

6 (13) all non-exempt, hourly employees who were employed by CAM-BAS, Inc. or
7 its predecessor, merged or related entities in California as a Shift Manager at
8 any point from August 31, 2017 and continuing into the present. (“CAM-BAS
Shift Manager Expense Reimbursement Subclass”);

9 (14) all non-exempt, hourly employees who were employed by Willco Management,
10 Inc. or its predecessor, merged or related entities in California as a Shift
11 Manager at any point from August 31, 2017 and continuing into the present.
12 (“Willco Shift Manager Expense Reimbursement Subclass”);

13 Collectively, groups thirteen (13) and fourteen (14) may be referred to as the “Shift Manager
14 Expense Reimbursement Subclass.”

15 (15) all individuals who were employed by CAM-BAS, Inc. or its predecessor,
16 merged or related entities for one or more pay periods in California as a non-
17 exempt, hourly employee and whose employment concluded at any time
18 between August 31, 2017 and continuing into the present; (“CAM-BAS Late
Payment Subclass”);

19 (16) all individuals who were employed by Willco Management, Inc. or its
20 predecessor, merged or related entities for one or more pay periods in California
21 as a non-exempt, hourly employee and whose employment concluded at any
22 time between August 31, 2017 and continuing into the present; (“Willco Late
Payment Subclass”);

23 Collectively, groups fifteen (15) and sixteen (16) may be referred to as the “Late Payment
24 Subclass.”

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

27
28 ² Plaintiff reserves the right to redefine the Classes and Subclasses identified herein.

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 non-exempt, hourly employees who were employed by CAM-BAS, Inc. or its predecessor, merged or related entities in California as an employee at any point from November 12, 2019 and continuing into the present. (“CAM-BAS Non-Exempt Aggrieved Employees”);

(2) all non-exempt, hourly employees who were employed by Willco Management, Inc. or its predecessor, merged or related entities in California as an employee at any point from November 12, 2019 and continuing into the present. (“Willco Non-Exempt Aggrieved Employees”);

Collectively, aggrieved employee groups one (1) and two (2) may be referred to as the “Non-Exempt Aggrieved Employees.”

(3) all non-exempt, hourly employees who were employed by CAM-BAS, Inc. or its predecessor, merged or related entities in California as a Shift Manager at any point from November 12, 2019 and continuing into the present. (“CAM-BAS Shift Manager Aggrieved Employees”);

(4) all non-exempt, hourly employees who were employed by Willco Management, Inc. or its predecessor, merged or related entities in California as a Shift Manager at any point from November 12, 2019 and continuing into the present. (“Willco Shift Manager Aggrieved Employees”);

Collectively, aggrieved employee groups three (3) and four (4) may be referred to as the “Shift Manager Aggrieved Employees.

(5) all individuals who were employed by CAM-BAS, 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 November 12, 2019 and continuing into the present; (“CAM-BAS Late Payment Aggrieved Employees”);

(6) all individuals who were employed by CAM-BAS, 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 November 12, 2019 and continuing into the present; (“Willco Late Payment Aggrieved Employees”);

1
2 Collectively, aggrieved employee groups five (5) and six (6) may be referred to as the
3 “Late Payment Aggrieved Employees.”

4 Collectively, these may all collectively be referred to herein as aggrieved employees and/or all
5 aggrieved employees where appropriate.

6 3. Plaintiff, the Classes, and the aggrieved employees were employed by Defendants
7 CAM-BAS, INC., Defendant WILLCO MANAGEMENT, and any subsidiaries or affiliated
8 companies and Does 1 through 50 (who include individuals acting on behalf an employer within
9 the meaning of Labor Code § 558.1) within the State of California as a non-exempt, hourly
10 employees between August 31, 2016 and continuing into the present.

11 4. At all times relevant hereto, Defendants operated as a single integrated enterprise,
12 including but not limited to using the same officers (Dania Fagundo and Cosme Fagundo) or
13 business locations, procuring labor for each other, sharing a common corporate headquarters
14 (7112 Calle Artis, San Jose, CA 95131).

15 5. CAM-BAS stands for Bascom Avenue and Camden Way, which is where two of
16 the restaurants operated by Defendants are located. It was acquired by Dania and Cosme Fagundo
17 from Roger and Carol Knott in or around March 1, 1996. At that time, CAM-BAS alone existed.
18 Willco did not come into existence until a year later and its sole purpose is to “service” or manage
19 the restaurants owned by Dania Fagundo and Cosme Fagundo. Willco Management constitutes
20 nothing more than the alter egos of Dania Fagundo and Cosme Fagundo as well as CAM-BAS,
21 Inc. Indeed, in prior litigation about the CAM-BAS restaurant locations, the prior owners noted
22 that the transaction between them and Dania Fagundo and Cosme Fagundo involved multiple
23 locations and was not limited to the Camden Way location. *See e.g. Knott v. McDonald's Corp.*,
24 985 F. Supp. 1222, 1226 (N.D. Cal. 1997) (“Neither the Carties nor Defendant deny that the
25 Defendant told the Carties that there was substantial reinvestment needed for the Bascom store;
26 that there was limited or no room for growth and opportunity for them in the San Jose area; that
27 the Camden store might have to be relocated; and that another store might open in the area.”)
28

1 6. Moreover, at all times relevant hereto Defendants failed to segregate their
2 corporate records, used the same office and business locations, procured labor for each other,
3 contracted with each other to avoid liability and use it as a personal liability, and shared
4 employees including, but not limited to, Dania Fagundo and Cosme Fagundo. Defendants also
5 jointly calculated and oversaw the payment of wages for each other such that each was closely
6 involved with and a part of the business operations for each other, and also jointly managed the
7 McDonald's restaurants owned by Dania and Cosme Fagundo.

8 7. At all times relevant hereto, Defendants served as alter egos of themselves and/or
9 Dania Fagundo and Cosme Fagundo.

10 8. Plaintiff is a former employee of Defendants who worked for Defendants in San
11 Jose County. At times throughout her employment with Defendants between August 31, 2016 and
12 within the past year, Plaintiff, the Classes, and the aggrieved employees worked shifts in excess
13 of six (6) hours in a day and shifts in excess of eight (8) hours in a day.

14 9. At times throughout her employment with Defendants between August 31, 2016
15 and the present and within the past year, Plaintiff, the Classes, and the aggrieved employees
16 worked more than forty (40) hours per week.

17 10. Defendants hire employees to work within the state of California who are covered
18 by California Industrial Welfare Commission Occupational Wage Order No, 5-2001. Based upon
19 information and belief, Defendants classified Plaintiff, the Classes, and the aggrieved employees
20 as non-exempt for the purposes of overtime, meal periods, and rest periods.

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

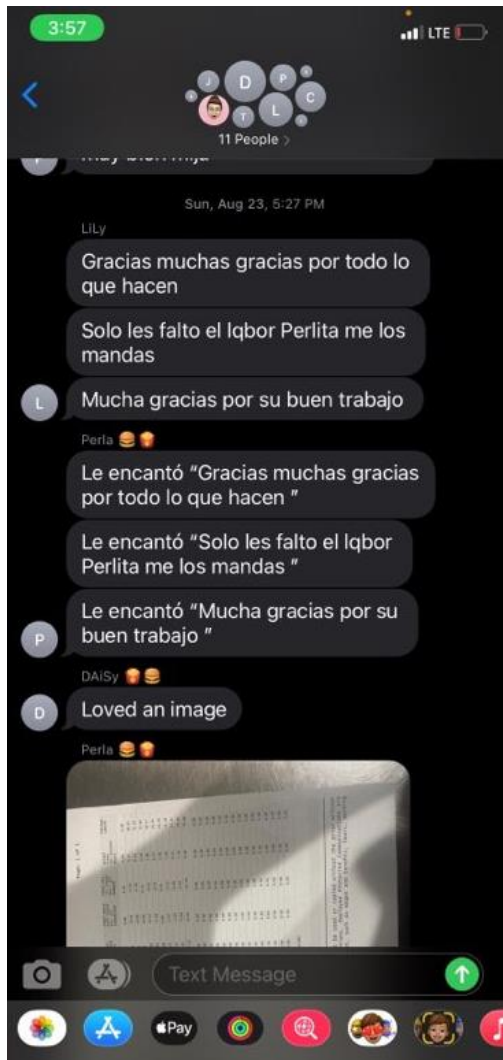
23 12. Labor Code § 1197 states the California requirement that employees must be paid
24 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
25 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles
26 "any employee receiving less than the legal minimum wage...to recover in a civil action the
27 unpaid balance of the full amount of this minimum wage." IWC Wage Order No. 5-2001
28 obligates employers to pay each employee minimum wages for all hours worked.

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

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

14 15. Similarly, Labor Code § 2802 provides that “[a]n employer shall indemnify his or
15 her employee for all necessary expenditures or losses incurred by the employee in direct
16 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
17 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
18 believed them to be unlawful.”

19 16. At times throughout her employment with Defendants between August 31, 2016
20 and the present and within the past year, Defendants required and/or expected Plaintiff, the
21 Classes, the Non-Exempt Aggrieved Employees, Shift Manager Aggrieved Employees to
22 regularly review and respond to work related communications during and after hours related to
23 issues at the Defendants locations, time records, job conditions, tasks, and other job related
24 communications on their won personal electronic devices—including, but not necessarily limited
25 to their cell phones in the normal course of their job duties:
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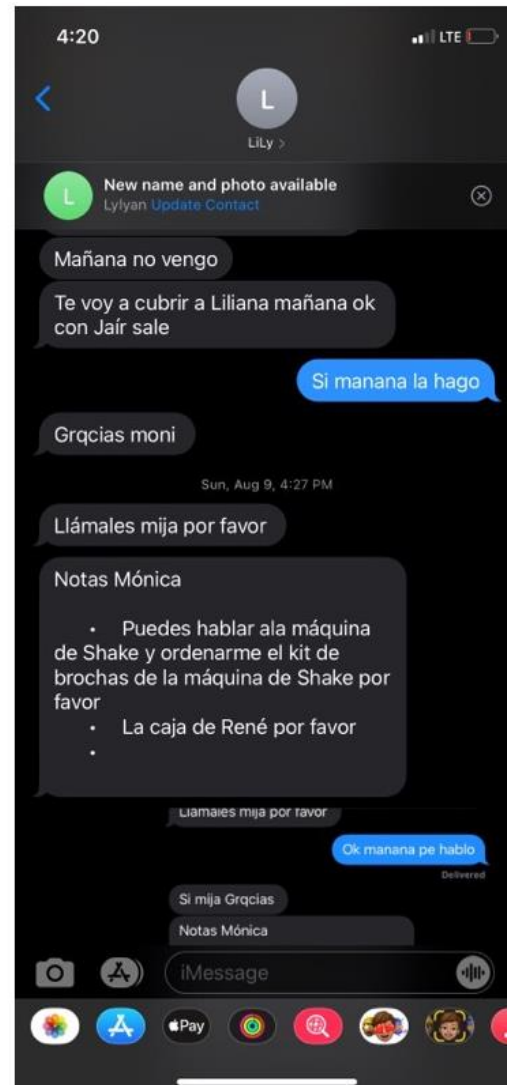
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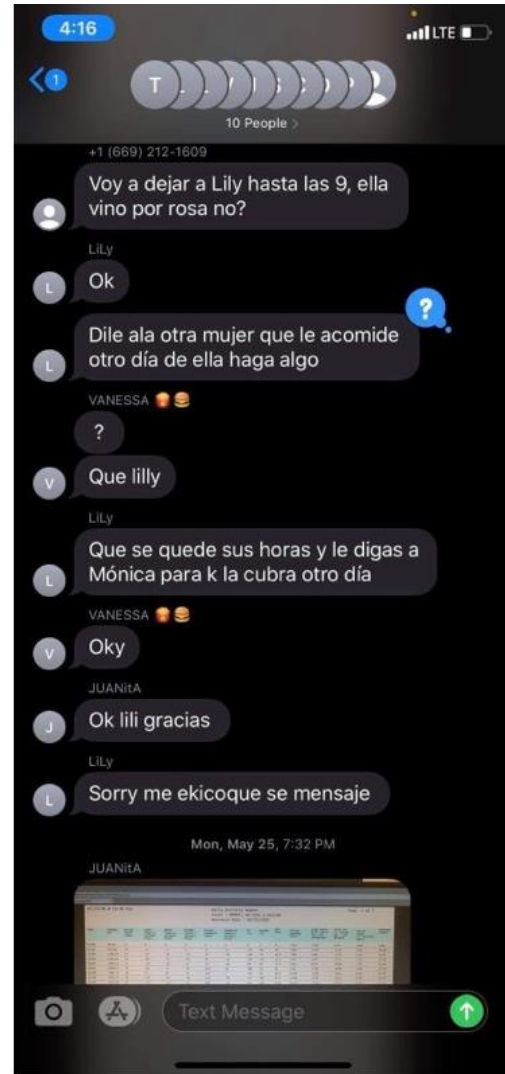
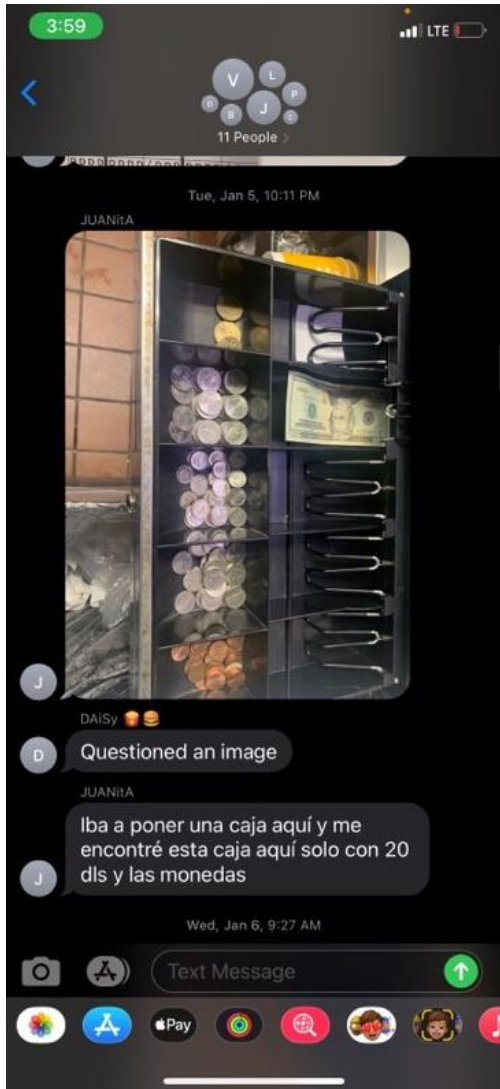
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1 17. Moreover, it was expected and known that Plaintiff, the Classes, and the aggrieved
2 employees would incur expenses and be suffered or permitted to expend time on reviewing and
3 acting in accordance with the text messages sent to Plaintiff, the Classes, and the aggrieved
4 employees with job site and assignment information. As such, Plaintiff, the Classes, and the
5 aggrieved employees were required and/or expected to use their personal cell phones in the
6 discharge of their job duties in order to obtain work schedules and assignments.

