

ACKERMANN & TILAJEF, P.C.
Craig J. Ackermann (SBN 229832)
cja@ackermanntilajef.com
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
Telephone: (310) 277-0614
Facsimile: (310) 277-0635

FILED
9/10/2021 5:35 PM
Clerk of the Napa Superior Court
By: Lori Walker, Deputy

PROXY LAW FIRM LLP
Rana Nader (SBN 247182)
nader@proxylawfirm.com
Hengameh S. Safaei (SBN 248048)
safaei@proxylawfirm.com
10880 Wilshire Boulevard, Suite 1101
Los Angeles, California 90024
Telephone: (310) 948-9871
Facsimile: (310) 861-5931

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF NAPA

ANTONIO ESPINOZA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SILVERADO RESORT SERVICES
GROUP, LLC, a Delaware limited liability
company; and DOES 1-100, inclusive,

Defendants.

CASE NO: 21CV001300

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

- (1) FAILURE TO PAY MINIMUM WAGES
(LABOR CODE §§ 1194, 1197, 1197.1, 1198,
1199)**
- (2) FAILURE TO PROVIDE COMPLIANT REST
PERIODS AND/OR PAY MISSED REST
PERIOD PREMIUMS (LABOR CODE § 226.7;
IWC WAGE ORDER NO. 5-2001 § 12)**
- (3) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802)**
- (4) FAILURE TO PROVIDE COMPLETE WAGE
STATEMENTS (LABOR CODE § 226)**
- (5) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210)**
- (6) UCL VIOLATIONS (BUS. & PROF. CODE §§
17200-17204)**
- (7) PAGA AND OTHER PENALTIES (LABOR
CODE §§ 2698 – 2699.5)**

DEMAND FOR JURY TRIAL

1 Plaintiff Antonio Espinoza (“Plaintiff”), on behalf of himself, the State of California, other
2 aggrieved employees, and all others similarly situated (hereinafter “Class Members”), complains
3 and alleges as follows:

4 OVERVIEW OF CLAIMS

5 1. Plaintiff brings this action on behalf of himself and all others similarly situated, as a
6 class action, as a representative action pursuant to the California Private Attorneys General Act,
7 Labor Code § 2699, *et seq.* (“PAGA”), and on behalf of the California general public, against
8 Defendant Silverado Resort Services Group, LLC dba Silverado Resort Service Group LLC and
9 DOES 1 to 100 (collectively, “Defendants”) for (1) failure to pay all minimum wages due for time
10 spent in pre-shift COVID temperature checks and questioning; (2) failure to provide rest periods
11 for every four hours of work or major fraction thereof and pay missed rest period premiums; (3)
12 failure to reimburse business expenses, including for masks during the pandemic, incurred by
13 current and former employees in California; (4) failure to provide complete and accurate wage
14 statements to current and former employees in California within the one year prior to the filing of
15 this Complaint; (5) failure to pay timely wages to employees based on the foregoing; (6) unfair
16 business practices based on the foregoing; and (7) PAGA and other penalties based on the
17 foregoing. As a result of the foregoing, Defendants have violated California statutory laws as
18 described below.

19 2. The “Class Period” is designated as the period from four years prior to the filing of
20 this action through the trial date. The PAGA Period is one year from the date of Plaintiff’s PAGA
21 letter to the LWDA (i.e., from July 8, 2020) through the present and on-going. Defendants’
22 violations of California’s wage-hour laws and unfair competition laws, as described more fully
23 below, have been ongoing throughout the Class Period and PAGA Period.

24 VENUE

25 3. Venue is proper in this county under Section 395.5 of the California Code of Civil
26 Procedure. Many of the putative Class Members were employed and/or performed work during
27 the Class Period by Defendants in Napa County. Defendants operate a resort in in the county of
28 Napa. Many of the acts alleged herein including Defendants’ failure to pay minimum wages,

1 failure to provide compliant rest periods, failure to issue complete and accurate itemized wage
2 statements, failure to pay wages on a timely basis, and failure to reimburse for business expenses,
3 occurred in Napa County. Venue is therefore proper in Napa County.

4 **JURISDICTION**

5 4. Defendants are within the jurisdiction of this Court. Defendants conduct business
6 by operating a resort in California. Thus, Defendants have obtained the benefits of the laws of the
7 State of California. In addition, Plaintiff asserts no claims arising under federal law. Rather,
8 Plaintiff brings causes of action based solely on, and arising from, California law. The claims of
9 the class are also based solely on California law described herein. Furthermore, the total amount at
10 issue in this case, inclusive of attorneys' fees, is less than \$5 million. Therefore, jurisdiction is
11 appropriate in Napa County Superior Court.

12 **THE PARTIES**

13 5. Plaintiff is a California resident who worked for Defendants as a cook during the
14 relevant time period, from June 2006 through the present.

