

Assigned for all purposes to: Compton Courthouse, Judicial Officer: Thomas Long

ACKERMANN & TILAJEF, P.C.

Craig J. Ackermann (SBN 229832)

cja@ackermanntilajef.com

Avi Kreitenberg (SBN 266571)

ak@ackermanntilajef.com

1180 South Beverly Drive, Suite 610

Los Angeles, California 90035

Telephone: (310) 277-0614

Facsimile: (310) 277-0635

Attorneys for Plaintiff and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

NELSON MOLINA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

LINCOLN TRANSPORTATION SERVICES,
INC., a California Corporation, and DOES
1-10, inclusive,

Defendant.

CASE NO: 21CMCV00185

**PLAINTIFF'S REPRESENTATIVE ACTION
COMPLAINT FOR:**

**(1) PAGA PENALTIES FOR DEFENDANT'S
WILLFUL MISCLASSIFICATION IN
VIOLATION OF LABOR CODE SECTION
226.8 AND 2698, ET SEQ.;**

**(2) PAGA AND OTHER PENALTIES (LABOR
CODE §§ 2698 – 2699.5)**

1 Plaintiff Nelson Molina (“Plaintiff”), on behalf of himself, the State of California, and
2 other aggrieved employees(hereinafter “Aggrieved Employees”), complains and alleges as
3 follows:

4 **OVERVIEW OF CLAIMS**

5 1. Plaintiff brings this action on behalf of himself and all others similarly situated, as a
6 representative action pursuant to Labor Code § 2699, *et seq.*, and on behalf of the LWDA, against
7 Defendant Lincoln Transportation Services, Inc. (“Defendant”) for (1) PAGA penalties for its
8 willful misclassification of Plaintiff and other Aggrieved Employees as independent contractors;
9 and (2) PAGA and other penalties for other wage/hour violations. As a result of the foregoing,
10 Defendant has violated California statutory laws as described below.

11 2. The PAGA Period is from May 11, 2020 to the present. Defendant’s violations of
12 California’s wage and hour laws, as described more fully below, have been ongoing throughout the
13 PAGA Period.

14 **VENUE**

15 3. Venue is proper in this county under section 395.5 of the California Code of Civil
16 Procedure. Many of the Aggrieved Employees were employed by Defendant in Los Angeles
17 County and/or performed work for Defendant in Los Angeles County during the PAGA Period.
18 Defendant is a freight shipping and trucking company based in Compton, California that provides
19 both local and long-haul service. Many of the acts alleged herein including Defendant’s willful
20 misclassification of its drivers occurred in Los Angeles County. Venue is therefore proper in Los
21 Angeles County.

22 **JURISDICTION**

23 4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
24 dollars of business by providing freight and trucking services in California. Thus, Defendant has
25 obtained the benefits of the laws of the State of California. In addition, Plaintiff asserts no claims
26 arising under federal law. Rather, Plaintiff brings causes of action based solely on, and arising
27 from, California law. The claims of the Aggrieved Employees are also based solely on California
28 law described herein. Furthermore, the total amount at issue in this case, inclusive of attorneys’

1 fees, is less than \$5 million. Thus, jurisdiction is proper in Los Angeles County Superior Court.

2 **THE PARTIES**

3 5. Plaintiff is a California resident and, from August 2019 to August 2020 was
4 misclassified as an independent contractor but was actually an employee of Defendant tasked with
5 driving a truck for Defendant as part of Defendant's freight shipping and trucking company
6 business. From at least one year prior to the filing of Plaintiff's LWDA notice through the
7 present, and on-going, Defendant's drivers in California, including Plaintiff during his
8 employment, were willfully misclassified as independent contractors; were not provided compliant
9 meal and rest periods; were not paid all minimum wages owed; did not receive premium payments
10 for not being provided compliant meal and rest periods; were not provided accurate and/or
11 complete wage statements; did not receive timely wages; did not receive reimbursement for their
12 business expenses; and did not receive all of their wages due upon termination of employment.

13 6. Plaintiff represents the state of California and the following group of aggrieved
14 employees defined as:

15 All individuals who are or were California residents, who worked for Lincoln
16 Transportation Services, Inc. as drivers, or in any similar capacity, and whose pay was
17 reported on an IRS Form 1099 basis during the PAGA Period (hereinafter referred to as
"Aggrieved Employees").

18 7. Defendant is a California Corporation with its principal place of business in
19 Compton California. Defendant is a freight shipping and trucking company based in Compton,
20 California that provides both local and long-haul service. The Aggrieved Employees are estimated
21 to include 91 individuals.

22 8. Despite its willful misclassification of Plaintiff and the Aggrieved Employees,
23 Defendant was and is the employer of Plaintiff and the Aggrieved Employees for all relevant time
24 periods. In fact, Defendant employed Plaintiff and the Aggrieved Employees as drivers in
25 California at various times during the PAGA Period. Defendant employed approximately 91
26 drivers in California during the PAGA Period, who were all willfully misclassified as independent
27 contractors.

28 ///

FACTUAL ALLEGATIONS

9. Defendant operates and, at all times during the PAGA Period, has done and does business in California by providing freight shipping and trucking services in California. Defendant, in the course of operating its business in California during the PAGA Period, hired Plaintiff and the Aggrieved Employees, even though they were misclassified and classified incorrectly as truck drivers.