7 18. Defendants' conduct in requiring Plaintiff, the Classes, and the aggrieved
8 employees to use their cell phones to obtain their schedules and/or job assignments caused them
9 to incur losses as a direct consequence of their duties.

10 19. Although Plaintiff, the Classes, and the aggrieved employees were regularly
11 required to and/or ordered/directed to use their own personal electronic devices—including, but
12 not limited to cell phones—for work purposes, Plaintiff, the Classes, and the aggrieved
13 employees were not provided with any reimbursement for the use of their personal electronic
14 devices between August 31, 2016 and the present, including within the past year.

15 20. California law prohibits an employer from failing to reimburse employees from
16 losses incurred through the use of their own electronic devices even if the use would not cause the
17 employee to exceed their data limit. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App.
18 4th 113 (2014) ("We hold that when employees must use their personal cell phones for work-
19 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
20 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement
21 owed is a reasonable percentage of their cell phone bills.").

22 21. Moreover, between August 31, 2016 and the present, including within the past
23 year, Defendants also suffered and permitted Plaintiff, the Classes, and the aggrieved employees
24 to perform work while reviewing and acting in accordance with the instructions they received on
25 a frequent basis via text message. *Feaver v. Kaiser Found. Health Plan, Inc.*, No. 15-cv-00890-
26 EMC, 2016 U.S. Dist. LEXIS 9778, at *8 (N.D. Cal. Jan. 27, 2016) (conditionally certifying a
27 class under the Fair Labor Standards Act where the employees could show that they received
28

1 and/or sent emails off-the-clock despite the fact that the employer had a policy requiring all time
2 to be recorded.); *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018).

3 22. Defendants also engaged in a common policy and practice since the onset of the
4 COVID-19 pandemic of requiring Plaintiff, the Classes, and the aggrieved employees of
5 undergoing temperature checks while off-the-clock for which they did not receive compensation
6 in violation of Labor Code §§ 1194 and 510.

7 23. Defendants conduct in failing to pay Plaintiff, the Classes, and the aggrieved
8 employees for such time was willful. The Department of Industrial Relations issued guidance on
9 July 28, 2020 advising that employers that they must compensate employees for the time
10 associated with medical checks before shifts (including temperature checks):

11 **Medical Checks**

12 **9. Q: Must my employer pay me for time spent at my employer's worksite completing
13 certain medical checks (including temperature checks) before beginning a shift?**

14 A: Yes. Employers must pay workers for all "hours worked," including time that a worker is
15 under the control of the employer. Employers that require their workers to complete a
16 medical check in order to begin a shift, even if it is recommended under public health
17 orders, must compensate workers for that time worked.

18 The term "hours worked" means the time during which a worker is subject to the control of
19 an employer, and includes all the time the worker is suffered or permitted to work,
20 whether or not required to do so. Under this definition, one way to determine whether
21 time a worker spends performing a task is compensable—that is, whether it is time
22 "worked"—is whether the employer exercised control over the worker by requiring the
23 worker to perform that task.

24 If an employer requires that all workers perform a medical check (such as a temperature
25 check) onsite before beginning a shift, the time completing the medical check, including
26 any time waiting in line, would constitute time worked. This requirement applies even if
27 such tasks were performed pursuant to a state or local public health guideline, because
28 the check is done at the request, and thus under the control, of the employer.

29 **10. Q: Is my employer required to pay workers for required medical checks (including
30 temperature checks) at the employer's worksite, even if the medical checks take very
31 little time?**

32 A: Yes, an employer is required to compensate for all hours worked in California even if a
33 required task takes only a small amount of time. There is no "de minimis" rule under
34 California law. Therefore, if an employer requires medical checks (such as a temperature
35 check) at the employer's worksite, the employer must compensate a worker for that time

1 worked, even if the temperature check takes only a small amount of time to complete and
2 record.

3 24. Defendants required Plaintiff, the Classes, and the aggrieved employees to
4 undergo temperature checks both before starting their shifts and after their meal periods for which
5 no compensation was provided. Such time was not de minimis and often took between one (1) to
6 five (5) minutes and on occasion could take longer. Moreover, as a result of requiring Plaintiff,
7 the Class, and the aggrieved employees to undergo the temperature checks before returning from
8 lunch, Defendants improperly rounded their meal periods and failed to authorize and permit
9 complete meal periods in violation of Labor Code § 512. *See Donohue v. Amn Servs.*, No.
10 S253677, 2021 Cal. LEXIS 1294 (Feb. 25, 2021)

11 25. Since Plaintiff, the Classes, and many of the aggrieved employees had already
12 worked shifts of eight (8) hours at the time that they were required to work while off-the-clock,
13 included overtime hours.

14 26. Through Defendants' policy and practice of not paying Plaintiff, the Classes, and
15 the aggrieved employees for the time expended reviewing text messages with job assignment
16 information and/or other job related communications within the discharge of their duties,
17 Defendants violated Labor Code §§ 510, 558, 1194, 1197, 1197.1, 1198 and 2802.

18 27. Moreover, Defendants either can and/or should have recorded the time spent by its
19 non-exempt hourly employees on the use of the and compensated Plaintiff and the aggrieved
20 employees for such time. *See Donohue v. Amn Servs.*, No. S253677, 2021 Cal. LEXIS 1294, at
21 *45 (Feb. 25, 2021) ("It is the employer's duty to maintain accurate time records."). Instead of
22 complying with their legal obligations, Defendants instead systematically cheated Plaintiff, the
23 Classes, and the aggrieved employees of wages and expense reimbursement.

24 28. Labor Code § 558 imposes a penalty upon employers "who violates, or causes to
25 be violated...any provision regulating hours and days of work in any order of the Industrial
26 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
27 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was
28 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each

1 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
2 period for which the employee was underpaid in addition to an amount sufficient to recover
3 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected
4 employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only
5 the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and
6 not any underpaid wages.

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

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

25 31. Similarly, IWC Wage Order No. 5-2001 prohibits an employer from “employ[ing]
26 any person for a work period of more than five (5) hours without a meal period of not less than 30
27 minutes. IWC Wage Order No. 5-2001 further obligates employers to provide an employee to
28 “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each

1 workday that the meal period is not provided. Labor Code section 1198 prohibits an employer
2 from requiring an employee to work beyond the “standard conditions of labor fixed by the
3 commission...or under conditions of labor prohibited by the order.”

4 32. At times between August 31, 2016 and the present and within the past year,
5 Defendants failed to authorize and permit Plaintiff, the Class Members, and the aggrieved
6 employees to receive lawful meal periods, failed to advise them of their right to such meal
7 periods, and failed to authorize and permit them to take timely first meal periods within the first
8 five (5) hours of their shift.

9 33. At times between August 31, 2016 and the present and within the past year,
10 Defendants’ meal period policies and practices disincentivized and discouraged Plaintiff, the
11 Class Members, and the aggrieved employees from taking timely first meal periods within the
12 first five (5) hours of their shift. This includes, but is not limited to, requiring Plaintiff and the
13 other aggrieved employees to take their lunch at noon regardless of the start time of their shift
14 while working the day shift. However, Defendant also failed to authorize and permit Plaintiff, the
15 Class, and the aggrieved employees to take timely first meal periods when they worked evening
16 shifts. Defendants’ understaffing policies and practices also pressured, coerced, and forced
17 employees to take untimely first meal periods due to a lack of sufficient coverage.

18 34. At times between August 31, 2016 and the present and within the past year,
19 Defendants failed to authorize and permit Plaintiff, the Class, and the aggrieved employees to
20 receive lawful meal periods, failed to advise them of their right to such meal periods, and failed to
21 authorize and permit them to take timely first meal periods.

22 35. Defendants meal period policies and practices also disincentivized and
23 discouraged Plaintiff and the other aggrieved employees from taking timely first meal periods
24 within the first five (5) hours of their shift. Moreover, Defendants’ understaffing policies and
25 practices also pressured, coerced, and forced employees to take untimely first meal periods due to
26 a lack of sufficient coverage.

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

4 37. Similarly, IWC Wage Order No. 5-2001, prohibits an employer from “employ[ing]
5 any person for a work period of more than five (5) hours without a meal period of not less than 30
6 minutes. IWC Wage Order No. 5-2001 further obligate employers to provide an employee to “pay
7 the employee one (1) hour of pay at the employee’s regular rate of compensation for each
8 workday that the meal period is not provided.

9 38. At times between August 31, 2016 and the present and within the past year,
10 Defendants also failed to pay Plaintiff, the Class, and the aggrieved employees meal period
11 premiums for each workday that the employees did not receive a compliant meal period and/or at
12 the proper rate. Accordingly, for each day that Plaintiff and all aggrieved employees did not
13 receive compliant meal periods, they are entitled to receive meal period premiums pursuant to
14 Labor Code § 226.7 and IWC Wage Order No. 5-2001. Unfortunately, Plaintiff, the Class, and the
15 aggrieved employees were not compensated with one (1) hours’ worth of pay at their regular rate
16 of compensation when they were not provided with a compliant rest period in violation of Labor
17 Code § 226.7 and IWC Wage Order No. 5-2001.

18 39. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to
19 be violated...any provision regulating hours and days of work in any order of the Industrial
20 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
21 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was
22 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each
23 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
24 period for which the employee was underpaid in addition to an amount sufficient to recover
25 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected
26 employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only
27 the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and
28 not any underpaid wages.

1 40. Labor Code § 226.7 provides “an employer shall not require an employee to work
2 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
3 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
4 Order No. 5-2001, an employer must authorize and permit all employees to take ten (10) minute
5 duty free rest periods for every major fraction of four hours worked. *See Augustus v. ABM*
6 *Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods employers
7 must relieve employees of all duties and relinquish control over how employees spend their
8 time.”).