15 6. From at least four years from the filing of this Complaint through the present, and
16 on-going, Defendants' employees, at various times throughout the Class Period, including
17 Plaintiff during his employment, were not paid all minimum wages owed for time spent in pre-
18 shift COVID temperature checks and questioning; were not provided compliant rest periods nor
19 paid missed rest period premiums; were not provided accurate and/or complete itemized wage
20 statements; were not reimbursed for all business expenses; and did not receive timely wages.

21 7. Plaintiff represents the State of California and the following group of aggrieved
22 employees defined as:

23 Plaintiff and all other individuals who are or were employed by Defendant Silverado
24 Resort Services Group LLC as non-exempt hourly-paid employees who worked at least one
25 shift in California from July 8, 2020 to the present and ongoing (hereinafter referred to as
"Aggrieved Employees").

26 8. Plaintiff also seeks to represent a Class defined as:

27 Plaintiff and all other individuals who are or were employed by Defendant Silverado
28 Resort Services Group LLC as non-exempt hourly-paid employees who worked at least one
shift in California during the Class Period (hereinafter referred to as the "Class" or "Class

Members”).

a. The members of the Class who worked for Defendants during the one year preceding the filing of this Complaint constitute the “Wage Statement and Penalty Subclass”.

b. The Wage Statement and Penalty Subclass is coextensive with the Late Payment Class.

9. Defendant Silverado Resort Services Group LLC is a Delaware limited liability company doing business in Napa County, California. Defendants operate a hotel/resort.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

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

12. Defendants employed Plaintiff, the Class, and the Aggrieved Employees as non-exempt, hourly-paid employees in California at various times during the Class Period and PAGA Period. On information and belief, Defendants employed approximately 1,000 hourly-paid employees in California during the Class Period.

FACTUAL ALLEGATIONS

13. Defendants operate and, at all times during the Class Period and PAGA Period, have done business in California as a resort. Defendants, in the course of operating their business in California during the Class Period and PAGA Period, employed Plaintiff, the Class, and the

1 Aggrieved Employees as hourly-paid workers.

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

9 15. These minimum wage standards apply to each hour employees worked or subject to
10 control by the employer for which they were not paid. Therefore, an employer’s failure to pay for
11 any particular hour of time worked by an employee or subject to the employer’s control is
12 unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in
13 an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314,
14 324 (2005). Time spent by employees pre-shift under the control of an employer is certainly
15 compensable yet unpaid.

16 16. Here, Defendants required Plaintiff, the Class, and all Aggrieved Employees to
17 regularly perform work-off-the-clock for which they did not receive any compensation.
18 Specifically, as part of the Class Members’ and Aggrieved Employees’ employment, Defendants
19 required and continue to require Plaintiff, the Class, and all Aggrieved Employees to undergo
20 COVID-19 temperature checks and questionnaires in the parking lot area before the start of their
21 shift, and before they “clock in.” Specifically, from around April 2020 and continuing to the
22 present, Plaintiff, the Class, and Aggrieved Employees have been required to form a line outside of
23 Defendants’ resort facility and are given a temperature check by Defendants’ security team, while
24 off the clock, before being allowed to clock in for their shifts. From around early2020 and
25 continuing to the present, Plaintiff, the Class, and the Aggrieved Employees underwent the same
26 temperature checks, and were also given a mandatory pre-shift COVID-19 questionnaire to fill out.
27 Only afterwards did Plaintiff, the Class, and the Aggrieved Employees finally clock in for their
28 shifts. Although Defendants maintained a common policy and practice of requiring Plaintiff, the

1 Class, and the Aggrieved Employees to stand/wait in line pre-shift for COVID-19 temperature
2 checks and questionnaires during the Class Period and PAGA Period, Defendants failed to
3 compensate Plaintiff, the Class, and all Aggrieved Employees for such time

4 17. Employees must be paid for all “hours worked.” Hours worked is considered “the
5 time during which an employee is subject to the control of an employer, and includes all the time
6 the employee is suffered or permitted to work, whether or not required to do so....” *See Wage*
7 *Order 5-2001, subd. 2(K); see also Mendiola v. CPS Security Solutions, Inc.*, 60 Cal.4th 833
8 (2015). “[I]t is only necessary that the worker be subject to the control of the employer in order to
9 be entitled to compensation.” *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 584 (2000)
10 (internal citations omitted). An employee is under the employer’s control and entitled to
11 compensation when the employer “‘directs, commands or restrains’ an employee.” *Morillion*, 22
12 Cal.4th at 583 (internal citation omitted).

13 18. As the California Supreme Court made clear in *Morillion*, when determining
14 whether an employee’s activity is under the employer’s control entitling him or her to
15 compensation, the touchstone is not whether the employer requires the activity and thus whether
16 employees can avoid it, but the level of control employers exert over employees during the
17 activity: “The level of the employer’s control over its employees, *rather than the mere fact that the*
18 *employer requires the employees’ activity, is determinative.*” *Morillion*, 22 Cal.4th at 587
19 (emphasis added).