10. The California Supreme Court in *Dynamex Operations West, Inc., v. Superior Court*, 4 Cal. 5th 903, 956-57 (Cal. 2018) set forth the standard for determining whether an individual performing work is an independent contractor or an employee, as follows:

We find merit in the concerns noted above regarding the disadvantages, particularly in the wage and hour context, inherent in relying upon a multifactor, all the circumstances standard for distinguishing between employees and independent contractors. As a consequence, we conclude it is appropriate, and most consistent with the history and purpose of the suffer or permit to work standard in California's wage orders, to interpret that standard as: (1) placing the burden on the hiring entity to establish that the worker is an independent contractor who was not intended to be included within the wage order's coverage; and (2) requiring the hiring entity, in order to meet this burden, to establish *each* of the three factors embodied in the ABC test — namely (A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and* (B) that the worker performs work that is outside the usual course of the hiring entity's business; *and* (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed. (citations omitted).

11. The *Dynamex* decision was codified as AB-5 and it is now incorporated within Labor Code Section 2775, effective September 4, 2020. Section 2775 codifying AB 5 applies retroactively to the situation of any misclassification prior to September 4, 2020. *See Vasquez v. Jan-Pro Franchising, Inc.*, 2021 WL 127201, *4 (Cal. Jan. 14, 2021) (no reason to depart from well- established rule that legislative measures are retroactive). The standard is commonly referred to as the “ABC test.” Under the ABC Test, Defendant has the burden of establishing that Plaintiff, and the Aggrieved Employees are independent contractors and not intended to be included within the wage order's coverage. Further, Defendant must establish that Plaintiff and the Aggrieved Employees meet all three factors of the ABC Test, which as discussed below, they cannot meet.

12. A. Plaintiff and the Aggrieved Employees Were Subject to Defendant's Direction and Control: Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees

1 were free from the direction and control of the Defendant. At all times, Defendant retained and
2 retains the right to control the method and manner of how Plaintiff and Aggrieved Employees
3 perform their job duties and retained and retains all necessary control over Plaintiff and the
4 Aggrieved Employees during their employment. Among other things, Plaintiff and Aggrieved
5 Employees are required to follow detailed requirements imposed on them by Defendant governing
6 their interaction with dispatch, managers, customers and their deliveries. Defendant retained all
7 necessary control over Plaintiff and the other drivers' work; Defendant controlled the drivers'
8 rates, schedules, and routes; Defendant's Drivers did not operate distinct businesses, but were
9 integrated into Defendant's business and were required to dedicate all of their working time to
10 Defendant's business and were not allowed to use their trucks to conduct business on behalf of
11 other companies; Defendant closely monitored the work of their drivers; their jobs did not require
12 substantial skill; Defendant provided trucks which included Defendant's logo and insignia;
13 although Defendant paid the drivers on a per-load, in fact this payment plan resembled a pay
14 arrangement similar to an employee's pay arrangement; and drivers often stayed and drove for
15 Defendant for years. Under applicable standards of law, Plaintiff and aggrieved employees are, or
16 were during their employment by Defendant, employees and were and are not independent
17 contractors.

18 13. In sum, Defendant retained and retains the right to control the method and manner
19 of how Plaintiff and Aggrieved Employees performed his and their job duties, and retained and
20 retains all necessary control over Plaintiff and the Aggrieved Employees during his and their
21 employment. Among other things, Plaintiff and Aggrieved Employees are required to follow
22 detailed requirements imposed on them by Defendant governing their interaction with managers,
23 dispatchers, customers and their deliveries. Further, Defendant sets drivers' rates, and directs when
24 and where to make their deliveries. As a result, Plaintiff and Aggrieved Employees were and are
25 employees of Defendant. *See, e.g.* Labor Code sections 2775 and 226.8; *see also Ayala v. Antelope*
26 *Valley Newspapers, Inc.* (2014) 59 Cal.App.4th 522; *Ruiz v. Affinity Logistics, Corp.*, 754
27 F.Supp.3d 1093 (9th Cir. 2014) (employer's right to control detail of drivers' work support finding
28 of employer-employee relationship); *Alexander v. FedExGround Package System, Inc.* 765

1 F.Supp.3d 381 (9th Cir. 2014) (driver were employees as a matter of law where FedEx controlled
2 times drivers worked and controlled aspects of when packages would be delivered); *See, also,*
3 *Taylor v. Shippers Transport Express, Inc.*, 2014 W.L. 7499046 (C.D. Cal. 2014) (finding
4 employee status for drivers as a matter of law); and *Villapando v. Excel Direct, Inc.*, 2015 W.L.
5 15179486 (N.D. Cal. 2015) (granting summary judgment to Plaintiffs on Defendants' defense that
6 the drivers at issue were independent contractors).

7 14. Therefore, under the A factor of the ABC test, Plaintiff and the Aggrieved
8 Employees were misclassified as independent contractors. Based upon the case law cited above
9 and Sections 2775 and 226.8 of the Labor Code, Plaintiff and the aggrieved employees were
10 subject to control and were thus employees of Defendant.

11 15. B. Plaintiff and the Aggrieved Employees Performed Work Within the Usual
12 Course of the Defendant's Business: As described by the Court in *Dynamex*, the work performed
13 within the course of the defendants business is described thusly, "Workers whose roles are most
14 clearly comparable to those of employees include individuals whose services are provided within
15 the usual course of the business of the entity for which the work is performed and thus who would
16 ordinarily be viewed by others as working in the hiring entity's business and not as working,
17 instead, in the worker's own independent business." *Dynamex Operations W. v. Superior Court*,
18 *supra*, 4 Cal. 5th at 959. By way of example, the Supreme Court held that:

19 Thus, on the one hand, when a retail store hires an outside plumber to repair a leak in a
20 bathroom on its premises or hires an outside electrician to install a new electrical line,
21 the services of the plumber or electrician are not part of the store's usual course of
22 business and the store would not reasonably be seen as having suffered or permitted the
23 plumber or electrician to provide services to it as an employee. [citations] On the other
24 hand, when a clothing manufacturing company hires work-at-home seamstresses to make
25 dresses from cloth and patterns supplied by the company that will thereafter be sold by
26 the company [citations], or when a bakery hires cake decorators to work on a regular
27 basis on its custom-designed cakes (*cf., e.g., Dole v. Snell* (10th Cir. 1989) 875 F.2d
28 802, 811), the workers are part of the hiring entity's usual business operation and the
hiring business can reasonably be viewed as having suffered or permitted the workers to
provide services as employees. In the latter settings, the workers' role within the hiring
entity's usual business operations is more like that of an employee than that of an
independent contractor. *Id.* at 959-960.

