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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE**

JUAN ANGUIANO, as an individual and
on behalf of all others similarly situated,

Plaintiff,

v.

KANA PIPELINE, INC., a California
corporation; DANIEL A. LOCKE, an
individual; and DOES 1-50, inclusive,

Defendants.

Case No.: CVRI2102234

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE COMPLAINT FOR:**

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Failure to Compensate for Nonproductive Time in Violation of Labor Code Section 226.2**
6. **Failure to Furnish Accurate Itemized Wage Statements**
7. **Failure to Pay All Wages Due and Owing Upon Separation of Employment**
8. **Failure to Reimburse Business Expenses**
9. **Unfair Competition and**
10. **Violation of Private Attorneys General Act of 2004 Labor Code §§ 2698, et seq.**

DEMAND FOR JURY TRIAL

1 Plaintiff, JUAN ANGUIANO (“Plaintiff”), as an individual and on behalf of all others
2 similarly situated, hereby files this Complaint against Defendants KANA PIPELINE, INC.,
3 DANIEL A. LOCKE, and DOES 1-50, inclusive (referred to collectively hereinafter as
4 “Defendants”).

5 **JURISDICTION AND VENUE**

6 1. This court possesses original subject matter jurisdiction over this matter. Venue is
7 proper in Riverside County, California, because KANA PIPELINE, INC. maintains its principal
8 place of business in Riverside County and some of the complained of conduct occurred in this
9 judicial district.

10 **THE PARTIES**

11 2. Plaintiff resides in the State of California. Plaintiff worked for Defendants in the
12 State of California as a non-exempt employee during the relevant time period.

13 3. Defendant KANA PIPELINE, INC. is a California corporation that, at all relevant
14 times, was authorized to do business within the State of California and is doing business in the State
15 of California.

16 4. Plaintiff is informed and believes, and based thereon alleges, that DANIEL A.
17 LOCKE is an individual residing in the State of California and is, and at all relevant times has been,
18 the Chief Executive Officer of KANA PIPELINE, INC. Plaintiff is informed and believes, and
19 based thereon alleges, that DANIEL A. LOCKE devised and implemented the policies at issue in
20 this complaint and “caused” these violations as that term is used in Labor Code sections 558.1 and
21 1197.1. Pursuant to Labor Code sections 558 and 1197.1, DANIEL A. LOCKE is liable as a person
22 who “caused” the violations to occur.

23 5. The true names and capacities of the DOE Defendants sued herein as DOES 1
24 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendants
25 by said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible
26 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to
27 reflect the true names and capacities of the Doe Defendants when such identities become known.
28

6. Plaintiff is further informed and believes, and based thereon alleges, that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. Plaintiff is further informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

7. Whenever and wherever reference is made in this complaint to any act or failure to act by a Defendants or co-Defendant, such allegations and references shall also be deemed to mean the acts and/or failures to act by each Defendant acting individually, jointly and severally.

CLASS ALLEGATIONS

8. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to Code of Civil Procedure section 382. The class Plaintiff seeks to represent is defined as follows: “all non-exempt workers, whether paid on an hourly and or piece-rate basis, who were employed by Defendants in California at any time within the four years prior to the filing of the initial complaint.” (the “Class Members”)

a. Numerosity: While the exact number of Class Members is unknown to Plaintiff at this time, the class is so numerous that the individual joinder of all members is impractical under the circumstances of this case.

b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment because common questions of law and fact predominate over individual issues. Common questions include, but are not limited to, the following: (1) whether Defendants understated hours worked and failed to pay all amounts due to Plaintiff and the Class Members for wages earned, including minimum and overtime wages, under California law; (2) whether Defendants provided Plaintiff and the Class Members with all meal

1 periods or premium payments in lieu thereof in compliance with California law; (3)
2 whether Defendants provided Plaintiff and the Class members with all rest periods or
3 premium payments in lieu thereof, in compliance with California law; (4) whether
4 Defendants paid separately for nonproductive time during pay periods Plaintiff and the
5 Class Members were compensated on a piece-rate basis as required under California law;
6 (5) whether Defendants failed to reimburse Plaintiff and the Class Members for all
7 business expenses; (6) whether Defendants provided Plaintiff and the Class Members
8 with complete, accurate, itemized wage statements in compliance with California law by
9 displaying, inter-alia, actual hours worked, gross and net wages for the pay period, all
10 hours worked at each applicable rate of pay, the number of piece-rate units earned and
11 any applicable piece rate, and per Labor Code section 226.2, during pay periods when
12 paid on a piece-rate basis, the total hours of compensable rest time, the total hours for
13 other non-productive time, the rates of compensation for these hours and the gross wages
14 paid for these hours; (7) whether Defendants timely paid Plaintiff and the Class Members
15 all wages due upon separation of employment; and (8) whether Defendants violated
16 California Business and Professions Code sections 17200, et seq.