20 19. In *Frlekin v. Apple Inc.*, 8 Cal.5th 1038, 1056 (2020) (citing *Morillion*, 22 Cal.4th
21 at 587) the California Supreme Court reaffirmed its holding in *Morillion* that “[t]he level of the
22 employer’s control over its employees, rather than the mere fact that the employer requires the
23 employees’ activity, is determinative” concerning whether an activity is compensable under the
24 “hours worked” control clause. In *Frlekin*, the California Supreme Court found that time
25 employees spent undergoing bag searches at the end of their shifts was compensable. The Court
26 reasoned its decision by analyzing factors in determining whether an employer has exerted
27 compensable control over employees:

28 We also emphasize that whether an activity is required remains probative in

1 determining whether an employee is subject to the employer's control. But, at least
2 with regard to cases involving *onsite* employer-controlled activities, the mandatory
3 nature of an activity is not the only factor to consider. We conclude that courts may
4 and should consider additional relevant factors—including, but not limited to, the
5 location of the activity, the degree of the employer's control, whether the activity
6 primarily benefits the employee or employer, and whether the activity is enforced
7 through disciplinary measures—when evaluating such employer-controlled conduct.

8 *Frlekin*, 8 Cal.5th at 1056 (italics in original).

9 20. To be free of the employer's control for purposes of "hours worked," the employee
10 must be free to use his or her time "effectively for his or her own purposes." *Morillion*, 22 Cal.4th
11 at 583.

12 21. Here, as in *Frlekin*, the Class and Aggrieved Employees could not avoid
13 Defendants' COVID-19 temperature checks and questioning (which took place on Defendants'
14 premises and before employees could clock in) and could not then use their time effectively for
15 their own purposes. As such, Defendants exercised compensable control over the Class and
16 Aggrieved Employees who underwent COVID-19 temperature checks and questioning, and stood
17 in line to do so, and owe wages to the Class and Aggrieved Employees for this time.

18 22. The California Department of Industrial Relations ("DIR") recently issued guidance
19 regarding pre-shift worksite temperature checks and/or questionnaires. *See* Cal. Dept. of Industrial
20 Relations, Safe Reopening FAQs for Workers and Employers (July 8, 2021), available at
21 https://www.dir.ca.gov/covid19/FAQs_COVID-19_Safe_Reopening.htm. The DIR provides the
22 following in FAQ #10 titled "Medical Checks, Testing, and Vaccinations":

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

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

The term "hours worked" means the time during which a worker is subject to the
control of an employer and includes all the time the worker is suffered or permitted to

1 work, whether or not required to do so. Under this definition, one way to determine
2 whether time a worker spends performing a task is compensable—that is, whether it is
3 time “worked”—is whether the employer exercised control over the worker by
4 requiring the worker to perform that task.

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

11 23. Notably, there is no *de minimis* defense for such time. *See, Troester v. Starbucks*
12 *Corp.*, 5 Cal.5th 829 (2018) (in light of new technologies allowing time-tracking with specificity,
13 the de minimis principle is not applicable in the context of an alleged policy requiring employees
14 to work minutes off the clock routinely).

15 24. Defendants’ policy and practice of requiring Plaintiff, the Class, and the Aggrieved
16 Employees to undergo pre-shift COVID-19 temperature checks and questioning, clearly violated
17 Labor Code Section 1194. As a result of Defendants’ policy and practices described above,
18 Defendants regularly failed to pay Plaintiff, the Class, and all Aggrieved Employees for all hours
19 worked in violation of Labor Code Sections 1194 and 1197.

20 25. Labor Code Section 1197.1, subdivision (a), authorizes employees who are paid
21 less than the minimum fixed by an applicable state or local law, or by an order of the commission a
22 civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation
23 that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each
24 pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
25 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
26 period for which the employee is underpaid regardless of whether the initial violation is
27 intentionally committed. As set forth above, Defendants failed to compensate Plaintiff, the Class,
28 and all Aggrieved Employees for all hours worked. Accordingly, through PAGA and to the extent

1 permitted by law Plaintiff, the Class, and all Aggrieved Employees are entitled to recover
2 liquidated damages for violations of Labor Code § 1197.1. Based upon these same factual
3 allegations, Plaintiff, the Class, and all Aggrieved Employees are entitled to penalties under Labor
4 Code Sections 203 and 1197.1 and 1199.

5 26. Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover
6 liquidated damages for violations of Labor Code § 1194. Where an employee, as Plaintiff, the
7 Class, and all Aggrieved Employees experienced on a regular basis, are not paid for all hours
8 worked under Labor Code § 1194, the employees may recover minimum wages for the time for
9 which they received no compensation.

10 27. Section 12 of the applicable IWC Wage Order requires California employers to
11 provide a 10- minute duty-free and uninterrupted rest break to employees for each 4 hours of work,
12 or major fraction thereof. Insofar as practicable, the rest period shall be in the middle of each work
13 period. *See*, IWC Wage Order 5-2001, § 12. Labor Code section 226.7 imposes a premium
14 payment of one hour of pay at the employee's regular rate of pay for each workday where a
15 compliant rest break is not provided to an employee on a timely basis.