16. Here, Defendant cannot establish that Plaintiff and the Aggrieved Employees

1 perform work outside the Defendant's normal course of business. To the contrary, Plaintiff and the
2 Aggrieved Employees were performing work completely within Defendant's normal course of
3 business, since Defendant is in the business of providing transportation services, Plaintiff and the
4 Aggrieved Employees drove trucks for Defendant and made deliveries to Defendant's customers,
5 and Plaintiff and the Aggrieved Employees were not permitted to make deliveries for other
6 trucking companies.

7 17. For this additional reason, under the B factor of the ABC test, Plaintiff and the
8 Aggrieved Employees were misclassified erroneously as independent contractors. Based upon
9 the case law cited above and Section 2775 of the Labor Code, Plaintiff and the aggrieved
10 employees were working within Defendant's business and were thus employees.

11 18. C. Plaintiff and the Aggrieved Employees Were Not Customarily Engaged in
12 an Independently Established Trade, Occupation, Or Business of the Same Nature as the Work
13 Performed: As with the A and B of the ABC Test, Defendant cannot establish that Plaintiff and the
14 Aggrieved Employees are or were employees customarily engaged in an independent occupation, or
15 business. As the Supreme Court in *Dynamex* held:

16 As a matter of common usage, the term "independent contractor," when applied to an
17 individual worker, ordinarily has been understood to refer to an individual who
18 *independently* has made the decision to go into business for himself or herself.
19 [citations] Such an individual generally takes the usual steps to establish and promote
20 his or her independent business—for example, through incorporation, licensure,
21 advertisements, routine offerings to provide the services of the independent business to
22 the public or to a number of potential customers, and the like. When a worker has not
23 independently decided to engage in an independently established business but instead is
24 simply designated an independent contractor by the unilateral action of a hiring entity,
25 there is a substantial risk that the hiring business is attempting to evade the demands of
26 an applicable wage order through misclassification. A company that labels as
27 independent contractors a class of workers who are not engaged in an independently
28 established business in order to enable the company to obtain the economic advantages
that flow from avoiding the financial obligations that a wage order imposes on
employers unquestionably violates the fundamental purposes of the wage order. The
fact that a company has not prohibited or prevented a worker from engaging in such a
business is not sufficient to establish that the worker has independently made the
decision to go into business for himself or herself. *Dynamex Operations W. v. Superior*
Court, supra, 4 Cal. 5th at 962.

19. Here, Defendant's drivers, including Plaintiff and the Aggrieved Employees, are not

1 and were not customarily considered part of an independently established business. Indeed, many,
2 if not all, of the drivers among the Aggrieved Employees worked full-time for Defendant and did
3 not work for any other trucking companies. Moreover, few, if any of the Aggrieved Employees
4 held themselves out to the world as operating independent trucking companies. Notably, under the
5 lease agreements for Defendant's trucks, Plaintiff and the Aggrieved Employees were not
6 permitted to make deliveries for anyone other than Lincoln Transportation and its customers.

7 20. Thus, under the three elements of the ABC test, Plaintiff and the Aggrieved
8 Employees are clearly "employees" and not "independent contractors." *Dynamex Operations West,*
9 *Inc., v. Superior Court* (2018) 4 Cal. 5th 903, 956-958; *See, also Ayala v. Antelope Valley*
10 *Newspapers, Inc.* (2014) 59 Cal. App. 4th 522; *Ruiz v. Affinity Logistics, Corp.*, 754 F.Supp.3d
11 1093 (9th Cir. 2014) (employer's right to control detail of drivers' work support finding of
12 employer-employee relationship); *Alexander v. FedExGround Package System, Inc.* 765 F.Supp.3d
13 381 (9th Cir. 2014) (driver were employees as a matter of law where FedEx controlled times
14 drivers worked and controlled aspects of when packages would be delivered).

15 21. Since Defendant cannot meet any part of the ABC test, it is clear that Defendant
16 intentionally and willfully misclassified Plaintiff and Aggrieved Employees as independent
17 contractors in violation of Labor Code Sections 226.8(a) and 2775. This misclassification was also
18 part of a pattern and practice that applied to all of the members of the Aggrieved Employees, and
19 not just to Plaintiff, thereby triggering the heightened penalty amounts in Section 226.8 (which are
20 recoverable through a PAGA representative action).

21 22. California Labor Code §226.2 governs compensation paid to piece-rate employees,
22 like Plaintiff and the Aggrieved Employees. It states, in the relevant part:

23 This section shall apply for employees who are compensated on a piece-rate
24 basis for any work performed during a pay period. This section shall not be construed to
25 limit or alter minimum wage or overtime compensation requirements, or the obligation
26 to compensate employees for all hours worked under any other statute or local
27 ordinance. For the purposes of this section, "applicable minimum wage" means the
28 highest of the federal, state, or local minimum wage that is applicable to the
employment, and "other nonproductive time" means time under the employer's control,
exclusive of rest and recovery periods, that is not directly related to the activity being
compensated on a piece-rate basis.