9 41. At times between August 31, 2016 and the present and within the past year,
10 Defendants failed to provide Plaintiff, the Class, and all aggrieved employees with duty-free rest
11 periods of not less than ten (10) minutes for every major fraction of four (4) hours worked.
12 Instead, Defendants regularly and consistently required Plaintiff, the Class, and the aggrieved
13 employees to remain on the premises during their rest periods as part of their common policies
14 and practices. Specifically, Defendants maintained a common policy and practice of requiring
15 employees to remain on premises during the rest periods. This includes, is not limited to, advising
16 Plaintiff, the Classes, and the aggrieved employees that they could not leave the premises because
17 Defendants were paying them for the time associated with rest periods. As such, Defendants did
18 not relieve Plaintiff, the Class, or the aggrieved employees of all duties during their rest periods
19 and continued to exercise control over them during such periods in violation of IWC Wage Order
20 No. 5-2001 and Labor Code section 226.7.

21 42. Moreover, as a result of its understaffing practices and policies with respect to
22 employees, it was not possible for Plaintiff, the Class, and the aggrieved employees to take rest
23 periods.

24 43. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the
25 Class, and the aggrieved employees were not compensated with one (1) hours’ worth of pay at
26 their regular rate of compensation when they were not provided with a compliant rest period
27 and/or their rest period was interrupted in accordance with Labor Code § 226.7(b).
28

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

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

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

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

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

28 (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 45. Due to Defendants' failure to pay Plaintiff and all aggrieved employees all
2 minimum wages, overtime wages, meal period premiums, and rest period premiums, the wage
3 statements issued by Defendants 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, Plaintiff is an
6 aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code
7 §226(a)(1), (2), (5), and (9) with respect to Plaintiff and all aggrieved employees.

8 46. Plaintiff, the Wage Statement Class, and the aggrieved employees also suffered
9 legal "injury" for purposes of Labor Code section 226(e) insofar as they were unable to readily
10 and easily determine from the wage statements themselves the information required to be set forth
11 by Section 226(a), the information provided by Defendants was confusing and inaccurate.

12 47. In addition, Plaintiff, the Wage Statement Class, and the aggrieved employees
13 were unable to determine at all the total hours worked by the employee, the gross wages earned,
14 the net wages earned, and all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee for the reasons
16 discussed above.

17 48. As described in detail above, Defendants willfully failed to pay Plaintiff and the
18 other Class Members whose employment concluded (including the Late Payment Subclass) all
19 wages owed, including but not limited to minimum wages, overtime wages, meal period
20 premiums, and rest period premiums within the time constraints proscribed in Labor Code §§
21 201-202 at the time of their termination/separation. Thus, as result of Defendants' faulty policies
22 described above, Plaintiff and all Class Members' left their employment with Defendants without
23 being compensated for each and every hour worked at the appropriate rate in violation of Labor
24 Code §§ 201, 202, and 203. At the time of Plaintiff, the other members of the Class, the Late
25 Payment Subclass, and the Late Payment Aggrieved Employees' separation from Defendants,
26 these sums were certain and known to Defendants.

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

1 advance by the employer as the regular paydays.” Violations of Labor Code § 204 are non-
2 curable under PAGA pursuant to Labor Code § 2699.5.

3 50. As discussed in detail above, Defendants failed to pay Plaintiff and all aggrieved
4 employees minimum wages, overtime wages, meal period premiums, and rest period premiums
5 owed, Defendants failed to timely pay the aggrieved employees for labor performed between the
6 1st and 15th days between the 16th calendar day of the month during which the labor was
7 performed on a regular and consistent basis. Moreover, as a result of the conduct described in
8 detail above, Defendants also failed to pay Plaintiff and the other aggrieved employees all wages
9 owed for labor performed between the 16th and last day between the 1st and 10th day of the
10 following month on a regular and consistent basis.

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

22 52. Labor Code § 1174 provides that each employer shall keep “payroll records
23 showing the hours worked daily by and the wages paid to...employees employed
24 at...establishments.” An employer who fails to maintain the records proscribed by Labor Code §
25 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

26 53. As previously explained, Defendants failed to maintain accurate records of the
27 total hours worked by employees or of the time associated with reviewing the text messages that
28

1 Defendants sent to Plaintiff and the other aggrieved employees while off-the-clock on a regular
2 and consistent basis. Thus, Defendants violated Labor Code §§ 1174 and 1174.5.

3 54. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her
4 employee for all necessary expenditures or losses incurred by the employee in direct consequence
5 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
6 even though unlawful, unless the employee, at the time of obeying the directions, believed them
7 to be unlawful.”

8 55. California law prohibits an employer from failing to reimburse employees from
9 losses incurred through the use of their own electronic devices even if the use would not cause the
10 employee to exceed their data limit. *See Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App.
11 4th 113 (2014) (“We hold that when employees must use their personal cell phones for work-
12 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
13 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement
14 owed is a reasonable percentage of their cell phone bills.”).

15 56. As discussed in detail above, at times between August 31, 2016 and the present
16 and within the past year, Defendants required and/or expected Plaintiff, the Class, and the
17 aggrieved employees to use their cell phones in the normal course of their job duties.

18 57. Defendants’ conduct in requiring Plaintiff, the Class and the aggrieved employees
19 to engage in the above described activities caused them to incur losses as a direct consequence of
20 their duties in violation of Labor Code § 2802. Although Plaintiff, the Class, and the aggrieved
21 employees were regularly required to and/or ordered/directed to use their own personal
22 communication devices for work purposes, Plaintiff, the Class, and the aggrieved employees were
23 not provided with any reimbursement for the use of their personal cell phones.

24 II.

25 **JURISDICTION AND VENUE**

26 58. This Court has subject matter jurisdiction over all causes of action asserted herein
27 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
28 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,

1 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
2 laws of the State of California or is subject to adjudication in the courts of the State of California.

3 59. This Court has personal jurisdiction over Defendant CAM-BAS, Inc. because
4 Defendant has caused injuries in the County of Santa Clara and State of California through their
5 acts, and by their violation of the California Labor Code and California law in Santa Clara
6 County. During the statutory period applicable to the claims at issue in this action, Defendant's
7 principal place of business was located at 7112 Calle Artis, San Jose, CA 95131.

8 60. This Court has personal jurisdiction over Defendant Willco Management, Inc.
9 because Defendant has caused injuries in the County of Santa Clara and State of California
10 through their acts, and by their violation of the California Labor Code and California law in Santa
11 Clara County. During the statutory period applicable to the claims at issue in this action,
12 Defendant's principal place of business was located at 7112 Calle Artis, San Jose, CA 95131.

13 61. Defendants also engaged and suffered and/or permitted the Class Members, and
14 aggrieved employees to perform work in Santa Clara County during the statutory period
15 applicable to their claims resulting in injuries within Santa Clara. *Battaglia Enterprises, Inc. v.*
16 *Sup. Ct.*, 215 Cal.App.4th 309, 313 (2013) (holding that if "venue is proper in more than one
17 county, a plaintiff may choose among the available options."); accord *Crestwood Behavioral*
18 *Health, Inc. v. Sup. Ct.*, No. A160523, 2021 Cal. App. LEXIS 137, at *5 (Ct. App. Feb. 17, 2021)
19 (affirming that the Plaintiff's choice of venue in a PAGA case was proper in Alameda County
20 even though the employee only worked for the defendant in Solano County and the defendant's
21 principal office was in Sacramento County).

22 62. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
23 Civil Procedure §395. Defendants operates within California and do business within Santa Clara
24 County. The unlawful acts alleged herein have a direct effect on Plaintiff and the Classes within
25 the State of California and the County of Santa Clara.

26 63. This case should be classified as complex according to Rule 3.400 of the
27 California Rules of Court, and assigned to a complex litigation judge and department, as it will
28 involve substantial documentary evidence, and is likely to involve extensive motion practice

1 raising difficult or novel issues that will be time-consuming to resolve and would require
2 substantial post judgment judicial supervision.

3 **III.**

4 **PARTIES**

5 **A. PLAINTIFF**

6 64. Plaintiff MONICA MELENDEZ is a former employee of Defendants who worked
7 for Defendants in Santa Clara County within the past four (4) years, including within the past
8 year.

9 65. Plaintiff and the Class were regularly required to:

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

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

14 c. Work without being provided lawful meal periods;

15 d. Work without being provided lawful rest periods;

16 e. Work without being provided an accurate itemized wage statement that
17 accurately indicate the gross wages earned, total hours worked by the employee, the net wages
18 earned, as well as 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 f. Work without being reimbursed for expenses incurred in direct
21 consequence of the discharge of his or her duties;

22 g. Were deprived of wages that Defendants knew were due and owing, yet
23 failed to pay at the time of termination and/or within 72 hours of resignation for those former
24 employees who did not provide advance notice.

25 **B. DEFENDANTS**

26 66. Defendant CAM-BAS, INC., is a California corporation, with a current principal
27 place of business of 678 Parkridge Ave, Norco, CA 92691 and whose principal place of business
28 is 7112 Calle Artis, San Jose, CA 95131. Upon information and belief, Defendant employed

1 Plaintiff and the Classes within California and in Santa Clara County, including in San Jose,
2 California. Defendant has done and does business throughout the State of California and in Santa
3 Clara County.

4 67. Defendant WILLCO MANAGEMENT, INC., is a California corporation, with a
5 current principal place of business of 678 Parkridge Ave, Norco, CA 92691 and whose principal
6 place of business is 7112 Calle Artis, San Jose, CA 95131. Upon information and belief,
7 Defendant employed Plaintiff and the Classes within California and in Santa Clara County,
8 including in San Jose, California. Defendant has done and does business throughout the State of
9 California and in Santa Clara County.

10 68. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
12 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
13 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
14 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
15 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
16 capacities of the Defendants designated hereinafter as DOES when such identities become
17 known.

18 69. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
19 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
20 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
21 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
22 employer and/or joint employer of Plaintiff and the Class and/or as alter egos of each other.

23 IV.

24 **CLASS ACTION ALLEGATIONS**

25 70. Plaintiff brings this action on behalf of herself and all others similarly situated as a
26 Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent several
27 Classes and Subclasses composed of and defined as follows:
28

1 (1) all non-exempt, hourly employees who were employed by CAM-BAS, Inc. or
2 its predecessor, merged or related entities in California as an employee at any
3 point from August 31, 2016 and continuing into the present. (“CAM-BAS Non-
Exempt Class”);³

4 (2) all non-exempt, hourly employees who were employed by Willco Management,
5 Inc. or its predecessor, merged or related entities in California as an employee at
6 any point from August 31, 2016 and continuing into the present. (“Willco Non-
Exempt Class”);

7
8 Collectively, groups one (1) and two (2) may be referred to as the “Non-Exempt Class.”

9 (3) all non-exempt, hourly employees who were employed by CAM-BAS, Inc. or
10 its predecessor, merged or related entities in California as a Shift Manager at
11 any point from August 31, 2016 and continuing into the present. (“CAM-BAS
Shift Manager Subclass”);

12 (4) all non-exempt, hourly employees who were employed by Willco Management,
13 Inc. or its predecessor, merged or related entities in California as a Shift
14 Manager at any point from August 31, 2016 and continuing into the present.
15 (“Willco Shift Manager Subclass”);

16 Collectively, groups three (3) and four (4) may be referred to as the “Shift Manager Subclass.”

17 (5) all individuals who were employed by CAM-BAS, Inc. or its predecessor or
18 merged entities in California as a non-exempt, hourly employee or other similar
19 position and who worked a shift of more than eight (8) hours in a day and/or
20 forty (40) hours in a week during a pay period from August 31, 2016 and
continuing into the present. (“CAM-BAS Overtime Subclass”);

21 (6) all individuals who were employed by Willco Management, Inc. or its
22 predecessor or merged entities in California as a non-exempt, hourly employee
23 or other similar position and who worked a shift of more than eight (8) hours in
24 a day and/or forty (40) hours in a week during a pay period from August 31,
2016 and continuing into the present. (“Willco Overtime Subclass”);

25 Collectively, groups five (5) and six (6) may be referred to as the “Overtime Subclass.”

26 (7) all individuals who were employed by CAM-BAS, Inc. or its predecessor,
27 merged or related entities in California who worked one or more shifts of more

28 ³ The statute of limitations were tolled for at least sixty (60) days due to Emergency Rule 9 of the California Rules of Court also referred to as the “Emergency Rules Related to COVID-19”).