16 28. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
17 authorize and permit the amount of rest time or the proper timing for rest breaks called for under
18 the law (as specified in the applicable Wage Order), "it has violated the wage order and is liable."
19 The *Brinker* Court explained in the context of rest breaks that employer liability attaches from
20 adopting an unlawful policy:

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

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

25 29. Here, Plaintiff, the Class, and the Aggrieved Employees were not authorized nor
26 permitted to take rest breaks and did not take their rest breaks during their shifts.¹ Plaintiff, the
27

28 ¹ In the fifteen (15) years that Plaintiff has been employed by Defendants, he has rarely, if ever, taken a rest break.

1 Class, and the Aggrieved Employees were thus not able to receive their first, second, and/or third
2 rest breaks (for shifts that were longer than 8 hours and 12 hours respectively, or major fractions
3 thereof).

4 30. Furthermore, even if rest breaks were somehow authorized and permitted, which
5 they were not, since Defendants did not permit any rest breaks because Defendants' facility was
6 understaffed, Plaintiff, the Class, and the Aggrieved Employees were under pressure to finish their
7 work-related tasks on time. Plaintiff, the Class, and the Aggrieved Employees could not take their
8 first, second, and/or third rest break once working. Therefore, Defendants are and were in violation
9 of applicable California law by failing to authorize and permit rest breaks.

10 31. Defendants do not maintain an expense reimbursement policy and/or practice
11 stating that Defendants will affirmatively reimburse Plaintiff, the Class, and the Aggrieved
12 Employees for their business expenses incurred on behalf of Defendants.

13 32. Specifically, California Labor Code Section 2802 requires an employer in
14 California to "indemnify his or her employee for all necessary expenditures or losses incurred by
15 that employee in direct consequence of the discharge of his or her duties." See Cal. Labor Code §
16 2802(a); *see also* § 2802(c) where "necessary" is defined to include all "reasonable" costs. "The
17 elements of a claim under Section 2802 are: (i) the employee made expenditures or incurred
18 losses; (ii) the expenditures or losses were incurred in direct consequence of the employee's
19 discharge of his or her duties, or obedience to the directions of the employer; and (iii) the
20 expenditures or losses were reasonable and necessary." *Marr v. Bank of America, N.A.*, 2011 U.S.
21 Dist. LEXIS 24868 * 3 (N.D. Cal. March 8, 2011) (*citing Gattuso v. Harte-Hanks Shoppers,*
22 *Inc.*, 42 Cal.4th 554, 568 (2007)). "In addition, the employer 'must either know or have reason to
23 know that the employee has incurred [the] expense.'" *Id.* (*citing Stuart v. RadioShack Corp.*, 641
24 F.Supp. 2d 901 (N.D. Cal. 2009)). Where an employer has knowledge that employees are incurring
25 a reimbursable expense, the employer must "exercise due diligence to ensure each employee is
26 reimbursed." *Marr*, at *1. The right of an employee to expense reimbursements from his or her
27 employer is not waivable. *See* Cal. Labor Code § 2804; *Edwards v. Arthur Andersen LLP*, 44
28 Cal.4th 937, 954-55 (2008) ("no employee's right to indemnification, to which he or she is entitled

1 under the law, can be waived”).

2 33. Here, Plaintiff, the Class, and the Aggrieved Employees are and were all required
3 by Defendants to purchase their own facemasks during the COVID-19 pandemic, as such masks
4 were required to be worn by the Centers for Disease Control and Prevention (“CDC”).²
5 Defendants did not affirmatively reimburse Plaintiff, the Class, and the Aggrieved Employees in
6 any amount for any such work-related expenses incurred throughout the Class and PAGA Periods
7 even though the CDC requires Plaintiff, the Class, and Aggrieved Employees to wear facemasks as
8 a precondition of work.

9 34. Under California law, if an employer requires that an employee wear a uniform,
10 like the facemasks here, the employer must pay the cost of the uniform. *See*, Labor Code § 2802;
11 IWC Wage Order 5-2001, § 9 (“When uniforms are required by the employer to be worn by the
12 employee as a condition of employment, such uniforms shall be provided and maintained by the
13 employer”). In addition, the employer must pay for all necessary equipment used by employees
14 unless they earn twice minimum wage. Here, Plaintiff, the Class, and Aggrieved Employees never
15 earned twice minimum wage. Accordingly, Defendants are, and have been, required pay for the
16 costs of the masks.

17 35. In short, Defendants’ policies and/or practices require and expect, and/or with
18 Defendants’ knowledge thereof permit, Plaintiff, the Class, and the Aggrieved Employees to pay
19 for business expenses incurred in direct consequence of discharging their duties on behalf of
20 Defendants, without reimbursement in full by Defendants for such expenses. Defendants have
21 maintained their policies and/or practices of denying reimbursement in full of Plaintiff’s, the Class
22 Members’, and the Aggrieved Employees’ necessarily incurred business expenses, or substantially
23 similar policies, throughout California and throughout the Class and PAGA Periods.