(a) For employees compensated on a piece-rate basis during a pay period, the

1 following shall apply for that pay period:

2 (1) Employees shall be compensated for rest and recovery periods and other
nonproductive time separate from any piece-rate compensation.

3 (2) The itemized statement required by subdivision (a) of Section 226 shall, in
4 addition to the other items specified in that subdivision, separately state the
following, to which the provisions of Section 226 shall also be applicable:

5 (A) The total hours of compensable rest and recovery periods, the
6 rate of compensation, and the gross wages paid for those periods during the
pay period.

7 (B) Except for employers paying compensation for other
8 nonproductive time in accordance with paragraph (7), the total hours of
other nonproductive time, as determined under paragraph (5), the rate of
compensation, and the gross wages paid for that time during the pay period.

9 23. Thus, according to Cal. Labor Code §226.2, which codifies the decision in *Armenta*
10 *v. Osmose, Inc.* (Cal. App. 2d Dist. 2005) 135 Cal. App. 4th 314, employees who are paid on a
11 piece- rate basis, such as Plaintiff, and the Aggrieved Employees, must be compensated for all the
12 hours that they work, including non-productive time, such as pre and post trip inspections and
13 detention time under two hours and rest break time.

14 24. However, and due to Defendant's misclassification of Plaintiff and the Aggrieved
15 employees as independent contractors, Defendant failed to pay its drivers separately and hourly for
16 cleaning time, fueling time, rest break time, loading and unloading time, pre- and post-trip
17 inspection time, detention time up to two hours, and paperwork time (the "Non-Driving Tasks") in
18 violation of Labor Code §§ 1194 and 226.2. Instead, drivers were compensated on a piece-rate
19 "per load" flat rate basis where they were paid per load that they transported for Defendant.
20 Plaintiff and his fellow current and former truck drivers routinely spent several hours per day
21 conducting pre- and post-trip inspections, fueling, completing paperwork, loading and unloading,
22 and waiting at the ports. Additionally, Plaintiff and his fellow truck drivers typically took 2 to 3
23 unpaid rest periods per day, of at least 10 minutes each. Plaintiff and their fellow current and
24 former truck drivers were not paid separately and hourly for their rest break time or for their time
25 spent on Non-Driving Tasks.

26 25. Similarly, Labor Code § 1194.2 authorizes employees to recover wages to
27 recover liquidated damages for violations of Labor Code § 1194. Where an employee, as
28 Plaintiff and the other Aggrieved Employees are not paid for all hours worked under Labor

1 Code § 1194 and/or 226.2, the employee may recover minimum wages for the time associated
2 with the overtime for which they received no compensation. (See *Sillah v. Command Int'l*
3 *Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees suing for failure to
4 pay overtime could recover liquidated damages under § 1194.2 if they also showed they were
5 paid less than minimum wage]; accord *Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12,
6 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-2 I.) Since Defendant
7 failed to provide Plaintiff and all Aggrieved Employees with compensation for all hours
8 worked, each are entitled to recover liquidated damages under Labor Code §§ 1194.2 and
9 226.2 through PAGA.

10 26. As a result of their misclassification of Plaintiff and the Aggrieved Employees as
11 independent contractors, Defendant failed to provide Plaintiff and the other Aggrieved Employees
12 with compensated, duty-free rest periods of not less than ten (10) minutes for every major fraction
13 of four hours worked pursuant to Labor Code § 226.7, and the applicable IWC Wage Order.

14 27. Under the applicable IWC Wage Orders 9-2001 an employer must authorize and
15 permit all employees to take ten (10) minute duty free rest periods for every major fraction of four
16 hours worked. Labor Code § 226.7 provides “an employer shall not require an employee to work
17 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
18 regulation, standard, or order of the Industrial Welfare Commission (“IWC”).” Thus, the Wage
19 Orders set when and for how long the rest period must take place, and the Labor Code establishes
20 that violations of the Wage Order violate California law, and sets forth the premium pay employers
21 must pay their employees when employers fail to provide rest periods.

22 28. Because Defendant misclassified Plaintiff and the Aggrieved Employees as
23 Independent Contractors, Defendant failed to implement a lawful rest period policy that informed
24 Plaintiff and the other Aggrieved Employees of their right to receive lawful rest periods for shifts
25 that were more than at least a major fraction of four hours worked. Specifically, Defendant failed
26 to advise Plaintiff and the Aggrieved Employees of their right to take paid duty-free ten (10)
27 minute rest periods when working on a piece-rate basis and failed to separately compensate
28 Plaintiff and the Aggrieved Employees for the non-productive time associated with their rest

1 periods. *See, Bluford v. Safeway Stores, Inc.*, (Cal. Ct. App. May 8, 2013) 216 Cal. App. 4th 864,
2 872–73; Labor Code § 226.2. Separate and hourly pay is also required for inspection time, fueling
3 time, waiting time, and time spent on paperwork. *See, Reinhardt v. Gemini Motor Transport*
4 (E.D.Cal.2012) 869 F.Supp.2d 1158, 1168 (piece-rate pay system that did not separately pay truck
5 drivers for non-driving duties violates California law requiring compensation for each hour
6 worked); *Cardenas v. McLane FoodServices, Inc.* (C.D.Cal.2011) 796 F.Supp.2d 1246, 1252
7 (piece-rate pay system that did not separately pay truck drivers for non-driving duties and rest
8 periods violates California law requiring compensation for each hour worked);” *see also Gonzalez*
9 *v. Downtown LA Motors, LP*, (2013) 215 Cal. App. 4th 36, 49 (favorably citing and adopting
10 *Cardenas*); *Bluford v. Safeway Stores, Inc.*, (Cal. Ct. App. May 8, 2013) 216 Cal. App. 4th 864,
11 872–73; Labor Code § 226.2. Defendant cannot just pay a “percentage per-load” rate and assume
12 that it covers drivers’ rest breaks and other Non-Driving Tasks. *Id.*; see also Labor Code § 226.2
13 (codifying the listed case law).