- 17 c. Ascertainable Class. The proposed class is ascertainable as its members can be identified
18 and located using information in Defendant's business, payroll and personnel records.
- 19 d. Numerosity. The plaintiff class is so numerous that the individual joinder of all members
20 is impractical under the circumstances of this case. While the exact number of Class
21 Members is unknown to Plaintiff, Plaintiff is informed and believes the class consists of
22 at least 100 individuals.
- 23 e. Typicality. Plaintiff's claims are typical of the claims of the Class Members. Plaintiff
24 suffered a similar injury as the other Class Members as a result of Defendants' common
25 practices regarding, *inter-alia*, failure to calculate and pay all owed minimum and
26 overtime wages, failure to provide proper meal and rest periods or premium
27 compensation in lieu thereof, failure to separately compensate or compensate at the
28 proper rates for nonproductive time when paying on a piece-rate basis, failure to

1 reimburse for incurred business-related expenses, failure to provide accurate and
2 complete wage statements that complied with Labor Code sections 226 and 226.2, and
3 failure to timely pay all wages due upon separation of employment. In addition, Plaintiff
4 will fairly and adequately protect the interests of the Class Members. Plaintiff has no
5 interests adverse to the interests of the other class members.

6 f. Superiority. A class action is superior to other available means for the fair and efficient
7 adjudication of this controversy since individual joinder of all members of the class is
8 impractical. Class action treatment will permit a large number of similarly situated
9 persons to prosecute their common claims in a single forum simultaneously, efficiently,
10 and without the unnecessary duplication of effort and expense that numerous individual
11 actions would engender. Furthermore, as the damages suffered by each individual
12 member of the class may be relatively small, the expenses and burden of individual
13 litigation would make it difficult or impossible for individual members of the class to
14 redress the wrongs done to them, while an important public interest will be served by
15 addressing the matter as a class action. The cost to the court system of adjudication of
16 such individualized litigation would be substantial. Individualized litigation would also
17 present the potential for inconsistent or contradictory judgments. Finally, the alternative
18 of filing a claim with the California Labor Commissioner is not superior, given the lack
19 of discovery in such proceedings, the fact that there are fewer available remedies, and
20 the losing party has the right to a trial de novo in the Superior Court.

21 **FACTUAL ALLEGATIONS**

22 9. During the four-year period preceding filing of this complaint, Plaintiff, and each of
23 the Class Members, were employed by Defendants in the State of California as non-exempt workers,
24 paid on an hourly and or piece-rate basis. At all times referenced herein, Defendants exercised
25 control over Plaintiff and each of the Class Members and suffered and/or permitted them to work.

26 10. Plaintiff worked for Defendants as a full-time, non-exempt, pipe layer, from in or
27 about 2013 until the end of April of 2020. Plaintiff was paid on an hourly and or piece-rate basis at
28 all relevant times mentioned herein. Plaintiff worked out in the field at various job sites throughout

1 Southern California, typically in Ontario, Chino, and Irvine. Plaintiff typically worked at least eight
2 (8) hours per day, and shifts exceeding ten hours were not uncommon.

3 11. Plaintiff was unable to take timely, duty free, thirty-minute uninterrupted meal
4 periods, often being forced to take late meal periods or work through part or all of his meal periods
5 due to the nature and constraints of his job working out in the field and or commentary from
6 supervisors pressuring him to take non-compliant meal periods or skip meal periods completely in
7 order to be able to complete a job within a designated timeframe. During Plaintiff's employment
8 Defendant did not have a structured meal period policy or practice. Meal periods were taken only
9 as time permitted; sometimes Plaintiff would receive a half-hour meal period, sometimes it was
10 twenty minutes, and there were numerous shifts during which he would not receive any meal period
11 at all. For approximately 20% of Plaintiff's shifts, he would not receive any meal period at all.

12 12. Nevertheless, Defendants implemented a policy and practice of automatically
13 deducting at least thirty minutes per shift for these missed/improper meal periods, despite having
14 actual or constructive knowledge that Plaintiff did not receive compliant meal periods. Moreover,
15 for those shifts lasting more than 10 hours, Plaintiff never once received a second meal period before
16 the end of the tenth hour of work. Defendants also failed to pay Plaintiff an additional hour of wages
17 at his proper regular rate of pay for each workday a proper meal period was not provided.
18 Defendants either did not pay a meal period premium at all or did not pay a proper meal period
19 premium for failure to incorporate all forms of non-discretionary remuneration, including but not
20 limited to, fringe pay and or piece-rate compensation, into the regular pay rate for purposes of
21 calculating the owed meal period premium.