24 36. Defendants are aware or should have been aware that Plaintiff, the Class, and the
25 Aggrieved Employees regularly incur and have incurred business expenses in the discharge of
26 their duties, since they are obligated to wear facemasks on a daily basis, by virtue of Defendants’
27

28 ² See <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

1 instructions to Plaintiff, the Class, and the Aggrieved Employees. Defendants nevertheless have,
2 throughout the Class and PAGA Periods, failed and refused to reimburse Plaintiff, the Class, and
3 the Aggrieved Employees for such business expenses incurred by them in connection with their
4 work.

5 37. As to Plaintiff, the Wage Statement Subclass (as defined in Paragraph 8, *supra*),
6 and all Aggrieved Employees, Defendants also failed to provide accurate itemized wage
7 statements in accordance with Labor Code § 226(a).

8 38. Defendants knowingly and intentionally failed to pay Plaintiff, Aggrieved
9 Employees, and all Wage Statement Subclass Members all minimum wages associated with
10 COVID-19 temperature checks and questioning. Accordingly, all wage statements contained
11 inaccurate information as to hours worked and wages earned (since time spent on pre-shift COVID
12 temperature checks and questioning were never included). Moreover, Plaintiff, Aggrieved
13 Employees, and all Wage Statement Subclass Members also suffered legal “injury” for purposes of
14 Labor Code Section 226(e) insofar as they were unable to readily and easily determine the
15 information required to be set forth by Section 226(a). Specifically, Plaintiff, Aggrieved
16 Employees, and the Wage Statement Subclass Members were unable to determine the actual and
17 accurate total hours worked by the employees, the gross wages earned, the net wages earned, since
18 time spent on mandatory COVID-19 temperature checks, questions, and waiting in line was
19 always done off the clock and pre-shift.

20 39. Plaintiff, the Wage Statement Subclass and the Aggrieved Employees will prevail
21 on their claim for PAGA penalties under Labor Code § 226(a) without having to show injury or
22 willfulness. *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“a plaintiff
23 seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to
24 satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”); *Raines v.*
25 *Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the
26 “requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section
27 226(a).”).

28 40. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of

1 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
2 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
3 each violation in a subsequent citation, for which the employer fails to provide the employee a
4 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As
5 explained in detail above, Defendants failed to provide Plaintiff, the Wage Statement Subclass
6 Members, and all Aggrieved Employees with accurate itemized wage statements. Accordingly,
7 Plaintiff, the Wage Statement Subclass Members, and all Aggrieved Employees may recover
8 Labor Code § 226.3 penalties under PAGA for Defendants’ violations of Labor Code § 226(a) in
9 addition to the normal penalties provided for in Section 226.

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

15 42. Due to Defendants’ failure to pay Plaintiff and all Aggrieved Employees on a
16 timely and bi-monthly basis for all applicable minimum wages, Defendants failed to timely pay
17 Plaintiff and all Aggrieved Employees all wages owed within seven (7) days of the close of the
18 payroll period in accordance with Labor Code § 204(d) on a regular and consistent basis.

19 43. Pursuant to Labor Code Section 210, as amended,

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

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

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

(b) The penalty shall either be recovered by the employee as a statutory penalty
pursuant to Section 98 or by the Labor Commissioner as a civil penalty through
the 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.

44. Here, Plaintiff seeks to recover all penalties available under Labor Code Section 210 for Defendants' violations of Labor Code Section 204.

45. The administrative prerequisites of PAGA have been satisfied and Plaintiff has also paid the \$75.00 fee and has otherwise satisfied the administrative prerequisites of PAGA.

46. Plaintiff by this action seeks to recover, on behalf of himself and all other current and former Aggrieved Employees of Defendants, the civil penalties provided by PAGA, as specified in Labor Code § 2699(f). 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*, 46 Cal.4th 969 (2009). Class certification of the PAGA claims is not required. *Id.*

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class composed of and defined as: and all other individuals who are or were employed by Defendant Silverado Resort Services Group LLC, as non-exempt hourly-paid employees, who worked at least one shift in California during the Class Period (hereinafter "Class Members"). All such Class Members were subject to Defendants' unlawful policies including, Defendants' failure to pay minimum wages, Defendants' failure to provide compliant rest periods and pay missed rest period premiums, Defendants' failure to issue compliant wage statements, Defendants' failure to pay timely wages, and Defendants' failure to reimburse for out-of-pocket business expenses.

48. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the Class:

a. Numerosity: The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number

1 of Class Members has not been determined at this time, Plaintiff is informed and believes that
2 Defendants have employed approximately 1,000 Class Members as hourly-paid workers in
3 California who were subject to Defendants' unlawful compensation, rest period, wage statement,
4 final pay, and reimbursement policies. The Class Members are dispersed throughout California.
5 Joinder of all members of the proposed classes is therefore not practicable.