14 29. Here as in *Bluford*, Defendant compensated Plaintiff and the other Aggrieved
15 Employees by way of a “per load” piece-rate system. As a result, when they were not actively
16 driving, but rather taking a mandated rest period, they were not compensated for their time, in
17 violation of Labor Code section 226.7, 226.2 and Section 12 of IWC Wage Order 9-2001.

18 30. Pursuant to Labor Code § 226.7 and Wage Orders 9-2001, Defendant failed to
19 provide Plaintiff and all Aggrieved Employees with duty-free rest periods of not less than ten
20 (10) minutes for every major fraction of four (4) hours worked. Specifically, as a result of
21 their misclassification of Plaintiff and the Aggrieved Employees as independent contractors,
22 Defendant failed to have a lawful rest period policy in place that informed Plaintiff and the
23 other Aggrieved Employees of their right to take rest periods for shifts that were a major
24 fraction of a four (4) hour work period and to make rest breaks available to these employees.

25 31. The California Supreme Court in *Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th
26 1004, explained in the context of rest breaks that employer liability attaches from adopting an
27 unlawful policy:

28 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

1 uniform policy authorizing and permitting only one rest break for employees working a
2 seven-hour shift when two are required-it has violated the wage order and is liable.

3 *Id.* at 1033. Since Defendant did not offer employees the opportunity to receive a compliant
4 and appropriately separately compensated rest periods, "the court may not conclude
5 employees voluntarily chose to skip ... breaks." *Alberts v. Aurora Behavioral Health Care*,
6 241 Cal. App. 4th 388, 410 (2015) ("[i]f an employer fails to provide legally compliant meal
7 or rest breaks, the court may not conclude employees voluntarily chose to skip those
8 breaks."); accord *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal. 4th 1004, 1033 (2012) ("No issue of
9 waiver ever arises for a rest break that was required by law but never authorized; if a break is
10 not authorized, an employee has no opportunity to decline to take it.").

11 32. Even an employer who maintains an otherwise compliant rest period policy,
12 "reminded their employees of their availability-and the importance-of taking breaks on a daily
13 basis, and even went so far as to conduct regular audits to ensure that employees were being
14 offered rest breaks" will still be liable for rest period violations if the employees were not
15 separately or properly compensated for the non- productive time associated with rest periods
16 under a piece-rate compensation system. *Amaro v. Gerawan Farming, Inc.*, 2016 U.S. Dist.
17 LEXIS 66842 * (E.D. Cal. May 19, 2016) *aff'd* *Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS
18 112540, 20 I 6 WL 4440966, at * 11 (E.D. Cal. Aug. 22, 2016); rev. denied by 9th Cir. Case
19 No. 0:16-23f-80120 (9th Cir. Nov. 16, 2016).

20 33. Here, Defendant did not have a rest period policy and did not compensate
21 Plaintiff and the Aggrieved Employees for their rest periods. Plaintiff and the Aggrieved
22 Employees worked as many as 10-12 hours per day, which would trigger a two to three paid
23 rest breaks, but Plaintiff and all Aggrieved Employees were not compensated with one (1)
24 hour's worth of pay at their regular rate of compensation when they were not provided with a
25 compliant rest period.

26 34. Labor Code § 512 requires employers to provide employees with thirty (30) minute
27 uninterrupted and duty-free meal period within the first five hours of work.

28 35. As with rest periods, under Labor Code § 512, if an employer maintains a uniform

1 policy that does not authorize and permit the amount of mealtime called for under the law (as
2 specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker*
3 Court explained in the context of rest breaks that employer liability attaches from adopting an
4 unlawful policy:

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

9 *Brinker Rest. Corp. v. Sup. Ct., supra*, 53 Cal.4th at 1033. (Emphasis added.)

10 36. As a result of Defendant misclassifying Plaintiff and the Aggrieved Employees as
11 independent contractors, Defendant violated Labor Code § 512 by failing to advise Plaintiff and all
12 Aggrieved Employees of their right to receive thirty (30) minute uninterrupted meal periods within
13 the first five hours of the employee’s shift. In fact, because Defendant misclassified Plaintiff and the
14 Aggrieved Employees as independent contractors, they did not set any policies providing meal
15 periods to Plaintiff and the Aggrieved Employees.

16 37. As a result of Defendant’s failure to authorize or permit lawful meal periods
17 because Defendant misclassified Plaintiff, and the Aggrieved Employees as independent
18 contractors, Plaintiff and the other Aggrieved Employees frequently did not receive duty-free meal
19 periods within the first five (5) hours of their work. Defendant also failed to pay Plaintiff and the
20 other Aggrieved Employees meal period premiums for each workday that the employees did not
21 receive a compliant duty-free meal period.

22 38. Similarly, the applicable IWC Wage Order 9-2001, prohibits an employer from
23 “employ[ing] any person for a work period of more than five (5) hours without a meal period of
24 not less than 30 minutes. The applicable IWC Wage Order 9-2001 further obligates employers to
25 provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate of
26 compensation for each workday that the meal period is not provided. Labor Code § 226.7 provides
27 “an employer shall not require an employee to work during a meal or rest or recovery period
28 mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the
Industrial Welfare Commission (“IWC”). Accordingly, for each day that Plaintiff and the other

1 Aggrieved Employees did not receive compliant meal periods, they are entitled to receive meal
2 period premiums pursuant to Labor Code § 226.7 and Wage Orders 9-2001.