22 13. Plaintiff did not receive duty-free, timely, ten-minute rest periods for every four (4)
23 hours worked or major fraction thereof. Defendant often required Plaintiff to take late rest periods
24 or work through part or all of his rest periods. Defendant's supervisors instructed Plaintiff to take
25 late/shorter rest periods than he was entitled to or skip rest periods completely in order to be able to
26 complete a job within a designated timeframe. Additionally, Defendant required Plaintiff to remain
27 on the job site premises during rest periods, and thus he remained under employer control and not
28 off duty. Plaintiff was not paid rest period premiums for these missed/improper rest periods.

1 14. Defendants failed to compensate Plaintiff for all time worked, including but not
2 limited to, time spent working through uncompensated meal periods. As described herein,
3 Defendants implemented a policy and practice of automatically deducting at least thirty minutes per
4 shift for purported meal periods despite Defendants having actual or constructive knowledge that
5 Plaintiff was working through all or part of these meal periods. This off-the-clock work resulted in
6 violations of California minimum wage laws. Given that Plaintiff often worked shifts consisting of
7 more than eight (8) hours, this off-the-clock work stemming from being required to work through
8 uncompensated meal periods also resulted in the underpayment of owed overtime wages. In
9 addition, Defendants failed to pay for pre-shift and post-shift work. For example, Plaintiff reports
10 he and his coworkers were required to load their vans and drive to their first job site without being
11 compensated for time spent performing this work. Additionally, based on information and belief,
12 the piece-rate-based compensation scheme instituted by Defendants resulted in pay periods during
13 which Plaintiff was denied the minimum wage for all hours worked. Defendants paid Plaintiff on a
14 piece-rate basis, at least during some pay periods, during the relevant time period. However,
15 Defendants failed to separately compensate for all non-piece rate related activities/all nonproductive
16 time, including but not limited to, all rest periods. Defendants' failure to separately compensate
17 Plaintiff for rest periods and other nonproductive time resulted in Plaintiff not being paid for all
18 hours worked in violation of California minimum wage laws and Labor Code section 226.2.¹

19 15. Defendants further violated California overtime laws by failing to incorporate all
20 forms of non-discretionary remuneration, including but not limited to, fringe pay benefits and piece-
21 rate compensation, into the regular pay rate for purposes of calculating the owed overtime rate,
22 resulting in the further miscalculation and underpayment of owed overtime wages. In addition, even
23 for time acknowledged by Defendants as on-the-clock work, Defendants had a practice of paying
24 overtime worked at Plaintiff's regular wage rate. For example, if Plaintiff worked under forty hours
25

26 ¹ Pursuant to Labor Code section 226.2, Defendants were required to compensate Plaintiff for rest periods at a regular
27 hourly rate no less than the higher of: (i) an average hourly rate determined by dividing the total compensation for the
28 workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by
the total hours worked during the workweek, exclusive of rest periods, or (ii) The applicable minimum wage.

1 in a given week any daily overtime accrued during that week would simply be paid at his regular
2 pay rate.

3 16. Based on information and belief, Defendants did not provide Plaintiff with any sick
4 leave pay, or Defendants improperly accrued the amount of sick leave pay owed for failure to base
5 the owed sick leave pay on the correct number of hours worked and for failure to incorporate all
6 forms of non-discretionary remuneration, including but not limited to, fringe pay benefits and or
7 piece-rate compensation, into the regular pay rate for purposes of calculating the owed sick leave
8 pay. On further information and belief, Defendants failed to provide notice of the correct sick leave
9 amount balance available to Plaintiff.

10 17. Defendants failed to furnish Plaintiff with complete and accurate wage statements
11 in compliance with Labor Code section 226. The wage statements do not accurately reflect the total
12 gross and net wages earned, including, all earned minimum and overtime wages, all accrued sick
13 leave, do not accurately reflect all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate, and for pay periods during which
15 Plaintiff was compensated on a piece-rate basis, do not display the number of piece-rate units earned
16 and any applicable piece rate. Additionally, Defendants failed to include on the wage statements
17 for pay periods during which Plaintiff was compensated on a piece-rate basis, the total hours of
18 compensable rest time, the total hours for other non-productive time, the rates of compensation for
19 those hours, and the gross wages paid for those hours. Furthermore, due to Defendants' meal period
20 auto-deduction and other off-the-clock practices described herein, Defendants' wage statements do
21 not display the actual hours Plaintiff worked, a requirement of Labor Code section 226.

22 18. Defendants failed to reimburse Plaintiff for all necessary business-related
23 expenditures incurred by Plaintiff in direct discharge of his duties. For example, Defendants
24 instructed and required Plaintiff to use his personal cell phone/other mobile devices to communicate
25 with customers and management yet failed to provide any reimbursement for the cell phone/data
26 plan charge expenses incurred in connection therewith. Based on information and belief, Defendants
27 also failed to reimburse for mileage/all vehicle-related expenses Plaintiff incurred in connection
28 with the performance of his job duties.