6 b. Commonality: There are questions of law and fact common to Plaintiff and
7 the Class that predominate over any questions affecting only individual members of the Class.
8 These common questions of law and fact include, without limitation:

9 i. Whether Defendants violated Sections 1194 and 1197 of the Labor Code by
10 failing to pay minimum wages for all hours worked, including for pre-shift time associated with
11 COVID-19 temperature checks and questioning;

12 ii. Whether Defendants violated Section 226.7 and IWC Wage Order 5-2001
13 section 12 by failing to provide compliant rest periods during the Class Period;

14 iii. Whether Defendants violated Section 226.7 and IWC Wage Order 5-2001
15 section 12 by failing to pay rest period premiums for missed rest periods during the Class Period;

16 iv. Whether Defendants violated Labor Code Section 2802 by failing to reimburse
17 Plaintiff and the Class for their business expenses incurred during the Class Period;

18 v. Whether Defendants failed to provide Plaintiff and the members of the Class
19 compliant wage statements in violation of Labor Code Section 226(a);

20 vi. Whether Defendants violated Sections 204 and 210 of the Labor Code by
21 failing to pay member of the Class all wages due on a timely basis;

22 vii. Whether Defendants engaged in an unfair practice and violated Section
23 17200 of the California Business and Professions Code by failing to pay Plaintiff and the members
24 of the Class all minimum wages owed, by failing to provide compliant rest periods, and by failing
25 to reimburse them for their business-related expenses during the Class Period;

26 viii. Whether Plaintiff and the Class are entitled to restitution under Business and
27 Professions Code § 17200;

28 ix. The proper formula(s) for calculating damages, interest, and restitution

owed to Plaintiff and the Class Members; and

x. The nature and extent of class-wide damages.

c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly belonging to them, arising out of and caused by Defendants' common course of conduct in violation of law as alleged herein, in similar ways and for the same types of unpaid wages.

d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly and adequately represent and protect the interests of the Class and Class Members. Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represent Plaintiff are competent and experienced in litigating large wage and hour class actions, and will devote sufficient time and resources to the case and otherwise adequately represent the Class and Class Members.

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been damaged or may be damaged in the future by reason of Defendants' unlawful policies and/or practices. Certification of this case as a class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Certifying this case as a class action is superior because it allows for efficient and full disgorgement of the ill-gotten gains Defendants have enjoyed by failing to pay all minimum wages due, failing to provide compliant rest periods, and failing to reimburse all work-related expenses, and will thereby effectuate California's strong public policy of protecting employees from deprivation or offsetting of compensation earned in their employment. If this action is not certified as a Class Action, it will be impossible as a practical matter, for many or most Class Members to bring individual actions to recover monies unlawfully withheld from their lawful compensation due from Defendants', due to the relatively small amounts of such individual recoveries relative to the costs and burdens of litigation.

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
[Cal. Labor Code §§ 1194, 1194.2 and 1197]
On behalf of Plaintiff and the Class Against All Defendants

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

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

51. Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order 5-2001 also obligates employers to pay each employee minimum wages *for all hours worked*. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314, 324 (2005).

52. Furthermore, pursuant to Labor Code § 1198, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

53. Here, Defendants required Plaintiff and the Class to regularly perform work-off-the-clock before their shifts for which they did not receive any compensation. Specifically, as part of the Class’ employment, Defendants required and continues to require Plaintiff and all Class Members to undergo COVID-19 temperature checks and questionnaires in the parking lot area before the start of their shift, and before they “clock in.” Specifically, from around April 2020 and continuing to the present, Plaintiff and the Class have been required to form a line outside of

1 Defendants' hotel/resort facility and were given a temperature check by Defendants' security team,
2 while off the clock, before being allowed to clock in for their shifts. From around early2020 and
3 continuing to the present, Plaintiff and the Class underwent the same temperature checks, and were
4 also given a mandatory pre-shift COVID-19 questionnaire to fill out. Only after these tasks were
5 completed did Plaintiff and the Class finally clock in for their shifts. Although Defendants
6 maintained a common policy and practice of requiring Plaintiff and the Class to stand/wait in line
7 pre-shift for COVID-19 temperature checks and questionnaires during the Class Period,
8 Defendants failed to compensate Plaintiff and the Class for such time.

9 54. Labor Code § 1194 provides, in part, that any employee receiving less than the legal
10 minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage,
11 including interest thereon, reasonable attorney's fees, and costs of suit.

12 55. Labor Code § 1194.2 allows an employee to recover liquidated damages in an
13 amount equal to the wages unlawfully unpaid and interest thereon for any action under Labor Code
14 § 1194. Where an employee, such as Plaintiff and the other Class members, is not paid for all
15 hours worked under Labor Code § 1194, the employee may recover minimum wages for the time
16 associated with the overtime for which they received no compensation. *See Sillah v. Command*
17 *Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure
18 to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were
19 paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F.Supp.3d 1115,
20 1132-33 (N.D. Cal. 2016).

21 56. Plaintiff and the other Class Members suffered and continue to suffer losses related
22 to the use and enjoyment of compensation due and owing to them as a direct result of Defendants'
23 unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and
24 within the jurisdictional limitations of this Court.