3 39. As to Plaintiff and all Aggrieved Employees, Defendant also failed to provide
4 accurate itemized wage statements in accordance with Labor Code § 226(a). Labor Code § 226
5 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
6 statement in writing showing:

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

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

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

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

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

- (i) The amount of the gross wages or net wages paid to the employee during
the pay period or any of the other information required to be provided on the
itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
subdivision (a).
- (ii) Which deductions the employer made from gross wages to determine the
net wages paid to the employee during the pay period. Nothing in this
subdivision alters the ability of the employer to aggregate deductions consistent
with the requirements of item (4) of subdivision (a).
- (iii) The name and address of the employer and, if the employer is a farm
labor contractor, as defined in subdivision (b) of Section 1682, the name and

1 address of the legal entity that secured the services of the employer during the
2 pay period.

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

6 40. Defendant's failure to provide Plaintiff and his current and former fellow truck
7 drivers with complete wage statements, constitutes a violation of Labor Code §§ 226(a) and 226.2.
8 Specifically, the wage statements did not and do not include total hours worked and did not and do
9 not include all applicable hourly rates in effect during the pay period and the corresponding
10 number of hours worked at each hourly rate in violation of Labor Code Section 226(a) and 226.2.
11 Additionally, the wage statements did not and do not include all time spent on rest breaks and
12 Non-Driving Tasks in violation of Labor Code Sections 226(a) and 226.2.

13 41. In addition to violating Labor Code § 226(a), Defendant also knowingly and
14 intentionally failed to provide Plaintiff and the Aggrieved Employees with accurate itemized wage
15 statements in violation of Labor Code § 226(e). Defendant undeniably knew that they were not
16 providing Plaintiff and the other Aggrieved Employees with compliant wage statements required by
17 California law. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015)
18 (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the
19 "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid
20 on commission" even though it believed that employees paid solely on commission or
21 commission and salary "are exempt and therefore we do not record hours on a wage statement.").

22 42. Plaintiff and the Aggrieved Employees will prevail on their claim for PAGA
23 penalties under Labor Code § 226(a). *See Lopez v. Friant & Assocs., LLC*, (2017) 15 Cal. Cal.
24 App. 4th 773, 788 ("hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of
25 Labor Code section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional'
26 requirements of section 226(e)(1)."); *Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D.
27 Cal. 2014) (To obtain judgment on a PAGA claim, "all [plaintiff] needs to establish is a violation
28 of section 226(a), which she has done, as discussed above."); *McKenzie v. Fed. Exp. Corp.* 765
F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that "for the purposes of recovering PAGA

1 penalties, one need only prove a violation of Section 226(a), and need not establish a Section
2 226(e) injury.”).

3 43. Following *Friant*, courts have found that employees can recover separate penalties
4 under PAGA for a defendant’s violations of Labor Code § 226(a) and 226(e). *See e.g. Bell v.*
5 *Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) 2017 U.S. Dist. LEXIS 204493, at *5 [finding after
6 *Friant* that “[t]o the extent the Court’s Order [granting summary judgment to Home Depot] was
7 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’ derivative
8 claim for [PAGA] penalties under section 226(e)...the Court’s Order should not be read to grant
9 summary judgment on Plaintiffs’ claim for PAGA penalties based on violation of section
10 226(a).”)].

11 44. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
12 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
13 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
14 each violation in a subsequent citation, for which the employer fails to provide the employee a
15 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” Plaintiff
16 and the other Aggrieved Employees may recover Labor Code § 226.3 penalties for Defendant’s
17 violations of Labor Code § 226(a). *See Raines v. Coastal Pacific Food Distributors, Inc.*,
18 2018 Cal.App. LEXIS 468 (Cal. Ct. App. May 22, 2018).

19 45. As a result of Defendant’s misclassification of Plaintiff and the Aggrieved
20 Employees as independent contractors, and as a result of their failure to pay Plaintiff and all
21 Aggrieved Employees for all hours worked, including Non-Driving Tasks, and meal/rest period
22 premiums, Defendant violated Labor Code § 203. Labor Code § 203 provides “if an employer
23 willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of
24 the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*,
25 (1998) 68 Cal.App.4th 487, 492.

26 46. Due to Defendant’s faulty policies described above, Plaintiff and all Aggrieved
27 Employees whose employment with Defendant concluded were not compensated for each and every
28 hour worked or at the appropriate rate. Additionally, Defendant has failed to pay all Employees for

1 all Non-Driving Tasks, rest period premiums, and meal period premiums, whose sums were
2 certain, at the time of termination or within seventy-two (72) hours of their resignation and have
3 failed to pay those sums for thirty (30) days thereafter.

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

9 48. As discussed in detail above, and as a result of Defendant classifying Plaintiff and
10 the Aggrieved Employees as independent contractors, failing to pay for Non-Driving Tasks,
11 including rest periods, and failing to pay meal period premiums and rest period premiums,
12 Defendant failed to pay Plaintiff and the other aggrieved employees at least twice per month in
13 violation of Labor Code § 204. Defendant regularly and consistently failed to pay Plaintiff and the
14 Aggrieved Employees for all of their hours worked, for rest periods and/or rest period premiums,
15 and meal period premiums.

16 49. Pursuant to Labor Code Section 210, as amended,

17 (a) In addition to, and entirely independent and apart from, any other penalty
18 provided in this article, every person who fails to pay the wages of each employee as
19 provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5,
20 shall be subject to a penalty as follows:

21 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay
22 each employee.