19. Upon separation of employment, Defendants failed to furnish Plaintiff with a final paycheck containing all earned and unpaid wages, including, all earned and unpaid minimum and overtime wages.

20. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in the same unlawful practices described above with regard to all of the Class Members.

FIRST CAUSE OF ACTION
Recovery of Unpaid Minimum Wages and Liquidated Damages
(Against All Defendants)

21. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

22. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up to 40 per week or eight (8) per day, at a regular time rate no less than the mandated minimum wage. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

23. Defendants violated California's minimum wage laws by failing to compensate Plaintiff and the Class Members for all time worked. As described herein, Defendants implemented a policy and practice of automatically deducting at least thirty minutes per shift for purported meal periods despite Defendants having actual or constructive knowledge that Plaintiff and the Class Members were often working through all or part of these meal periods. This off-the-clock work resulted in violations of California minimum wage laws.

24. In addition, Defendants failed to pay for pre-shift and post-shift work. For example, Plaintiff and his coworkers were required to load their vans and drive to their first job site without being compensated for time spent performing this work. This off-the-clock work resulted in further violation of California's minimum wage laws. Additionally, based on information and belief, the piece-rate-based compensation scheme instituted by Defendants resulted in pay periods during which Plaintiff and the Class Members were denied the minimum wage for all hours worked. Defendants paid Plaintiff and the Class Members on a piece-rate basis, at least during some pay periods, during the relevant time period. However, Defendants failed to separately compensate

1 Plaintiff and the Class Members for rest periods and other nonproductive time separate from the
2 piece-rate compensation at rates at or in excess of the applicable minimum wage. Defendants'
3 failure to separately so compensate for rest periods and other nonproductive time resulted in Plaintiff
4 and the Class Members not being paid for all hours worked in violation of California Labor Code
5 sections 226.2, 1194, and 1197.

6 25. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff and the Class Members
7 are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus attorney's
8 fees and costs, in an amount to be proved at trial.

9
10 **SECOND CAUSE OF ACTION**
Recovery of Unpaid Overtime
(Against Defendants KANA PIPELINE, INC. and DOES 1-50, inclusive)

11 26. Plaintiff incorporates by reference all preceding paragraphs as if fully alleged herein.

12 27. California law provides employees in California must be paid overtime, equal to 1.5
13 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or (8) eight
14 per day and must be paid double wages for all hours worked in excess of 12 per day, unless they are
15 exempt. Defendants violated California's overtime laws by failing to correctly calculate the total
16 number of hours worked by Plaintiff and the Class Members by virtue of, among other things, its
17 auto-deduction practice for meal periods described herein and its requirement that Plaintiff and the
18 Class Members perform pre-shift and post-shift off-the-clock work. Given Plaintiff and the Class
19 Members' typical work schedules, this off-the-clock work during meal periods and other required
20 off-the-clock work, such as, but not limited to, the uncompensated loading/driving time described
21 herein, resulted in the miscalculation and underpayment of owed overtime wages.

22 28. Additionally, Defendants failed to incorporate all forms of non-discretionary
23 remuneration, including but not limited to, fringe pay and or piece-rate pay, into the regular pay rate
24 for purposes of calculating the owed overtime rate, resulting in the further miscalculation and
25 underpayment of owed overtime wages. Furthermore, even for time acknowledged by Defendants
26 as on-the-clock work, Defendants had a practice of paying overtime worked at Plaintiff and the
27 Class Members' regular wage rate(s). For example, if Plaintiff and the Class Members worked
28

1 under forty hours in a given week, any daily overtime accrued during that week would simply be
2 paid at their regular pay rate(s).

3 29. Defendants' conduct described above is in violation of California Labor Code
4 sections 510, 511 and 1194, and all applicable IWC Wage Orders.

5 30. Plaintiff and the Class Members are entitled to recover all unpaid overtime wages,
6 and attorney's fees and costs, in an amount to be proved at trial.

7 **THIRD CAUSE OF ACTION**

8 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
9 **(Against Defendants KANA PIPELINE, INC. and DOES 1-50, inclusive)**

10 31. Plaintiff incorporates by reference all preceding paragraphs as if fully alleged herein.

11 32. Pursuant to Labor Code section 512 and the IWC Wage Orders, Defendants were
12 required to provide Plaintiff and the Class Members with one 30-minute meal break free from all
13 duties for all shifts longer than five (5) hours, and a second 30-minute meal break free from all
14 duties for all shifts longer than 10 hours. Meal periods can be waived, but only under the following
15 circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more
16 than six (6) hours, the required meal period may be waived by mutual consent of the employer and
17 employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more
18 than twelve (12) hours, the required second meal period may be waived by mutual consent of the
19 employer and employee, but only if the first meal period was not waived. Employers covered by the
20 Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for
21 shifts over five hours, and (2) to record having done so. If the employer fails to properly record a
22 valid meal period, it is presumed no meal period was provided.