1 than six (6) hours as a non-exempt hourly employee or other similar position
2 from August 31, 2016 and continuing into the present. (“CAM-BAS Meal
3 Period Subclass”);

4 (8) all individuals who were employed by Willco Management, Inc. or its
5 predecessor, merged or related entities in California who worked one or more
6 shifts of more than six (6) hours as a non-exempt hourly employee or other
7 similar position from August 31, 2016 and continuing into the present. (“Willco
8 Meal Period Subclass”);

9 Collectively, groups seven (7) and eight (8) may be referred to as the “Meal Period Subclass.”

10 (9) all individuals who were employed by CAM-BAS, Inc. or its predecessor,
11 merged or related entities in California as a non-exempt hourly employee, or
12 other similar position, who worked one or more shifts of more than four (4)
13 hours in length or major fraction thereof from August 31, 2016 and continuing
14 into the present. (“CAM-BAS Rest Period Subclass”);

15 (10) all individuals who were employed by Willco Management, Inc. or its
16 predecessor, merged or related entities in California as a non-exempt hourly
17 employee, or other similar position, who worked one or more shifts of more
18 than four (4) hours in length or major fraction thereof from August 31, 2016 and
19 continuing into the present. (“Willco Rest Period Subclass”);

20 Collectively, groups nine (9) and ten (10) may be referred to as the “Rest Period Subclass.”

21 (11) all individuals who were employed by CAM-BAS, Inc. or its predecessor,
22 merged or related entities in California as a non-exempt, hourly employee or
23 other similar position for one or more pay periods from August 31, 2019 and
24 continuing into the present (“CAM-BAS Wage Statement Subclass”);

25 (12) all individuals who were employed by Willco Management, Inc. or its
26 predecessor, merged or related entities in California as a non-exempt, hourly
27 employee or other similar position for one or more pay periods from August 31,
28 2019 and continuing into the present (“Willco Wage Statement Subclass”);

Collectively, groups eleven (11) and twelve (12) may be referred to as the “Wage Statement Subclass.”

(13) all non-exempt, hourly employees who were employed by CAM-BAS, Inc. or its predecessor, merged or related entities in California as a Shift Manager at

any point from August 31, 2017 and continuing into the present. (“CAM-BAS Shift Manager Expense Reimbursement Subclass”);

(14) all non-exempt, hourly employees who were employed by Willco Management, Inc. or its predecessor, merged or related entities in California as a Shift Manager at any point from August 31, 2017 and continuing into the present. (“Willco Shift Manager Expense Reimbursement Subclass”);

Collectively, groups thirteen (13) and fourteen (14) may be referred to as the “Shift Manager Expense Reimbursement Subclass.”

(15) all individuals who were employed by CAM-BAS, 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 August 31, 2017 and continuing into the present; (“CAM-BAS Late Payment Subclass”);

(16) all individuals who were employed by CAM-BAS, 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 August 31, 2017 and continuing into the present; (“Willco Late Payment Subclass”);

Collectively, these groups may also all collectively be referred to herein as the Classes or Class Member(s).⁴

71. 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 non-exempt, hourly employees who were employed by CAM-BAS, Inc. or its predecessor, merged or related entities in California as an employee at any point from November 12, 2019 and continuing into the present. (“CAM-BAS Non-Exempt Aggrieved Employees”);

(2) all non-exempt, hourly employees who were employed by Willco Management, Inc. or its predecessor, merged or related entities in California as an employee at any point from November 12, 2019 and continuing into the present. (“Willco Non-Exempt Aggrieved Employees”);

⁴ Plaintiff reserves the right to redefine the Classes and Subclasses identified herein.

1
2 Collectively, aggrieved employee groups one (1) and two (2) may be referred to as the
3 “Non-Exempt Aggrieved Employees.”

4 (3) all non-exempt, hourly employees who were employed by CAM-BAS, Inc. or its
5 predecessor, merged or related entities in California as a Shift Manager at any point
6 from November 12, 2019 and continuing into the present. (“CAM-BAS Shift
7 Manager Aggrieved Employees”);

8 (4) all non-exempt, hourly employees who were employed by Willco Management, Inc.
9 or its predecessor, merged or related entities in California as a Shift Manager at any
10 point from November 12, 2019 and continuing into the present. (“Willco Shift
11 Manager Aggrieved Employees”);

12 Collectively, aggrieved employee groups three (3) and four (4) may be referred to as the
13 “Shift Manager Aggrieved Employees.”

14 (5) all individuals who were employed by CAM-BAS, Inc. or its predecessor, merged or
15 related entities for one or more pay periods in California as a non-exempt, hourly
16 employee and whose employment concluded at any time between November 12,
17 2019 and continuing into the present; (“CAM-BAS Late Payment Subclass”);

18 (6) all individuals who were employed by Willco Management, Inc. or its predecessor,
19 merged or related entities for one or more pay periods in California as a non-exempt,
20 hourly employee and whose employment concluded at any time between November
21 12, 2019 and continuing into the present; (“Willco Late Payment Subclass”);

22 Collectively, aggrieved employee groups five (5) and six (6) may be referred to as the
23 “Late Payment Aggrieved Employees.”

24 Collectively, these may all collectively be referred to herein as aggrieved employees and/or all
25 aggrieved employees where appropriate.

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

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

1 **A. Numerosity**

2 74. The potential members of the Proposed Classes as defined are each so numerous
3 that joinder of all the members of the Proposed Classes is impracticable. While the precise
4 number of proposed Class Members in each Class has not been determined at this time, Plaintiff
5 is informed and believes that Defendants currently employ, and during the relevant time periods
6 employed to be more than 500 members or more of the Proposed Class and Subclasses at any
7 given time based upon Defendants' PPP application.

8 75. Plaintiff alleges that Defendants' employment records would provide information
9 as to the number and location of all Proposed Class members. Joinder of all members of the
10 Proposed Class and Subclasses is not practicable.

11 **B. Commonality**

12 76. There are questions of law and fact common to the Proposed Classes⁵ that
13 predominate over any questions affecting only individual Proposed Class Members. These
14 common questions of law and fact include, without limitation:

15 a. Whether Defendants failed to pay minimum wages for all hours worked as
16 required by Labor Code §§ 1194, 1194.2, and 1197 as well as IWC Wage Order No.5-2001 to the
17 Non-Exempt Class and the Shift Manager Subclass;

18 b. Whether Defendants failed to pay wages and/or overtime compensation
19 and at the correct rate as required by Labor Code § 510 to the Non-Exempt Class, the Shift
20 Manager Subclass, and the Overtime Subclass;

21 c. Whether Defendants violated Labor Code §§ 226.7 and IWC Wage Order
22 No. 5-2001, by failing to authorize and permit the Non-Exempt Class, the Shift Manager
23 Subclass, and the Meal Period Subclass to take a timely meal period within the first five (5) hours
24 of their shift as well as their failure to pay the Meal Period Classes and the Unfair Competition
25 Class one additional hour of pay at the employees' at their regular rate of compensation when
26 they did not receive a compliant meal period;

27 _____
28 ⁵ Plaintiff reserves his right to designate subclasses within the Classes including designating an Unfair Competition subclass for each class.

1 d. Whether Defendants violated Labor Code § 226.7 and IWC No. 5-2001, by
2 failing to authorize and permit Plaintiff, the Non-Exempt Class, the Submanager Subclass, and
3 the Rest Period Subclass of their right to receive a ten (10) minute duty-free rest period for every
4 four hours of work or major fraction thereof, failing to authorize and permit employees' to leave
5 the premises during rest periods and/or relieve employees of all control during rest periods, and
6 by failing to compensate said employees one (1) additional hour of pay at the employee's regular
7 rate of compensation in lieu of rest periods;

8 e. Whether Defendants violated Labor Code § 226(a) and (e) by failing to
9 provide the Wage Statement Class with an accurate itemized wage statements that accurately
10 indicate, the gross wages earned, all deductions from wages, the net wages earned, as well as all
11 applicable hourly rates in effect during the pay period and the corresponding number of hours
12 worked at each hourly rate by the employee;

13 f. Whether Defendants violated Labor Code § 2802 by failing to provide
14 Plaintiff, the Non-Exempt Class, the Submanager Expense Subclass, and the Expense
15 Reimbursement Subclass with reimbursement for the use of their cell phones and/or other
16 personal electronic device;

17 g. Whether Defendants violated § 17200 et seq. of the Business & Professions
18 Code by engaging in the acts previously alleged against the Non-Exempt Class;

19 h. Whether Defendants violated §§ 201-203 of the Labor Code by failing to
20 pay compensation due and owing at the time that the Late Payment Classes employment with
21 Defendants concluded;

22 **C. Typicality**

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

27 **D. Adequacy of Representation**

1 78. Plaintiff will fairly and adequately represent and protect the interests of the
2 members of the proposed Classes. Counsel who represents Plaintiff and the Proposed Classes is
3 competent and experienced in litigating large employment class actions, and have the financial
4 resources to litigate the claims at issue.

5 **E. Superiority of Class Action**

6 79. A class action is superior to other available means for the fair and efficient
7 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
8 practicable, and questions of law and fact common to the Proposed Class predominate over any
9 questions affecting only individual members of the Proposed Class. Each member of the
10 Proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal
11 policy and/or practice of failing to pay all wages due, failing to provide meal periods, failing to
12 provide rest periods, failing to provide accurate itemized wage statements, and failing to pay all
13 wages upon resignation or termination.

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

18 **V.**

19 **FIRST CAUSE OF ACTION**
20 **FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§**
21 **1194, 1194.2 AND IWC WAGE ORDER NO. 7-2001**
22 **[Against All Defendants by Plaintiff, the Non-Exempt Class, and the Shift Manager**
23 **Subclass]**

24 81. Plaintiff, on behalf of herself, the Non-Exempt Class, and the Shift Manager
25 Subclass re-alleges and incorporates by reference all previous paragraphs.

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

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

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

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

5 84. As set forth above, Plaintiff, the Non-Exempt Class, and the Shift Manager
6 Subclass were not compensated for all hours worked as a result of Defendants' policies and
7 practices described in detail above.

8 85. In failing to pay Plaintiff, the Non-Exempt Class, and the Shift Manager Subclass
9 for all hours worked, for the reasons described above, Defendants willfully and intentionally
10 violated Labor Code § 1194 and acted in bad faith. Accordingly, pursuant to sections 1194 and
11 1194.2 of the California Labor Code, Plaintiff, the Non-Exempt Class, and the Shift Manager
12 Subclass are entitled to recover, either their unpaid hourly wages due, or minimum wage plus
13 interest and/or liquidated damages in an additional amount equal to the total amount of wages
14 unlawfully withheld during the Class Period.

15 VI.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER 18 LABOR CODE §§ 510, 1194, and 1199**

19 **[Against All Defendants by Plaintiff, the Non-Exempt Class, the Shift Manager Subclass,
20 and the Overtime Subclass]**

21 86. Plaintiff, on behalf of herself, the Non-Exempt Class, the Shift Manager Subclass,
22 the, and the Overtime Subclass realleges and incorporates by reference all previous paragraphs.

23 87. Labor Code § 510 requires an employer to compensate an employee who works
24 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
25 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
26 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
27 employees at no less than twice the regular rate of pay when an employee works more than
28 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 Non-Exempt Class, the Field Non-
Exempt Class, the Overtime Class, the Prevailing Wage Overtime Class, and the Incentive Pay
Overtime Class could not agree to work for a lesser wage.

88. 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.

89. 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.”

90. By their common policy of requiring Plaintiffs and members of the Proposed the Non-Exempt Class, the Shift Manager Subclass, the, and the Overtime Subclass to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at all for such hours and/or at the rate of one-half (1 1/2) their regular rate of pay, Defendants willfully violated the provisions of Labor Code § 510.

91. As a result of the unlawful acts of Defendants, the Non-Exempt Class, the Shift Manager Subclass, the, and the Overtime Subclass have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

VII.

THIRD CAUSE OF ACTION

**FAILURE TO PROVIDE LAWFUL MEAL PERIODS PURSUANT TO LABOR CODE
§§ 226.7 and 512; IWC WAGE ORDER NO. 5-2001 § 11**

[Against All Defendants by Plaintiff, the Non-Exempt Class, the Shift Manager Subclass, and the Meal Period Subclass]

92. Plaintiff, on behalf of herself, realleges and incorporates by reference all previous paragraphs.

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

94. At points within the past four (4) years including within the past year, Plaintiff, the Non-Exempt Class, the Shift Manager Subclass, and the Meal Period Subclass consistently worked shifts over six (6) hours and did not receive timely first meal periods within the first five (5) hours of their shifts.