25 57. Plaintiff seeks all available remedies for Defendants' violations including, but not
26 limited to, any and all wages due, monies, interest, liquidated damages, penalties attorney's fees,
27 and costs to the extent permitted by law.

28 ///

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE COMPLIANT REST PERIODS
AND/OR PAY MISSED REST PERIOD PREMIUMS
[Cal. Labor Code § 226.7; IWC Wage Order 5-2001, § 12]
On behalf of Plaintiff and the Class Against All Defendants

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

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

60. Section 12 of the applicable IWC Wage Order requires California employers to provide a 10- minute duty-free and uninterrupted rest break to employees for each 4 hours of work, or major fraction thereof. Insofar as practicable, the rest period shall be in the middle of each work period. *See*, IWC Wage Order 5-2001, § 12. Labor Code Section 226.7 imposes a premium payment of one hour of pay at the employee’s regular rate of pay for each workday where a compliant rest break is not provided to an employee on a timely basis.

61. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time or the proper timing for rest breaks called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

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

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

62. Here, Plaintiff and the Class were not authorized or permitted to take rest breaks and did not take their rest breaks during their shifts. Plaintiff and the Class were thus not able to receive their first, second, and/or third rest breaks (for shifts that were longer than 8 hours and 12 hours respectively, or major fractions thereof).

63. Furthermore, even if rest breaks were somehow authorized and permitted, which they were not, Defendants did not provide any rest breaks because, among other things, because Defendants' facility was understaffed, and Plaintiff and the Class were under pressure to finish their work-related tasks on time. Plaintiff and the Class could not take their first, second, and/or third rest break once working. Therefore, Defendants are and were in violation of applicable California law by failing to authorize and permit rest breaks.

THIRD CAUSE OF ACTION
FAILURE TO REIMBURSE BUSINESS EXPENSES
[Cal. Labor Code § 2802(a) and (c)]
On Behalf of Plaintiff and the Class Against All Defendants

64. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraph.

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

66. California Labor Code Section 2802 requires an employer in California to "indemnify his or her employee for all necessary expenditures or losses incurred by that employee in direct consequence of the discharge of his or her duties." See Cal. Labor Code Section 2802(a); *see also* 2802(c) where "necessary" is defined to include all "reasonable" costs. "The elements of a claim under Section 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses were incurred in direct consequence of the employee's discharge of his or her duties, or obedience to the directions of the employer; and (iii) the expenditures or losses were reasonable and necessary." *Marr v. Bank of America, N.A.*, 2011 U.S. Dist. LEXIS 24868 * 3 (N.D. March 8, 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)). "In addition, the employer 'must either know or have reason to know that the employee has incurred [the] expense.'" *Id.* (*citing Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D. Cal. 2009)). Where an employer has knowledge that employees are incurring a reimbursable expense, the employer must "exercise due diligence to ensure each employee is reimbursed." *Marr*, at *1. The right of an employee to expense reimbursements from his or her employer is not

1 waivable. *See* Cal. Labor Code § 2804; *Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937, 954-55
2 (2008).

3 67. Here, Plaintiff and the Class are and were all required by Defendants to purchase
4 their own facemasks during the COVID-19 pandemic, as such masks were required to be worn by
5 the CDC. Defendants did not affirmatively reimburse Plaintiff and the Class in any amount for any
6 such work-related expenses incurred throughout the Class Period even though the CDC requires
7 Plaintiff and the Class to wear facemasks as a precondition of work.

8 68. Accordingly, Defendants violated Labor Code § 2802 and continue to do so by
9 failing to reimburse Plaintiff and all other Class Members for all work-related charges they
10 incurred in connection with their job duties. By failing to reimburse Plaintiff and the Class for their
11 personal expenses incurred for work-related purposes, Defendants violated Labor Code § 2802.

12 **FOURTH CAUSE OF ACTION**
13 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
14 **[Cal. Labor Code § 226(a) and (e)]**

15 **On behalf of Plaintiff and the Wage Statement and Penalty Subclass Against All Defendants**

16 69. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
17 in the preceding paragraphs.

18 70. The actionable period for this cause of action is one year prior to the filing of this
19 Complaint through the present, and on-going until the violations are corrected, or the subclass is
20 certified. This claim is brought on behalf of the Wage Statement and Penalty Subclass.

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

22 Every employer shall...furnish each of his or her employees...an accurate
23 itemized statement in writing showing (1) gross wages earned, (2) total hours
24 worked by the employee, except for any employee whose compensation is
25 solely based on a salary and who is exempt from payment of overtime under
26 subdivision (a) of Section 515 or any applicable order of the Industrial
27 Welfare Commission, (3) the number of piece-rate units earned and any
28 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 only the last four digits of his or her social security
number or an employee identification number other than a social security
number, (8) the name and address of the legal entity that is the employer and
(9) all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate by the employee
2

3 72. Defendants knowingly and intentionally failed to pay Plaintiff and all Wage
4 Statement Subclass Members all minimum wages associated with COVID-19 temperature checks
5 and questioning. Accordingly, all wage statements contained inaccurate information as to hours
6 worked and wages earned (since time spent on pre-shift COVID temperature checks and
7 questioning were never included). Moreover, Plaintiff and all Wage Statement Subclass Members
8 also suffered legal “injury” for purposes of Labor Code Section 226(e) insofar as they were unable
9 to readily and easily determine the information required to be set forth by Section 226(a).
10 Specifically, Plaintiff and the Wage Statement Subclass Members were unable to determine the
11 actual and accurate total hours worked by the employees, the gross wages earned, the net wages
12 earned, since time spent on COVID-19 temperature checks, questions, and waiting in line was
13 always done off the clock and pre-shift.