23 33. Plaintiff and the Class Members were unable to take timely, thirty-minute
24 uninterrupted meal periods, often being forced to take late meal periods or work through part or all
25 of meal periods due to the nature and constraints of their job duties and/or from supervisors
26 pressuring them to take non-compliant meal periods or skip meal periods completely. Nevertheless,
27 Defendants implemented a policy and practice of automatically deducting at least thirty minutes per
28 shift for these missed/improper meal periods, despite having actual or constructive knowledge that

Plaintiff and the Class Members did not receive compliant meal periods. Moreover, for those shifts lasting more than 10 hours, Defendant did not provide Plaintiff and the Class Members second meal periods before the end of the tenth hour of work. Defendants also failed to pay Plaintiff and the Class Members an additional hour of wages at their regular rate of pay for each workday a meal period was not provided. Defendants either did not pay a meal period premium at all or did not pay a proper meal period premium for failure to incorporate all forms of non-discretionary pay, including but not limited to, fringe pay and or piece-rate compensation, into the regular pay rate for purposes of calculating the owed meal period premium.

34. Defendants failed to provide Plaintiff and the Class Members with all required meal periods, or with proper compensation in lieu thereof. As a result, under Labor Code section 226.7, Plaintiff and the Class Members are entitled to one additional hour's pay at the proper premium pay rate for each day a meal period was missed, late or interrupted, in amounts to be proved at trial.

FOURTH CAUSE OF ACTION
Failure to Provide Rest Periods or Compensation in Lieu Thereof
(Against Defendants KANA PIPELINE, INC. and DOES 1-50, inclusive)

35. Plaintiff incorporates by reference all preceding paragraphs as if fully alleged herein.

36. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period “insofar as practicable.” The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. (*Augustus v. ABM Security Services, Inc.* (2016) 5 Cal.5th 257.) Accordingly, an employer cannot require employees to stay on the work premises during their rest periods as “one cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to *particular locations* or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minute rest periods.” (*Id.* at p. 269, emphasis added.) If the employer fails to provide required rest periods, the employer must pay the employee one hour of pay at the employee’s regular rate of compensation

1 for each workday the employer did not provide at least one legally required rest period, pursuant to
2 Labor Code section 226.7.

3 37. Plaintiff and the Class Members did not receive duty-free, timely, ten-minute rest
4 periods every four (4) hours worked or major fraction thereof. Defendant did not implement a policy
5 or practice to ensure Plaintiff and the Class Members were able to take timely compliant rest periods.
6 Furthermore, based on information and belief, Plaintiff and the Class Members were required to
7 remain on the job site premises during their rest periods and thus remained under employer control
8 and not off duty. Defendants further employed policies and procedures which ensured Plaintiff and
9 the Class Members did not receive any premium wages to compensate them for workdays that they
10 did not receive all legally required rest periods.

11 38. Defendants are therefore liable to Plaintiff and the Class Members for one hour of
12 additional pay at the regular rate of compensation for each workday that a require rest period was
13 not provided, pursuant to California Labor Code section 226.7 and the applicable Wage Order.

14 **FIFTH CAUSE OF ACTION**

15 **Failure to Separately Compensate for Rest Periods and Nonproductive Time in Violation of**
16 **Labor Code Section 226.2**

17 **(Against Defendants KANA PIPELINE, INC. and DOES 1-50, inclusive)**

18 39. Plaintiff incorporates by reference all preceding paragraphs as if fully alleged herein.

19 40. Labor Code section 226.2 requires an employer to pay employees compensated on a
20 piece-rate basis separately for rest and recovery periods and other nonproductive time, apart from
21 any piece-rate pay. This statute further requires an employer to include on the wage statements for
22 these employees the total hours of compensable rest and recovery period, the total hours for other
23 non-productive time, the rates of compensation for these hours, and the gross wages paid for these
24 hours. In addition, the statute requires that employees shall be compensated for rest and recovery
25 periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined
26 by dividing the total compensation for the workweek, exclusive of compensation for rest and
27 recovery periods and any premium compensation for overtime, by the total hours worked during the
28 workweek, exclusive of rest and recovery periods, or (ii) the applicable minimum wage.

41. During the Class Period, Defendants failed to comply with Labor Code section 226.2. Specifically, Defendants failed to pay Plaintiff and the Class Members who were paid on a piece rate basis separately for their rest periods and other nonproductive time and/or failed to pay them for this time at the correct rates. Defendants further failed to include the information on Plaintiff and the Class Members' wage statements required by this statute.

42. As a direct and proximate result of Defendants' violation of Labor Code Section 226.2 as alleged herein, Plaintiff and the Class Members have sustained damages, including but not limited to, loss of earnings for hours worked, prejudgment interest, and costs and attorneys' fees, pursuant to the statute and other applicable law. The violations described herein also subject Defendants to penalties under Labor Code section 226.3.