95. During the statutory period applicable to their claims, Plaintiff, the Non-Exempt Class, the Shift Manager Subclass, and the Meal Period Subclass 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.

96. Pursuant to Labor Code §226.7, Plaintiff, the Non-Exempt Class, the Shift Manager Subclass, and the Meal Period Subclass 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 NO. 5-2001, § 12
[Against All Defendants by Plaintiff, the Non-Exempt Class, the Shift Manager Subclass,
and the Rest Period Subclass]

97. Plaintiff, on behalf of herself, the Non-Exempt Class, the Shift Manager Subclass, and the Rest Period Subclass, realleges and incorporates by reference all previous paragraphs.

98. Plaintiff, the Non-Exempt Class, the Shift Manager Subclass, and the Rest Period Subclass, 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.

99. 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. 5-2001 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.

100. 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. 5-2001 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.

101. 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 Shift Manager Subclass, and the Rest Period Subclass, to forgo rest periods and/or made it impossible for them to complete their assignments and deliveries and also take a rest period.

102. 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.

103. Based upon the foregoing, at all times pertinent hereto, Defendants failed to authorize and permit Plaintiff, the Non-Exempt Class, the Shift Manager Subclass, and the Rest Period Subclass 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.

104. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the Non-Exempt Class, the Shift Manager Subclass, and the Rest Period Subclass, 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).

105. Pursuant to Labor Code § 226.7, Plaintiff the Non-Exempt Class, the Shift Manager Subclass, and the Rest Period Subclass 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]

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

107. From one (1) year prior to the filing of this action and continuing into the present, Defendants knowing and intentionally failed to provide accurate itemized wage statements to Plaintiff and the Wage Statement Class in accordance with Labor Code § 226(a)(1, 2, 5, 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 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.

108. Due to Defendants' failure to pay Plaintiff and the Wage Statement Class all minimum wages, all overtime wages, all rest period premiums, and meal period premiums, the wage statements issued by Defendants 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, Defendant has violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and the Wage Statement Class.

109. Moreover, the wage statements issued to the, 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, 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).

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

1 pay period and the corresponding number of hours worked at each hourly rate by the employee
2 for the reasons discussed above.

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

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

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

27 **X.**

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(LABOR CODE § 2802)

1 **[Against all Defendants on behalf of Plaintiff, the Non-Exempt Class, the Shift Manager**
2 **Subclass, and the Expense Reimbursement Subclass]**

3 114. Plaintiffs on behalf of herself, the Non-Exempt Class, the Shift Manager Subclass,
4 and the Expense Reimbursement Subclass re-allege and incorporate by reference each and every
5 allegation set forth in the preceding paragraphs.

6 115. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her
7 employee for all necessary expenditures or losses incurred by the employee in direct consequence
8 of the discharge of his or her duties.”

9 116. California law prohibits an employer from failing to reimburse employees from
10 losses incurred through the use of their own electronic devices even if the use would not cause the
11 employee to exceed their data limit. *See Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App.
12 4th 113 (2014) (“We hold that when employees must use their personal cell phones for work-
13 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
14 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement
15 owed is a reasonable percentage of their cell phone bills.”).

16 117. At times during the four (4) years prior to the filing of this Action and/or within
17 the past year, Defendants required and/or expected Plaintiff, the Non-Exempt Class, the Shift
18 Manager Subclass, and the Expense Reimbursement Subclass to use their cell phones in the
19 normal course of their job duties as detailed above.

20 118. Defendants’ conduct in requiring Plaintiff, the Non-Exempt Class, the Shift
21 Manager Subclass, and the Expense Reimbursement Subclass to engage in the above described
22 activities caused them to incur losses as a direct consequence of their duties in violation of Labor
23 Code § 2802. Although Plaintiff and the Non-Exempt Class, the Shift Manager Subclass, and the
24 Expense Reimbursement Subclass were regularly required to and/or ordered/directed to use their
25 own personal communication devices for work purposes, the Non-Exempt Class, the Shift
26 Manager Subclass, and the Expense Reimbursement Subclass were not provided with any
27 reimbursement for the use of their personal cell phones.

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

XI.
SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200
[Against all Defendants on behalf of Plaintiff, the Classes and all Subclasses]

120. Plaintiff, on behalf of herself and the Classes, realleges and incorporates by reference all previous paragraphs.

121. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself, 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.

122. 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.

123. 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

1 unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving
2 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
3 privileges guaranteed to all employees under law.

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

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

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

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

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

23 XII.

24 **EIGHTH CAUSE OF ACTION**

25 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
26 FOR PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS
27 OF LABOR CODE §§ 204, 210, 226(a), 226(e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5,
28 1194, 1197, 1198, and 2802 and IWC Wage Order No. 5-2001.**

129. Plaintiff, on behalf of the State of California, realleges and incorporates by
reference all previous paragraphs.

1 130. 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.

9 131. 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 §§ 204, 210, 226(a), 226(e),
11 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802 and IWC Wage Order No.
12 5-2001.

13 132. 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.

19 133. 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).

12 134. 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.”

19 135. 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.”

25 136. 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

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

11 138. Labor Code § 1174 provides that each employer shall keep “payroll records
12 showing the hours worked daily by and the wages paid to...employees employed
13 at...establishments.” An employer who fails to maintain the records proscribed by Labor Code §
14 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

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

26 ///

27 ///

28 ///

XIII.
NINTH CAUSE OF ACTION
WAITING TIME PENALTIES PURSUANT TO LABOR CODE §§201-203
[Against all Defendants on behalf of Plaintiff and the Late Payment Subclass]

140. Plaintiffs on behalf of herself and the Late Payment Subclass Class re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

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

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

143. As described in detail above, Defendants failed to pay Plaintiff and the other Class Members whose employment concluded all wages owed, including but not limited to minimum wages, 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 Class Members' 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.

144. At the time of Plaintiff, the other members of the General Late Payment Class and the Sick Pay Late Payment Class' separation from Defendants, these sums were certain and known to Defendants.

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

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RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

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

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

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

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

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

6. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a) in the amount of 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 exceeding an aggregate penalty of four thousand dollars (\$4,000) for the inaccurate itemized wage statements issued to Plaintiff and the Wage Statement Class from August 31, 2019 and continuing into the present;

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

8. An order enjoining Defendants and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class Members proper compensation for minimum wages, overtime hours worked, meal period

1 premiums, rest period premiums, and from failing to provide timely first meal periods within the
2 first five (5) hours of an employees shift;

3 9. For penalties under Labor Code § 2698, et seq. for Plaintiff and all aggrieved
4 employees because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226(a),
5 226(e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802 and IWC Wage
6 Order No. 5-2001.

7 10. An award to Plaintiff and the Late Payment Subclass of waiting time penalties in
8 the amount of up to 30 days' wages;

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

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

11 13. An award of attorneys' fees; and

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

13
14 DATED: March 22, 2021

WINSTON LAW GROUP, P.C.

15
16 By: David S. Winston
17 DAVID S. WINSTON
18 Attorneys for Plaintiff and the Proposed
19 Classes
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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 2, 2021

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

CAM-BAS, Inc.
711 Calle Artis
San Jose, CA 95131

Willco Management, Inc.
711 Calle Artis
San Jose, CA 95131

Re: Monica Melendez vs. CAM-BAS, Inc., Willco Management, Inc. and/or other dbas of the above identified entities and/or other names by which these entities and/or businesses are known as CAM-BAS, Inc. and/or Willco Management, Inc.- California Labor Code §2699 Penalties

Gentlepersons:

This firm represents Monica Melendez (“Plaintiff” or “Ms. Melendez”) and a proposed group of current and former employees working for Defendants CAM-BAS, Inc. and Willco Management, Inc. (“Defendants”) in California for violations of California Labor Code §§ 204, 210, 226(a), 226(e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802 and IWC Wage Order No. 5-2001.

- (1) all non-exempt, hourly employees who were employed by CAM-BAS, Inc. or its predecessor, merged or related entities in California as an employee at any point from one (1) year prior to the date of this letter and continuing into the present. (“CAM-BAS Non-Exempt Aggrieved Employees”);
- (2) all non-exempt, hourly employees who were employed by Willco Management, Inc. or its predecessor, merged or related entities in California as an employee at any point from one (1) year prior to the date of this letter and continuing into the present. (“Willco Non-Exempt Aggrieved Employees”);

Collectively, aggrieved employee groups one (1) and two (2) may be referred to as the “Non-Exempt Aggrieved Employees.”

- (3) all non-exempt, hourly employees who were employed by CAM-BAS, Inc. or its predecessor, merged or related entities in California as a Shift Manager at any point from one (1) year prior to the date of this letter and continuing into the present. (“CAM-BAS Shift Manager Aggrieved Employees”);

- (4) all non-exempt, hourly employees who were employed by Willco Management, Inc. or its predecessor, merged or related entities in California as a Shift Manager at any point from one (1) year prior to the date of this letter and continuing into the present. (“Willco Shift Manager Aggrieved Employees”);

Collectively, aggrieved employee groups one (1) and two (2) may be referred to as the “Shift Manager Aggrieved Employees.”

These groups 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 Specifically, Plaintiff contends that Defendant required and/or suffered and permitted Plaintiff and the other aggrieved employees to perform work off-the-clock without compensation, failed to reimburse Plaintiff and the other aggrieved employees for expenses associated with the use of their cell phone in the discharge of their duties, failed to authorize and permit timely first meal periods, failed to authorize and permit lawful rest periods where employees were relieved of all duties and allowed to leave the premises, failed to provide accurate itemized wage statements, and failed to timely pay wages during employment.

DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 510, 1194, 1197, 1198, and 2802

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. 5-2001 obligates employers to pay each employee minimum wages for all hours worked.

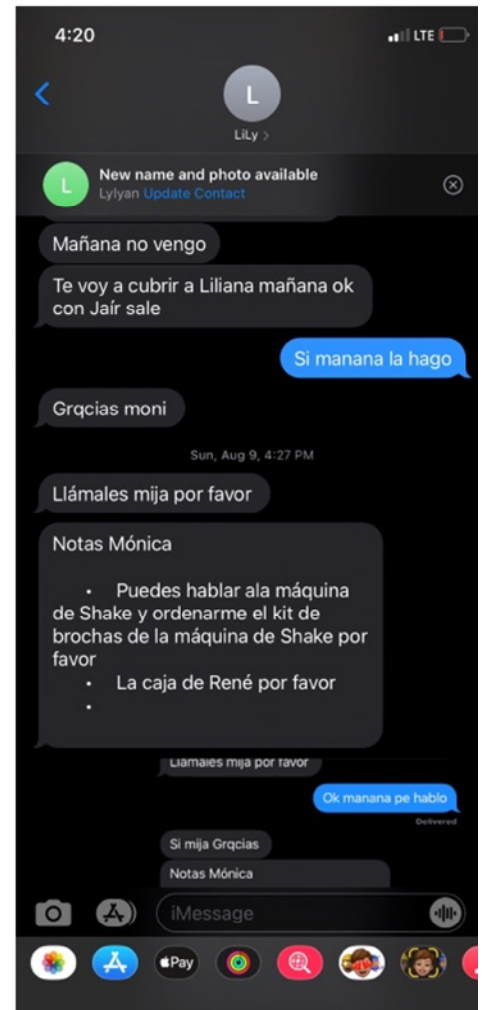
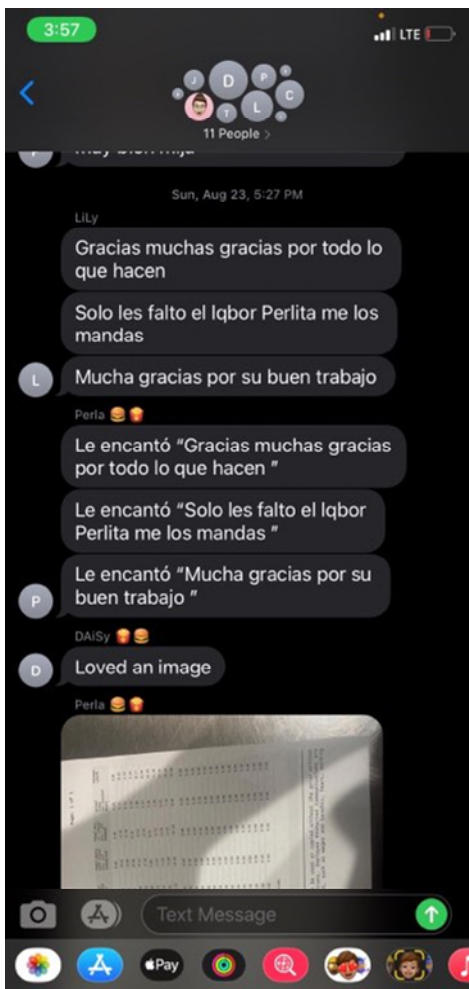
Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further,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