23 (2) For each subsequent violation, or any willful or intentional violation, two
24 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent
25 of the amount unlawfully withheld.

26 (b) The penalty shall either be recovered by the employee as a statutory penalty
27 pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the
28 issuance of a citation or pursuant to Section 98.3. The procedures for issuing,
contesting, and enforcing judgments for citations issued by the Labor Commissioner
under this section shall be the same as those set forth in subdivisions (b) through (k),
inclusive, of Section 1197.1.

(c) An employee is only entitled to either recover the statutory penalty provided for in
this section or to enforce a civil penalty as set forth in subdivision (a) of Section
2699, but not both, for the same violation.

50. Here, Plaintiff seeks to recover all penalties available under Labor Code Section

1 210 for Defendant's violations of Labor Code Section 204 through PAGA.

2 51. Plaintiff and the Aggrieved Employees regularly incurred expenses during the
3 course of their employment, such as phone usage as well as fuel and other truck-related expenses.

4 52. Cal. Labor Code §2802 (a) provides that:

5 An employer shall indemnify his or her employee for all necessary expenditures or losses
6 incurred by the employee in direct consequence of the discharge of his or her duties, or of
7 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.

8 53. Defendant required that its truck drivers in California to use their personal cell
9 phones for work purposes without offering any reasonable reimbursement to drivers for their data
10 usage, wear and tear and other expenses associated with maintaining their devices. Defendant
11 requires and required its truck drivers to call into dispatch and to call customers on multiple
12 occasions during a driver's shift. Defendant never provided cell phones to its drivers, and
13 Defendant did not provide devices to its drivers that would allow drivers to make such calls. As a
14 result, Plaintiffs and other current and former drivers employed by Defendant incurred personal
15 cell phone related expenses, but were not reimbursed a reasonable portion of their personal cell
16 phone bills in clear violation of Section 2802 of the California Labor Code. *See, Cochran v.*
17 *Schwan 's Home Services, Inc.*, Case No. B247160 (Cal.App.Ct. (2nd Dist) Aug. 12, 2014) ("We
18 hold that when employees must use their personal cell phones for work related calls, Labor Code
19 section 2802 requires the employer to reimburse them. Whether the employees have cell phone
20 plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable
21 percentage of their cell phone bills"). After all, the purpose of 2802 is to "prevent employers from
22 passing along their operating expenses onto their employees." *Gattuso v. Harte-Hanks Shoppers,*
23 *Inc.*, (2007) 42 Cal. 4th 554, 562. In addition, Defendant did not reimburse Plaintiff and the
24 Aggrieved Employees for their gas mileage expenses incurred in connection with fueling their
25 trucks, which was substantial.

26 54. Further, by virtue of its willful misclassification of Plaintiff and the aggrieved
27 employees, Defendant violated Labor Code § 2802 by failing to reimburse Plaintiff and the
28 aggrieved employees for their business-related expenses including fuel expenses and monthly cell

1 phone expenses incurred. *See, Gattuso v. Harte Hanks Shoppers, Inc.*, 42 Cal. 4th 554 (2007)
2 (business related mileage must be reimbursed either with actual expenses reimbursements, usage
3 of the IRS mileage rate, or a monthly flat rate reimbursement that covers the employees' out-of-
4 pocket expenses. The employer's obligation to reimburse employees for gas mileage expenses
5 arises when an employer "knew or should have known" that employees are or were driving in their
6 own personal vehicles on behalf of the employer. *See Stuart v. RadioShack Corp.*, 2009 U.S. Dist.
7 Lexis 41658 (N.D. Cal. 2009). As a result, Plaintiff and the aggrieved employees spent hundreds
8 of dollars each month on non-reimbursed business-related expenses that should have been paid for
9 by the Defendant.

10 55. The administrative prerequisites of PAGA were satisfied after 65 days elapsed from
11 May 11, 2021 (i.e., 65 days since Plaintiff's mailing of the PAGA notice with no further
12 communication from the LWDA to Plaintiff's counsel). Plaintiff has paid the \$75.00 fee and has
13 otherwise satisfied the administrative prerequisites of PAGA.

14 56. Plaintiff by this action seeks to recover, on behalf of himself and all other current
15 and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as
16 specified in Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a
17 representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior*
18 *Court*, 46 Cal. 4th 969 (2009). Class certification of the PAGA claims is not required. *Id.*

19 **FIRST CAUSE OF ACTION**
20 **PAGA PENALTIES FOR WILLFUL MISCLASSIFICATION OF ALL OF**
21 **DEFENDANT'S ONLINE TEACHERS**
22 **[Cal. Labor Code §§ 2698 et seq. 2775, 226.8(a)(1), and 226.8(b) or 226.8(c)]**
23 **On behalf of Plaintiff, the LWDA and the PAGA Aggrieved Employees**

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

26 58. Plaintiff and similarly situated employees are "Aggrieved Employees" under the
27 PAGA as they were employed by Defendant during the applicable statutory period and suffered
28 the Labor Code violation alleged herein. At all times relevant hereto, Plaintiff and Aggrieved
Employees were employees for purposes of the California Labor Code, although they were

1 willfully misclassified as independent contractors.

2 59. In violation of the Labor Code provisions cited herein and in willful violation of
3 California law and public policy, Defendant intentionally misclassified Plaintiff and Aggrieved
4 Employees as independent contractors in violation of Labor Code § 226.8(a). This was part of a
5 pattern as practice of willful misclassification of all, or virtually all, of Defendant's drivers thereby
6 triggering heightened penalties under sections 226.8(b) and (c).