SIXTH CAUSE OF ACTION
Failure to Furnish Accurate Itemized Wage Statements
(Against Defendants KANA PIPELINE, INC. and DOES 1-50, inclusive)

43. Plaintiff incorporates by reference all preceding paragraphs as if fully alleged herein.

44. Pursuant to California Labor Code section 226, subdivision (a), Plaintiff and the Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

45. During the Class Period, Defendants intentionally failed to furnish Plaintiff and the Class Members with complete and accurate wage statements that complied with Labor Code section

1 226. The wage statements do not accurately reflect the total gross and net wages earned, including,
2 all earned minimum and overtime wages, do not accurately reflect all applicable hourly rates in
3 effect during the pay period and the corresponding number of hours worked at each hourly rate, and
4 for pay periods during which Plaintiff and the Class Members were compensated on a piece-rate
5 basis, do not display the number of piece-rate units earned and any applicable piece rate.
6 Additionally, Defendants failed to include on the wage statements for pay periods during which
7 Plaintiff and the Class Members were compensated on a piece-rate basis, the total hours of
8 compensable rest time, the total hours for other non-productive time, the rates of compensation for
9 those hours, and the gross wages paid for those hours. Furthermore, due to Defendants' meal period
10 auto-deduction and other off-the-clock practices described herein, Defendants' wage statements do
11 not display the actual hours Plaintiff and the Class Members worked, a requirement of Labor Code
12 section 226. Accordingly, Defendants have violated Labor Code sections 226 and 226.2 as to
13 Plaintiff and the Class Members.

14 46. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
15 suffered injury. The absence of accurate information on their wage statements has prevented earlier
16 challenges to Defendants' unlawful pay practices, will require discovery and mathematical
17 computations to determine the amount of wages owed, and will cause difficulty and expense in
18 attempting to reconstruct time and pay records. Defendants' conduct led to the submission of
19 inaccurate information about wages and amounts deducted from wages to state and federal
20 government agencies. As a result, Plaintiff and the Class Members are required to participate in this
21 lawsuit and create more difficulty and expense for Plaintiff and the Class Members from having to
22 reconstruct time and pay records than if Defendants had complied with their legal obligations.

23 47. Pursuant to California Labor Code section 226(e), Plaintiff and the Class Members
24 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
25 violation occurred and one hundred dollars per employee per violation for each subsequent pay
26 period, not to exceed an aggregate penalty of four thousand dollars per employee.

27 48. Pursuant to Labor Code section 226(e), Plaintiff and the Class Members are entitled
28 to recover the full amount of penalties due under Section 226(e), reasonable attorneys' fees, and

1 costs of suit.

2 **SEVENTH CAUSE OF ACTION**

3 **Failure to Pay All Wages Due and Owing Upon Separation of Employment**
4 **(Against Defendants KANA PIPELINE, INC. and DOES 1-50, inclusive)**

49. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

50. Pursuant to California Labor Code sections 201 and 202, Plaintiff and the Class
6 Members were entitled upon termination to timely payment of all wages earned and unpaid prior to
7 termination. Discharged employees were entitled to payment of all wages earned and unpaid prior
8 to discharge immediately upon termination. Employees who resigned were entitled to payment of
9 all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
10 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
11 unpaid prior to resignation at the time of resignation.

51. Defendants failed to timely pay Plaintiff and the Class Members all wages earned
12 and unpaid upon separation of employment, including all earned and unpaid minimum and overtime
13 wages and all accrued and unpaid sick leave, in accordance with California Labor Code sections
14 201, 202, and 203.

52. Defendants' failure to pay Plaintiff and the Class Members all wages earned prior
15 to separation of employment timely in accordance with California Labor Code sections 201, 202,
16 and 203 was willful. Defendants had the ability to pay all wages earned by non-exempt employees
17 prior to separation of employment in accordance with California Labor Code sections 201, 202, 203,
18 but intentionally adopted policies or practices incompatible with the requirements of California
19 Labor Code sections 201, 202, and 203. As a result of Defendants' conduct, Plaintiff and the Class
20 Members have suffered injuries.

53. Pursuant to California Labor Code section 203, Plaintiff and the Class Members are
21 entitled to continuation of their wages, from the day their earned and unpaid wages were due upon
22 separation until paid, up to a maximum of 30 days.

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EIGHTH CAUSE OF ACTION
Failure to Reimburse Business Expenses
(Against All Defendants)

54. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

55. Pursuant to California Labor Code section 2802, Plaintiff and the Class Members were entitled to be reimbursed for all necessary expenditures and losses associated with carrying out orders by their employer and/or carrying out the duties assigned by their employers. "Necessary expenditures and losses" include "all reasonable costs". (Labor Code § 2802, subd. (c).)