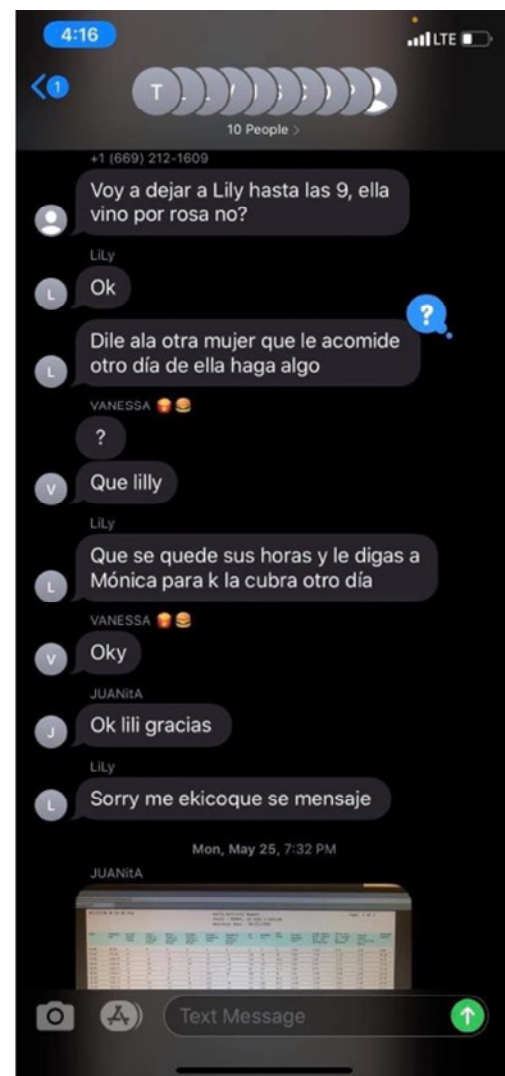
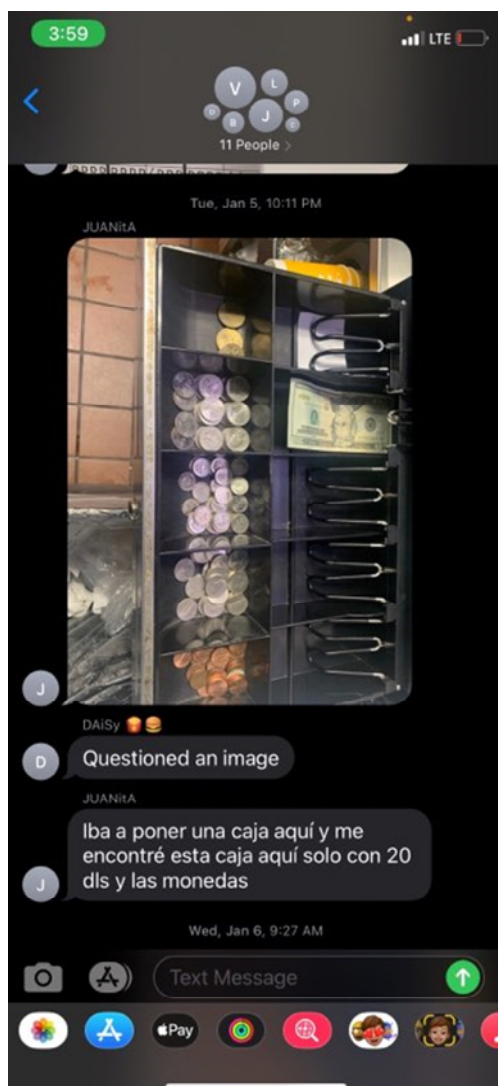
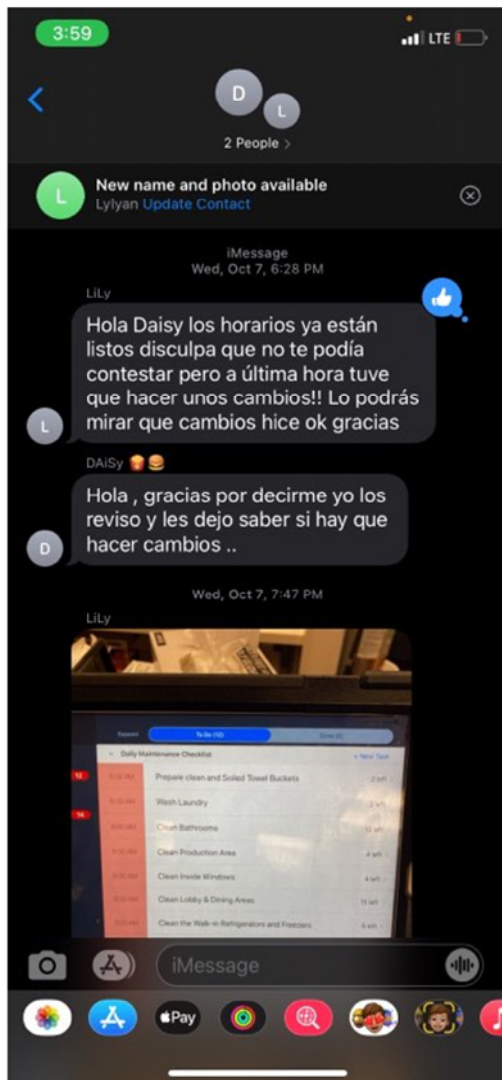
¹ See *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. Jul. 8, 2011) 796 F. Supp. 2d 1246, 1261; *Moua v. Int'l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) No. 5:10-CV-01070 EJD, 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) No. CV 08-07919 GAF PJWX, 2012 WL 10890355,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

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.”

Similarly, 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.”

Defendants required and/or expected Plaintiff, the Non-Exempt aggrieved employees, Shift Manager Aggrieved Employees to regularly review and respond to work related communications during and after hours related to issues at the Defendants locations, time records, job conditions, tasks, and other job related communications on their won personal electronic devices—including, but not necessarily limited to their cell phones in the normal course of their job duties:





Moreover, it was expected and known that employees would incur expenses and be suffered or permitted to expend time on reviewing and acting in accordance with the text messages sent to Plaintiff and the other aggrieved employees with job site and assignment information. As such, Plaintiff and the other aggrieved employees were required and/or expected to use their personal cell phones in the discharge of their job duties in order to obtain work schedules and assignments. Defendants' conduct in requiring Plaintiff and the other aggrieved employees to use their cell phones to obtain their schedules and/or job assignments caused them to incur losses as a direct consequence of their duties.

Although Plaintiff and the other aggrieved employees were regularly required to and/or ordered/directed to use their own personal electronic devices—including, but not limited to cell phones—for work purposes, Plaintiff and the other aggrieved employees were not provided with any reimbursement for the use of their personal electronic devices. 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.”).

Moreover, even assuming *arguendo* Plaintiff and the other aggrieved employees were not required to use their cell phone—which they indisputably were—Defendants also suffered and permitted Plaintiff and the other aggrieved employees to perform work while reviewing and acting in accordance with the instructions they received on a frequent basis via text message. *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). Since Plaintiff and many of the aggrieved employees had already worked shifts of eight (8) hours at the time that they were required to work while off-the-clock, included overtime hours.

Through Defendants’ policy and practice of not paying Plaintiff and the other aggrieved employees for the time expended reviewing text messages with job assignment information and/or other job related communications within the discharge of their duties, Defendants violated Labor Code §§ 510, 558, 1194, 1197, 1197.1, 1198 and 2802. Moreover, as set forth in *Troester*, Defendants either can and/or should have recorded the time spent by its non-exempt hourly employees on the use of the and compensated Plaintiff and the aggrieved employees for such time. *See also 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.”). As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code §§ 11510, 558, 1194, 1197, 1197.1, 1198 and 2802 with respect to Plaintiff and the aggrieved employees.

Based upon the foregoing, Defendants 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, 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 liquidated damages for violations of Labor Code § 1197.1.

DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 226.7, 512, 558, and 1198 AS WELL AS IWC WAGE ORDER NO. 5-2001

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 No. 5-2001 prohibits 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 1048–1049.² 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 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

² 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.)

ultimately worked 6.01 hours or more.

Here, Defendants 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, and failed to authorize and permit them to take timely first meal periods. Defendants 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. Defendants' understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods due to a lack of sufficient coverage.

Defendants 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 No. 5-2001, prohibits 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 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 No. 5-2001. Unfortunately, Plaintiff and the other 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 rest period in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001.

Based upon the foregoing, Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 as well as IWC Wage Order No. 5-2001 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.

DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE § 226.7 AND IWC WAGE ORDER NO. 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 No. 5-2001, 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. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.”). In *Augustus*, the court expressly rejected the employer’s assertion that it could provide an on-duty rest period to employees and further explained “that employers [must] relinquish any control over how employees spend their break time, and relieve their employees of all duties.” *Id.* at 273.

In *Augustus*, the court expressly rejected the employer’s assertion that it could provide an on-duty rest period to employees and further explained “that employers [must] relinquish any control over how employees spend their break time, and relieve their employees of all duties.” *Id.* at 273; *accord Faulkinbury v. Boyd & Associates, Inc.*, 216 Cal.App.4th 220, 236 (2013) (“There does not appear to be an on-duty rest break exception as there is for meal breaks.”); *Wright vs. Renzenberger, Inc.*, Case No. 2:13-cv-06642-FMO-AGR, Dkt. 118 (C.D. Cal. Mar. 8, 2018) (holding that requiring employees to stay in near proximity of the vans violated California’s rest period laws).

The California Supreme Court’s ruling in *Augustus* follows the clear directive in *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal. App. 4th 968, 975 (1995) that “[w]hen an employer directs, commands or restrains an employees from leaving the work place...and thus prevents the employee from using the time effectively for his or her own purposes, that employees remains subject to the employer’s control. *Augustus*, 2 Cal.5th at 275 (citing *Bono*, 32 Cal. App. 4th at 975). “Restricting employees to the employer’s premises, or worksite, means that the employee is subject to the employer’s control so as to constitute hours worked.” DLSE Manual 45.1.5.1 (2016) at p. 45-3; *Morillion v. Royal Packing Co.*, 22 Cal.4th 575 (2000). Specifically, in *Morillion*, the California Supreme Court rejected the employer’s argument that employees “were not under its control during the required bus ride because they could read on the bus, or perform other personal activities.” *Id.* at 586. The court explained that “[p]ermitting plaintiffs to engage in limited activities such as reading or sleeping on the bus does not allow them to use “the time effectively for their own purposes...during the bus ride plaintiffs could not drop off their children at school, stop for breakfast before work, or run other errands requiring the use of a car.” *Id.*

Following *Augustus*, the California Labor Commissioner published a memorandum on rest periods wherein it unequivocally stated both that employers cannot require employees to remain on the premises during rest periods and that an employer cannot require an employee to engage in

radio communications during a rest period:

5. Q.Can my employer require that I stay on the work premises during my rest period?

A.No, your employer cannot impose any restraints not inherent in the rest period requirement itself. In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement "obligates employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time." (citation omitted) As a practical matter, however, if an employee is provided a ten minute rest period, the employee can only travel five minutes from a work post before heading back to return in time.

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 No. 5-2001, Defendants failed to provide Plaintiff and all aggrieved employees with duty-free 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 and the other aggrieved employees to remain on the premises during their rest periods as part of their common policies and practices. Specifically, Defendants maintained a common policy and practice of requiring employees to remain on premises during the rest periods. This includes, is not limited to, advising Plaintiff and the other aggrieved employees that they could not leave the premises because Defendants were paying them for the time associated with rest periods. As such, Defendants did not relieve Plaintiff and the other aggrieved employees of all duties during their rest periods and continued to exercise control over them during such periods in violation of IWC Wage Order No. 5-2001 and Labor Code section 226.7.