7 60. The administrative prerequisites of PAGA will be satisfied after 66 days have
8 elapsed from May 11, 2021 (i.e., 65 days since Plaintiff's mailing of the PAGA notice with no
9 further communication from the LWDA to Plaintiff's counsel). The actionable period is one year
10 prior to the sending of the LWDA letter through the present. Plaintiff has paid the \$75.00 fee and
11 has otherwise satisfied the administrative prerequisites of PAGA, as amended.

12 61. Plaintiff by this action seeks to recover, on behalf of himself and all other current
13 and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as
14 specified in Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a
15 representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior*
16 *Court*, 46 Cal. 4th 969(2009). Therefore, class certification of the PAGA claims is not required.
17 *Id.*

18 **SECOND CAUSE OF ACTION**
19 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
20 **PAGA PENALTIES FOR LABOR CODE VIOLATIONS OTHER THAN**
21 **MISCLASSIFICATION**
(Labor Code §§ 2698-2699.5)
On Behalf of Plaintiff and the PAGA Aggrieved Employees and LWDA

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

24 63. Plaintiff and those individuals who were employed by Defendant within the last
25 year are, "aggrieved employees" under PAGA as they were employed by Defendant during the
26 applicable statutory period and suffered the Labor Code violations alleged herein; specifically,
27 violations of §§ 201, 202, 203, 204, 210, 221, 222, 223, 226(a) and (e), 226.2, 226.3, 226.7, 226.8,
28 512, 1194, 1198, 2750.3, 2802 as well as Sections 7, 11 and 12 of IWC Wage Orders 9-2001.

1 Plaintiff was employed by Defendant during the one year preceding the submission of a PAGA
2 letter to the LDWA on or around May 11, 2021. As such, she seeks to recover, on behalf of
3 himself and all other current and former aggrieved employees of Defendant, the civil penalties
4 provided by PAGA.

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

8 \$100 for the initial violation per employee per pay period; and

9 \$200 for each subsequent violation per employee per pay period.

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

12 65. The aggrieved employees are all individuals who are or were California residents,
13 who worked for Lincoln Transportation Services, Inc. as drivers, or in any similar capacity, and
14 whose pay was reported on an IRS Form 1099 basis during the PAGA Period. These employees
15 were subject to the aforementioned Labor Code violations, during the period of time from one year
16 prior to the submission of Plaintiff's letter to the LWDA on May 11, 2021 through the present and
17 on-going.

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

25 67. Pursuant to Labor Code § 226.3, for PAGA penalties associated with the Section
26 226 claim, Plaintiff and the Aggrieved Employees for the Section 226 claim are entitled to \$250
27 for each initial pay period with a violation and \$1,000 for each subsequent pay period with a
28 violation. See *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal. App. 5th 667, 674-675

(2018) (finding that Labor Code § 226.3 applies to all violations of Labor Code § 226(a)); see also *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d 1058, 1109 (N.D. Cal. 2019) (“the Court finds that Cal. Lab. Code § 226.3 penalties are applicable as the appropriate measure of civil penalties under PAGA” for the violation of Labor Code § 226(a).

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

69. Plaintiff seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46 Cal.4th 969.

70. Pursuant to Labor Code § 2699.3 (a), on May 11, 2021, Plaintiff gave written notice by certified mail to Defendant, and to the Labor and Workforce Development Agency (“LWDA”) of his claims, including the facts and theories supporting all claims outlined in this Complaint. Accordingly, Plaintiff fulfilled all administrative prerequisites to the pursuit of his PAGA claim on behalf of himself and all other current and former aggrieved employees of Defendant.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of herself and the Aggrieved Employees, prays for judgment against Defendant as follows:

1. On the First Cause of Action:

a. That the Court find that Defendant violated California Labor Code §§ 226.8(a)(1) by willfully misclassifying Plaintiff and Aggrieved Employees as independent

1 contractors.

2 b. That Plaintiff and other Aggrieved Employees be awarded penalties, at a
3 minimum, as specified in Labor Code §226.8(b).

4 c. That the Court find, additionally, the Defendant engaged in a pattern or
5 practice of willful misclassification of Plaintiff and the Aggrieved Employees.

6 d. That Plaintiff and other Aggrieved Employees be awarded penalties, upon a
7 finding of a pattern or practice, as specified in Labor Code § 226.8(c) in lieu of the penalties in
8 226.8(b).

9 e. That the Court award attorneys' fees and costs pursuant to Labor Code §
10 2699(g)(1).

11 2. On the Second Cause of Action:

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

17 b. Pursuant to Labor Code § 226.3, for PAGA penalties associated with the
18 Section 226 claim, Plaintiff is entitled to \$250 for each initial pay period with a violation and
19 \$1,000 for each subsequent pay period with a violation. See *Raines v. Coastal Pacific Food*
20 *Distributors, Inc.*, 23 Cal. App. 5th 667, 674-675 (2018) (finding that Labor Code § 226.3 applies
21 to all violations of Labor Code § 226(a)); see also *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d.
22 1058, 1109 (N.D. Cal. 2019) ("the Court finds that Cal. Lab. Code § 226.3 penalties are applicable
23 as the appropriate measure of civil penalties under PAGA" for the violation of Labor Code §
24 226(a).

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

28 d. An award of all costs incurred by the undersigned counsel for Plaintiff in

1 connection with Plaintiff's and Aggrieved Employees' PAGA claim against Defendant, as
2 provided for in Labor Code § 2699(g)(1);

3 12. All other relief as this Court deems proper.

4 Dated: July 16, 2021

Respectfully,

5 ACKERMANN & TILAJEF, P.C.

6
7 By:  _____

8 Craig Ackermann, Esq.

9 *Counsel for Plaintiff and the Aggrieved*
10 *Employees*