56. Defendants failed to reimburse Plaintiff and the Class Members for all necessary business-related expenditures incurred in direct discharge of their duties. For example, Defendants instructed and required Plaintiff and the Class Members to use their personal cell phones/other mobile devices to communicate with customers and management yet failed to provide any reimbursement for the cell phone/data plan charge expenses incurred in connection therewith. Based on information and belief, Defendants also failed to reimburse for mileage/all vehicle-related expenses Plaintiff and the Class Members incurred in connection with the performance of their job duties. Defendants' failure to provide Plaintiff and the Class Members with full reimbursement for all reasonable expenses associated with carrying out their duties required that Plaintiff and the Class Members subsidize and carry the burden of business expenses in violation of Labor Code section 2802.

57. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered injury in that they were not completely reimbursed as mandated by California law.

58. Pursuant to California Labor Code section 2802, Plaintiff and the Class Members are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable attorneys' fees, and costs of suit.

NINTH CAUSE OF ACTION
Unfair Competition
(Against Defendants KANA PIPELINE, INC. and DOES 1-50, inclusive)

59. Plaintiff incorporates by reference all preceding paragraphs as if fully alleged herein.

60. The unlawful conduct of Defendants alleged herein constitutes unfair competition

1 within the meaning of California Business and Professions Code section 17200. This unfair conduct
2 includes, among other things, Defendants' failure to pay minimum and overtime wages by virtue of
3 its illegal meal period auto-deduction and other off-the-clock practices, failure to compensate at all
4 for nonproductive time or compensate at the appropriate rate per Labor Code section 226.2 during
5 those pay periods when Plaintiff and the Class Members were compensated on a piece-rate basis,
6 failure to authorize or permit, or provide, all required meal and rest periods or pay proper premiums
7 in lieu thereof, failure to provide proper notice and pay of sick time benefits, failure to furnish
8 complete and accurate itemized wage statements, failure to reimburse business expenses, and failure
9 to timely pay all wages due during and upon separation of employment. Due to its unfair and
10 unlawful business practices in violation of the California Labor Code, Defendants have gained a
11 competitive advantage over other comparable companies doing business in the State of California
12 that comply with their obligations to authorize or permit rest and meal periods or pay proper meal
13 and rest period premiums in lieu thereof, to compensate for nonproductive time when paying on a
14 piece-rate basis, to provide proper notice and properly accrue and pay sick time benefits, to provide
15 complete and accurate itemized wage statements, to pay all owed minimum and overtime wages, to
16 reimburse for business expenses, and to pay all wages timely upon separation of employment of
17 their employees.

18 61. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
19 Class Members have suffered injury in fact and lost money or property, as described in more detail
20 above. Pursuant to California Business and Professions Code section 17200, *et seq.*, Plaintiff and
21 Class Members are entitled to restitution of all wages and other monies rightfully belonging to them
22 that Defendants failed to pay and wrongfully retained by means of its unlawful and unfair business
23 practices. Plaintiff also seeks an injunction against Defendants on behalf of the Class Members
24 enjoining Defendants, and any and all persons acting in concert with it, from engaging in each of
25 the unlawful practices, policies and patterns set forth herein.

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TENTH CAUSE OF ACTION

**Violation of Private Attorneys General Act of 2004 – Labor Code §§ 2698, et seq.
(Against All Defendants)**

62. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

63. California’s Private Attorneys General Act (Labor Code §§ 2698, et seq.) authorizes aggrieved employees to bring a civil action to recover civil penalties for violations of the California Labor Code. Pursuant to Labor Code section 2699.3, an aggrieved employee must give written notice by online filing with the Labor and Workforce Development Agency (“LWDA”) and by certified mail to the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

64. As discussed herein, Plaintiff is an aggrieved employee who has been subject to the foregoing Labor Code violations and the Labor Code violations described below. Plaintiff provided the LWDA and Defendants with the required written notice of Plaintiff’s intention to pursue this PAGA claim on April 27, 2021. The LWDA has not provided notice of its intention to investigate the claims since that time.

65. During the approximate 1 year and 65-day time period prior to filing the Complaint, Defendants violated the California Labor Code sections discussed above. Defendants further failed to maintain records as required by Labor Code section 1174 and the applicable IWC Wage Order. Moreover, by virtue of its violations with respect to meal period, rest period, recordkeeping provisions and minimum and overtime wage laws, Defendants further violated Labor Code sections 1198 and 1199, which together make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission. Defendants also failed to comply with Labor Code section 204 by failing to timely pay twice during each calendar month all wages due and payable to Plaintiff and the other Aggrieved Employees. Defendants also violated Labor Code section 216, which declares unlawful an employer’s refusal to pay wages due and payable and/or denial of the validity of any claim to wages due by failing to pay Plaintiff and the other Aggrieved Employees for all hours worked at the proper wage rate and by failing to pay Plaintiff and the other Aggrieved Employees

1 an additional hour of pay for each meal/rest period not provided/that was invalid. In violation of
2 California Labor Code section 223, Defendants also willfully and systematically denied Plaintiff
3 and the other Aggrieved Employees minimum and overtime wage compensation for all hours
4 worked which resulted in the payment of less than statutorily required wages to them.