As discussed above, “[r]estricting employees to the employer’s premises, or worksite, means that the employee is subject to the employer’s control so as to constitute hours worked.” DLSE Manual 45.1.5.1 (2016) at p. 45-3; *Morillion*, 22 Cal.4th 575 (2000) (holding that employees who could were required to remain on a bus and could eat and make phone calls were still subject to the employer’s control). By requiring Plaintiff and the other aggrieved employees to remain on the premises during rest periods, Defendants continued to exercise control over and restrained their employees from leaving the workplace, engaging in certain specified activities without restriction, and interfered with the right of their employees to take rest periods. For instance, Defendants’

policy and practice had a chilling effect on tasks that Defendants could not easily monitor and/or their limited their ability to complain about workplace conditions during their breaks. Such conduct violated Labor Code § 226.7 and IWC Wage Order No. 5-2001.

Based upon the foregoing, Defendant violated Labor Code § 226.7 and 1198 as well as IWC Wage Order No. 5-2001 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.

DEFENDANTS VIOLATED AND CONTINUE 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. 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,

Due to Defendants' 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 Defendants 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 Defendants have 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).").

In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to pay Plaintiff and all aggrieved employees rest periods premiums including at the proper rates. Moreover, Plaintiff and all aggrieved employees also suffered legal "injury" for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily determine from the wage statements themselves the information required to be set forth by Section 226(a), the

information provided by Defendants was confusing and inaccurate. In addition, Plaintiff and the aggrieved employees were unable to determine at all the total hours worked by the employee, the gross wages earned, the net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee for the reasons discussed above. Such conduct can permit the imposition of default PAGA penalties under Labor Code section 2699(f). *See e.g. Gola vs. University of San Francisco*, San Francisco County Superior Court Case No. CGC-18-565018.

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, Defendants failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of Labor Code § 226(a).

DEFENDANTS 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.” Violations of Labor Code § 204 are non-curable under PAGA pursuant to Labor Code § 2699.5.

As discussed in detail above, Defendants failed to pay Plaintiff and all aggrieved employees minimum wages, overtime wages, meal period premiums, and rest period premiums owed, Defendants failed to timely pay the aggrieved employees for labor performed between the 1st and 15th days between the 16th calendar day of the month during which the labor was performed on a regular and consistent basis. Moreover, as a result of the conduct described in detail above, Defendants also failed to pay Plaintiff and the other aggrieved employees all wages owed for labor performed between the 16th and last day between the 1st and 10th day of the following month 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, Plaintiff and the other

aggrieved employees are 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).

DEFENDANTS 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 previously explained, Defendants failed to maintain accurate records of the total hours worked by employees or of the time associated with reviewing the text messages that Defendants sent to Plaintiff and the other aggrieved employees while off-the-clock on a regular and consistent basis. Thus, Defendants violated Labor Code §§ 1174 and 1174.5.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency of our intent to pursue a civil class action lawsuit and representative action against Defendant that will also include a PAGA claim for penalties under Labor Code § 2699. If Defendants are interested in attempting to resolve this matter on a representative basis, please contact us or have any Counsel you choose to retain contact me so that we can discuss an informal discovery plan and the possibility of early mediation on or before **March 18, 2021**.

Very truly yours,

WINSTON LAW GROUP, P.C.

By: 
DAVID S. WINSTON

Exhibit B

WINSTON LAW GROUP, P.C.

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

March 19, 2021

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

O'HAGAN MEYER

Mr. Matthew Sgnilek and Ms. Andrea Rosenkranz

4695 Macarthur Ct, Ste 210

Newport Beach, CA 92660-88591

Re: Monica Melendez vs. CAM-BAS, Inc., Willco Management, Inc. and/or other dbas of the above identified entities and/or other names by which these entities and/or businesses are known as CAM-BAS, Inc. and/or Willco Management, Inc.- California Labor Code §2699 Penalties – Amended PAGA Notice for LWDA Case No. LWDA-CM-823293-21

Gentlepersons:

As you know, this firm represents Monica Melendez (“Plaintiff” or “Ms. Melendez”) and a proposed group of current and former employees working for Defendants CAM-BAS, Inc. and Willco Management, Inc. (“Defendants”) in California for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226(e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802 and IWC Wage Order No. 5-2001.

- (1) all non-exempt, hourly employees who were employed by CAM-BAS, Inc. or its predecessor, merged or related entities in California as an employee at any point from March 2, 2020 and continuing into the present. (“CAM-BAS Non-Exempt Aggrieved Employees”);
- (2) all non-exempt, hourly employees who were employed by Willco Management, Inc. or its predecessor, merged or related entities in California as an employee at any point from March 2, 2020 and continuing into the present. (“Willco Non-Exempt Aggrieved Employees”);

Collectively, aggrieved employee groups one (1) and two (2) may be referred to as the “Non-Exempt Aggrieved Employees.”

- (3) all non-exempt, hourly employees who were employed by CAM-BAS, Inc. or its predecessor, merged or related entities in California as a Shift Manager at any point from March 2, 2020 and continuing into the present. (“CAM-BAS Shift Manager Aggrieved Employees”);

- (4) all non-exempt, hourly employees who were employed by Willco Management, Inc. or its predecessor, merged or related entities in California as a Shift Manager at any point from March 2, 2020 and continuing into the present. (“Willco Shift Manager Aggrieved Employees”);

Collectively, aggrieved employee groups one (1) and two (2) may be referred to as the “Shift Manager Aggrieved Employees.”

- (5) all individuals who were employed by CAM-BAS, 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 2, 2020 and continuing into the present; (“CAM-BAS Late Payment Aggrieved Employees”);
- (6) all individuals who were employed by CAM-BAS, 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 2, 2020 and continuing into the present; (“Willco Late Payment Aggrieved Employees”);

Collectively, aggrieved employee groups five (5) and six (6) may be referred to as the “Late Payment Aggrieved Employees.

These groups 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.² Specifically, Plaintiff contends that Defendant required and/or suffered and permitted Plaintiff and the other aggrieved employees to perform work off-the-clock without compensation, failed to reimburse Plaintiff and the other aggrieved employees for expenses associated with the use of their cell phone in the discharge of their duties, failed to authorize and permit timely first meal periods, failed to authorize and permit lawful rest periods where employees were relieved of all duties and allowed to leave the premises, failed to provide accurate itemized wage statements, and failed to timely pay wages during employment.

² 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.

DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 510, 1194, 1197, 1198, and 2802

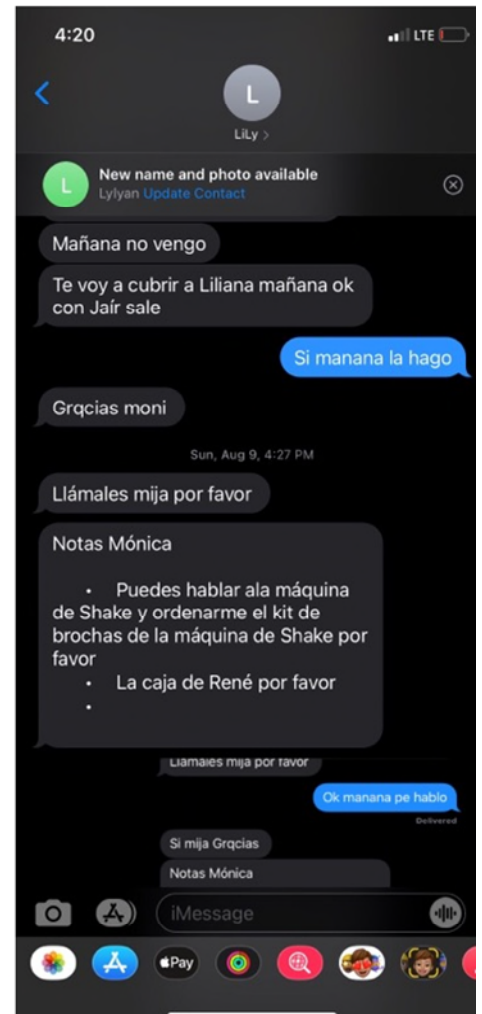
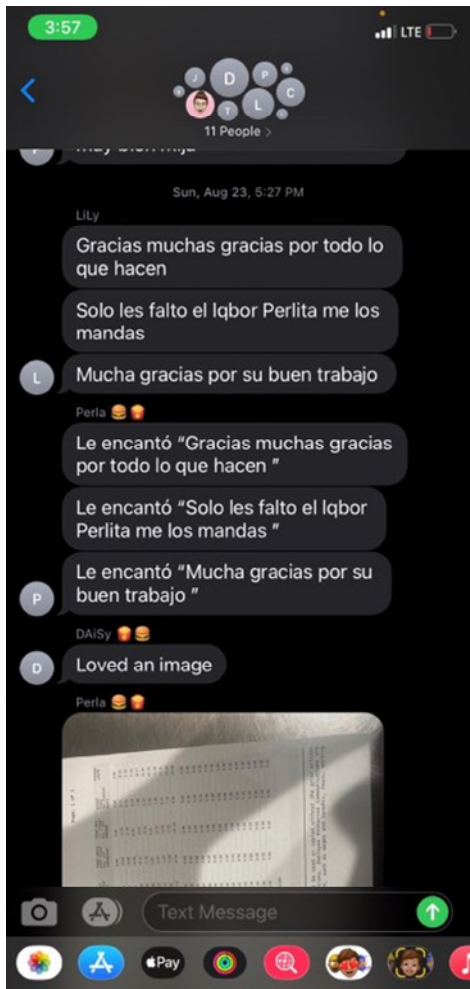
Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than 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. 5-2001 obligates employers to pay each employee minimum wages for all hours worked.

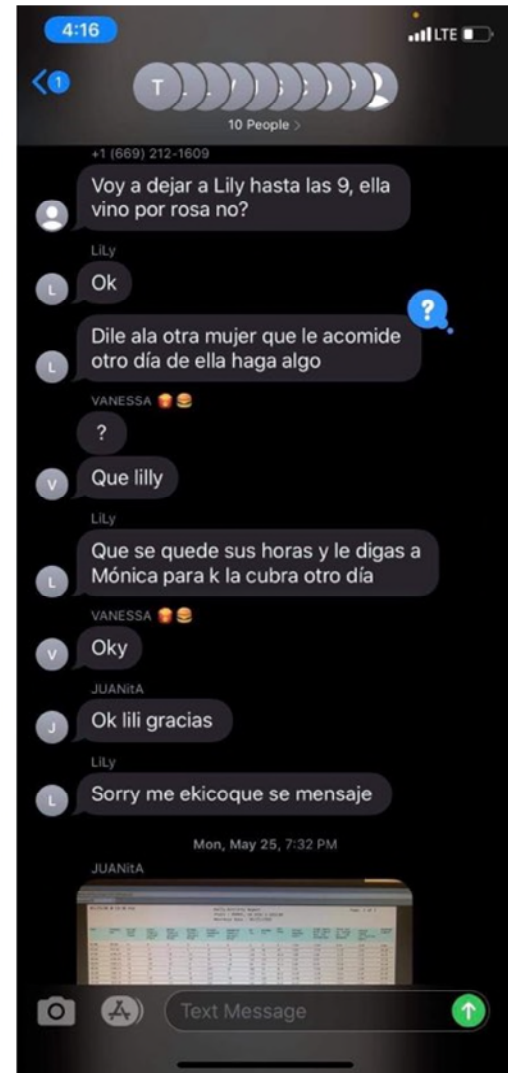
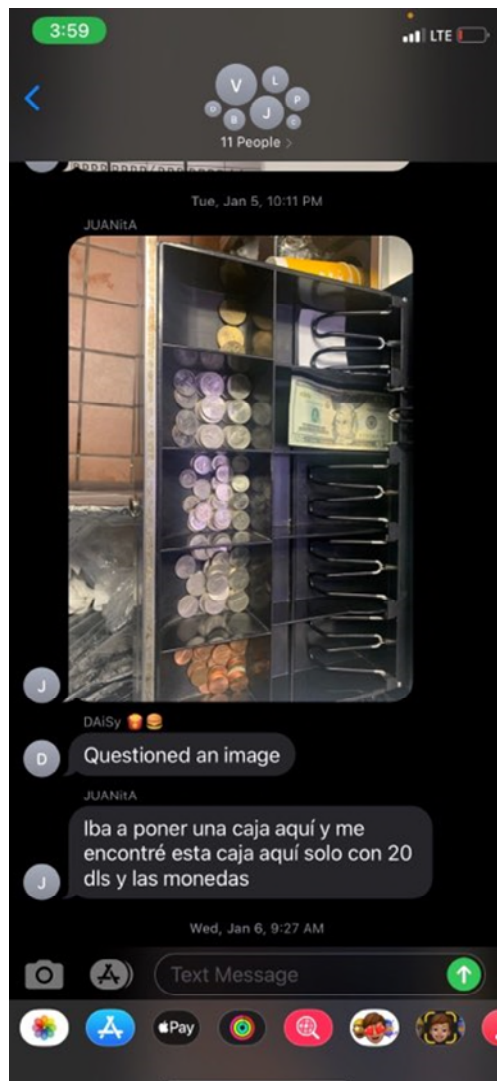
Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, 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 § 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.”

Similarly, 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.”

Defendants required and/or expected Plaintiff, the Non-Exempt aggrieved employees, Shift Manager Aggrieved Employees to regularly review and respond to work related communications during and after hours related to issues at the Defendants locations, time records, job conditions, tasks, and other job related communications on their won personal electronic devices—including, but not necessarily limited to their cell phones in the normal course of their job duties:





Moreover, it was expected and known that employees would incur expenses and be suffered or permitted to expend time on reviewing and acting in accordance with the text messages sent to Plaintiff and the other aggrieved employees with job site and assignment information. As such, Plaintiff and the other aggrieved employees were required and/or expected to use their personal cell phones in the discharge of their job duties in order to obtain work schedules and assignments. Defendants' conduct in requiring Plaintiff and the other aggrieved employees to use their cell phones to obtain their schedules and/or job assignments caused them to incur losses as a direct consequence of their duties.

Although Plaintiff and the other aggrieved employees were regularly required to and/or ordered/directed to use their own personal electronic devices—including, but not limited to cell phones—for work purposes, Plaintiff and the other aggrieved employees were not provided with any reimbursement for the use of their personal electronic devices. 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.”).

Moreover, even assuming *arguendo* Plaintiff and the other aggrieved employees were not required to use their cell phone—which they indisputably were—Defendants also suffered and permitted Plaintiff and the other aggrieved employees to perform work while reviewing and acting in accordance with the instructions they received on a frequent basis via text message. *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). Since Plaintiff and many of the aggrieved employees had already worked shifts of eight (8) hours at the time that they were required to work while off-the-clock, included overtime hours.

Through Defendants’ policy and practice of not paying Plaintiff and the other aggrieved employees for the time expended reviewing text messages with job assignment information and/or other job related communications within the discharge of their duties, Defendants violated Labor Code §§ 510, 558, 1194, 1197, 1197.1, 1198 and 2802. Moreover, as set forth in *Troester*, Defendants either can and/or should have recorded the time spent by its non-exempt hourly employees on the use of the and compensated Plaintiff and the aggrieved employees for such time. *See also 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.”). As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code §§ 11510, 558, 1194, 1197, 1197.1, 1198 and 2802 with respect to Plaintiff and the aggrieved employees.

Based upon the foregoing, Defendants 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.

Defendants also engaged in a common policy and practice since the onset of the COVID-19 pandemic of requiring Plaintiff and the aggrieved employees of undergoing temperature checks while off-the-clock for which they did not receive compensation in violation of Labor Code §§ 1194 and 510.

Defendants conduct in failing to pay Plaintiff and the aggrieved employees for such time was willful. The Department of Industrial Relations issued guidance on July 28, 2020 advising that employers that they must compensate employees for the time associated with medical checks before shifts (including temperature checks):

Medical Checks

9. Q: Must my employer pay me for time spent at my employer's worksite completing certain medical checks (including temperature checks) before beginning a shift?

A: Yes. Employers must pay workers for all "hours worked," including time that a worker is under the control of the employer. Employers that require their workers to complete a medical check in order to begin a shift, even if it is recommended under public health orders, must compensate workers for that time worked.

The term "hours worked" means the time during which a worker is subject to the control of an employer, and includes all the time the worker is suffered or permitted to work, whether or not required to do so. Under this definition, one way to determine whether time a worker spends performing a task is compensable—that is, whether it is time "worked"—is whether the employer exercised control over the worker by requiring the worker to perform that task.

If an employer requires that all workers perform a medical check (such as a temperature check) onsite before beginning a shift, the time completing the medical check, including any time waiting in line, would constitute time worked. This requirement applies even if such tasks were performed pursuant to a state or local public health guideline, because the check is done at the request, and thus under the control, of the employer.

10. Q: Is my employer required to pay workers for required medical checks (including temperature checks) at the employer's worksite, even if the medical checks take very little time?

A: Yes, an employer is required to compensate for all hours worked in California even if a required task takes only a small amount of time. There is no "de minimis" rule under California law. Therefore, if an employer requires medical checks (such as a temperature check) at the employer's worksite, the employer must compensate a worker for that time worked, even if the temperature check takes only a small amount of time to complete and record.

Defendants required Plaintiff and the aggrieved employees to undergo temperature checks both before starting their shifts and after their meal periods for which no compensation was provided. Such time was not de minimis and often took between one (1) to five (5) minutes and on occasion could take longer and violated Labor Code section 1194, 1197, 1197.1, and 1198. Moreover, as a result of requiring Plaintiff and the aggrieved employees to undergo the temperature checks before returning from lunch, Defendants improperly rounded their meal periods and failed to authorize and permit complete meal periods in violation of Labor Code § 512. See *Donohue v. Amn Servs.*, No. S253677, 2021 Cal. LEXIS 1294 (Feb. 25, 2021).

Since Plaintiff and many of the aggrieved employees had already worked shifts of eight (8) hours at the time that they were required to work while off-the-clock, included overtime hours for which they received no compensation in violation of Labor Code § 510.

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 liquidated damages for violations of Labor Code § 1197.1.

DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 226.7, 512, 558, and 1198 AS WELL AS IWC WAGE ORDER NO. 5-2001

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 No. 5-2001 prohibits 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).³ 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

³ 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.)

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 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, Defendants 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, and failed to authorize and permit them to take timely first meal periods. Defendants 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. Defendants’ understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods due to a lack of sufficient coverage.

Defendants 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 No. 5-2001, prohibits 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 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 No. 5-2001. Unfortunately, Plaintiff and the other 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 rest period in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001.

Based upon the foregoing, Defendants violated Labor Code §§ 226.7, 512, 558, and 1198

as well as IWC Wage Order No. 5-2001 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. **DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE § 226.7 AND IWC WAGE ORDER NO. 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 No. 5-2001, 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. See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.”). In *Augustus*, the court expressly rejected the employer’s assertion that it could provide an on-duty rest period to employees and further explained “that employers [must] relinquish any control over how employees spend their break time, and relieve their employees of all duties.” *Id.* at 273.

In *Augustus*, the court expressly rejected the employer’s assertion that it could provide an on-duty rest period to employees and further explained “that employers [must] relinquish any control over how employees spend their break time, and relieve their employees of all duties.” *Id.* at 273; accord *Faulkinbury v. Boyd & Associates, Inc.*, 216 Cal.App.4th 220, 236 (2013) (“There does not appear to be an on-duty rest break exception as there is for meal breaks.”); *Wright vs. Renzenberger, Inc.*, Case No. 2:13-cv-06642-FMO-AGR, Dkt. 118 (C.D. Cal. Mar. 8, 2018) (holding that requiring employees to stay in near proximity of the vans violated California’s rest period laws).

The California Supreme Court’s ruling in *Augustus* follows the clear directive in *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal. App. 4th 968, 975 (1995) that “[w]hen an employer directs, commands or restrains an employees from leaving the work place...and thus prevents the employee from using the time effectively for his or her own purposes, that employees remains subject to the employer’s control. *Augustus*, 2 Cal.5th at 275 (citing *Bono*, 32 Cal. App. 4th at 975). “Restricting employees to the employer’s premises, or worksite, means that the employee is subject to the

employer's control so as to constitute hours worked.'" DLSE Manual 45.1.5.1 (2016) at p. 45-3; *Morillion v. Royal Packing Co.*, 22 Cal.4th 575 (2000). Specifically, in *Morillion*, the California Supreme Court rejected the employer's argument that employees "were not under its control during the required bus ride because they could read on the bus, or perform other personal activities." *Id.* at 586. The court explained that "[p]ermitting plaintiffs to engage in limited activities such as reading or sleeping on the bus does not allow them to use "the time effectively for their own purposes...during the bus ride plaintiffs could not drop off their children at school, stop for breakfast before work, or run other errands requiring the use of a car." *Id.*

Following *Augustus*, the California Labor Commissioner published a memorandum on rest periods wherein it unequivocally stated both that employers cannot require employees to remain on the premises during rest periods and that an employer cannot require an employee to engage in radio communications during a rest period:

5. Q.Can my employer require that I stay on the work premises during my rest period?

A.No, your employer cannot impose any restraints not inherent in the rest period requirement itself. In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement "obligates employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time." (citation omitted) As a practical matter, however, if an employee is provided a ten minute rest period, the employee can only travel five minutes from a work post before heading back to return in time.

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 No. 5-2001, Defendants failed to provide Plaintiff and all aggrieved employees with duty-free 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 and the other aggrieved employees to remain on the premises during their rest periods as part of their common policies and practices. Specifically, Defendants maintained a common policy and practice of requiring employees to remain on premises during the rest periods. This includes, is not limited to, advising Plaintiff and the other aggrieved employees

that they could not leave the premises because Defendants were paying them for the time associated with rest periods. As such, Defendants did not relieve Plaintiff and the other aggrieved employees of all duties during their rest periods and continued to exercise control over them during such periods in violation of IWC Wage Order No. 5-2001 and Labor Code section 226.7.

As discussed above, “[r]estricting employees to the employer’s premises, or worksite, means that the employee is subject to the employer’s control so as to constitute hours worked.” DLSE Manual 45.1.5.1 (2016) at p. 45-3; *Morillion*, 22 Cal.4th 575 (2000) (holding that employees who could were required to remain on a bus and could eat and make phone calls were still subject to the employer’s control). By requiring Plaintiff and the other aggrieved employees to remain on the premises during rest periods, Defendants continued to exercise control over and restrained their employees from leaving the workplace, engaging in certain specified activities without restriction, and interfered with the right of their employees to take rest periods. For instance, Defendants’ policy and practice had a chilling effect on tasks that Defendants could not easily monitor and/or their limited their ability to complain about workplace conditions during their breaks. Such conduct violated Labor Code § 226.7 and IWC Wage Order No. 5-2001.

Based upon the foregoing, Defendant violated Labor Code § 226.7 and 1198 as well as IWC Wage Order No. 5-2001 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.

DEFENDANTS VIOLATED AND CONTINUE 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. 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,

Due to Defendants' 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 Defendants 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 Defendants have 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).”).

In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to pay Plaintiff and all aggrieved employees rest periods premiums including at the proper rates. Moreover, Plaintiff and all aggrieved employees also suffered legal “injury” for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily determine from the wage statements themselves the information required to be set forth by Section 226(a), the information provided by Defendants was confusing and inaccurate. In addition, Plaintiff and the aggrieved employees were unable to determine at all the total hours worked by the employee, the gross wages earned, the net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee for the reasons discussed above. Such conduct can permit the imposition of default PAGA penalties under Labor Code section 2699(f). *See e.g. Gola vs. University of San Francisco*, San Francisco County Superior Court Case No. CGC-18-565018.

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, Defendants failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of Labor Code § 226(a).

DEFENDANTS 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.” Violations of Labor Code § 204 are non-curable under PAGA pursuant to Labor Code § 2699.5.

As discussed in detail above, Defendants failed to pay Plaintiff and all aggrieved employees minimum wages, overtime wages, meal period premiums, and rest period premiums owed, Defendants failed to timely pay the aggrieved employees for labor performed between the 1st and

15th days between the 16th calendar day of the month during which the labor was performed on a regular and consistent basis. Moreover, as a result of the conduct described in detail above, Defendants also failed to pay Plaintiff and the other aggrieved employees all wages owed for labor performed between the 16th and last day between the 1st and 10th day of the following month 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, Plaintiff and the other aggrieved employees are 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 minimum wages, 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.

DEFENDANTS 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.

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As previously explained, Defendants failed to maintain accurate records of the total hours worked by employees or of the time associated with reviewing the text messages that Defendants sent to Plaintiff and the other aggrieved employees while off-the-clock on a regular and consistent basis. Thus, Defendants violated Labor Code §§ 1174 and 1174.5.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency of our intent to pursue a civil class action lawsuit and representative action against Defendant.

Very truly yours,

WINSTON LAW GROUP, P.C.

By: David S. Winston
DAVID S. WINSTON

Certified Mail #: 7020 1810 0000 4230 5353