5 66. Based on information and belief, Defendant required Plaintiff and other Aggrieved
6 Employees to submit to an unlawful criminal and/or financial background check as a condition of
7 obtaining and/or holding employment in violation of Labor Code sections 1024.5 and/or 432.7.
8 Based on further information and belief, Defendants also required Plaintiff and the other Aggrieved
9 Employees to agree in writing to unlawful background checks not in conformance with the
10 requirements ICRAA and/or FCRA, and Defendants also asked about arrests not resulting in
11 convictions on its employment application. These violations subject Defendants to civil penalties
12 under the Labor Code, including without limitation Labor Code sections 432.5, 432.7 and 2699.

13 67. Moreover, Defendants violated California's paid sick leave laws including, Labor
14 Code §§ 245-248.5; Defendants did not provide Plaintiff and the other Aggrieved Employees with
15 any sick leave pay, or Defendants improperly accrued the amount of sick leave pay owed for failure
16 to base the owed sick leave pay on the correct number of hours worked and for failure to incorporate
17 all forms of non-discretionary remuneration, including but not limited to, fringe pay benefits and or
18 piece-rate compensation, into the regular pay rate for purposes of calculating the owed sick leave
19 pay. Defendants further failed to put them on notice of their paid sick leave rights or put their
20 entitlement to sick leave in a Labor Code § 2810.5 notice.

21 68. In addition, Defendants failed to maintain accurate records of used sick leave and the
22 balance of paid sick leave left to the employee throughout the relevant time period. Throughout the
23 relevant time period, Defendants failed to provide notice of sick leave amount balance left for
24 Plaintiff and the other Aggrieved Employees, thus affecting their intelligent exercise of their paid
25 sick leave. But for this failure, Plaintiff and the other Aggrieved Employees would have used their
26 paid sick leave at least prior to their respective separations, for as on several occasions thereafter,
27 he or she would have been entitled to use the banked sick leave and earn appropriate compensation.
28 This illegal retention of paid sick leave is unlawful and Plaintiff seeks all forms of injunctive relief,

1 restitution, and declaratory relief as permitted by California law, on behalf of himself and the other
2 Aggrieved Employees.

3 69. In violation of Labor Code § 247.5, Employer failed to maintain records
4 documenting the hours worked and paid sick days accrued and used by Plaintiff and the other
5 Aggrieved Employees, permitting the presumption that they were entitled to the maximum number
6 of hours accruable under this article at the time of her termination. Defendants further failed to
7 comply with Labor Code § 246, that is, providing its employees with a 226 statement or separate
8 writing containing amount of paid sick leave available, or paid time off leave an employer provides
9 in lieu of sick leave, at the time it pays its period wages and provides a Labor Code § 226 statement.
10 Plaintiff seeks all available relief as a result of the Labor Code violations described herein under
11 PAGA, including PAGA penalties, and attorney's fees and costs in pursuing this PAGA claim.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for relief and judgment as follows on behalf of himself, the
14 Class Members and the Aggrieved Employees:

- 15 1. For an order that the action, be certified as a class action;
 - 16 2. For an order that Plaintiff, be appointed class representative;
 - 17 3. For an order that counsel for Plaintiff be appointed class counsel;
 - 18 4. For compensatory damages according to proof;
 - 19 5. For statutory penalties according to proof;
 - 20 6. For an order requiring Defendant to make restitution of all amounts wrongfully
21 withheld from Plaintiff and the class;
 - 22 7. For pre-judgment interest as permitted by law;
 - 23 8. For civil penalties according to proof, including PAGA penalties;
 - 24 9. Attorney's fees and costs reasonably incurred; and
 - 25 10. Such other and further relief that the Court deems just and proper.
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1 Dated: July 30, 2021

CROSNER LEGAL, PC

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3 By: 

Michael R. Crosner, Esq.

Zachary M. Crosner, Esq.

Blake R. Jones, Esq.

Chad Saunders, Esq.

Attorneys for Plaintiff,
JUAN ANGUIANO

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8 **DEMAND FOR JURY TRIAL**

9 Plaintiff demands a trial by jury on all claims so triable.

10
11 Dated: July 30, 2021

CROSNER LEGAL, PC

12
13 By: 

Michael R. Crosner, Esq.

Zachary M. Crosner, Esq.

Blake R. Jones, Esq.

Chad Saunders, Esq.

Attorneys for Plaintiff,
JUAN ANGUIANO