14 73. Defendants’ violation of Labor Code § 226 was knowing and intentional. *See*
15 *Garnett v. ADT LLC*, 139 F.Supp. 3d 1121, 1134 (E.D. Cal. 2015) (finding that the defendant
16 knowingly and intentionally violated Labor Code § 226 because the “[d]efendant knew that it was
17 not providing total hours worked to plaintiff or other employees paid on commission” even though
18 it believed that employees paid solely on commission or commission and salary “are exempt and
19 therefore we do not record hours on a wage statement”).

20 74. As a result of Defendants’ failure to issue compliant wage statements to Plaintiff
21 and the Wage Statement Subclass Members (i.e., those members of the class who were employed
22 by Defendants during the actionable period for this cause of action) in violation of Section 226(a)
23 of the California Labor Code, Plaintiff and the Wage Statement Subclass Members are each
24 entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not
25 exceeding an aggregate penalty of \$4,000 per Plaintiff and per every member of the Wage
26 Statement Subclass from Defendants pursuant to Section 226(e) of the Labor Code, costs and
27 reasonable attorneys’ fees.

28 ///

FIFTH CAUSE OF ACTION
FAILURE TO PAY WAGES ON A TIMELY BASIS
[Cal. Labor Code §§ 204, 210]

On behalf of Plaintiff and the Late Wages Subclass Against All Defendants

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

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

77. Due to Defendants’ failure to pay Plaintiff and the Class Members for minimum wages owed, Defendants violated Labor Code § 204 by failing to pay all wages due to the Late Wages Subclass members within seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

78. Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above, Plaintiff and the Class are entitled to recover penalties under Labor Code § 210. See also AB 673 (amending Section 210 to provide for the existence of a private right of action to recover Section 210 penalties).

///

///

///

SIXTH CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
(BUS. & PROF. CODE § 17200, ET SEQ.)
On Behalf of Plaintiff and the Class Against All Defendants

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

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

81. Under Section 17208 of the California Business and Professions Code, the statute of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this cause of action is four years prior to the filing of this Complaint through the present, and on-going until the violations are corrected, or the Class is certified.

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

83. As a direct and proximate result of Defendants’ unlawful business practices, Plaintiff and the Class Members have suffered economic injuries. Defendants have profited from its unlawful, unfair, and/or fraudulent acts and practices.

84. Plaintiff and similarly situated Class Members are entitled to monetary relief pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid minimum wages, unpaid rest period premiums, the right to receive accurate itemized wage statements, and unreimbursed business expenses due and interest thereon, from at least four years prior to the filing of this Complaint through to the date of such restitution, at rates specified by law. Defendants should be required to disgorge all the profits and gains they have reaped and restore such profits

1 and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

2 85. Through the actions alleged herein, Defendants have engaged in unfair competition
3 within the meaning of Section 17200 of the California Business & Professions Code, because
4 Defendants' conduct, as herein alleged has damaged Plaintiff and the Class Members by
5 wrongfully denying them minimum wages, rest period premiums, the right to receive accurate
6 itemized wage statements, and wrongfully denying them reimbursement for business expenses, and
7 therefore was substantially injurious to Plaintiff and the Class Members.

8 86. Defendants engaged in unfair competition in violation of Sections 17200 et seq. of
9 the California Business & Professions Code by violating Section 1194 of the California Labor
10 Code.

11 87. Defendants' course of conduct, act and practice in violation of the California laws
12 mentioned above constitute independent violations of Sections 17200 et seq. of the California
13 Business and Professions Code.

14 88. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
15 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

16 89. Plaintiff has assumed the responsibility of enforcement of the laws and public
17 policies specified herein by suing on behalf of himself and other similarly situated Class Members
18 previously or presently employed by Defendants in California. Plaintiff's success in this action
19 will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in
20 pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to
21 Plaintiff is appropriate pursuant to Code of Civil Procedure § 1021.5.

22 **SEVENTH CAUSE OF ACTION**
23 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**
24 **PENALTIES FOR LABOR CODE VIOLATIONS**
(Labor Code §§ 2698-2699.5)

On Behalf of Plaintiff, the LWDA and the Aggrieved Employees Against All Defendants

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

27 91. Plaintiff and the "Aggrieved Employees" under PAGA, i.e., those employees who,
28

1 during the PAGA Period, suffered the Labor Code violations alleged herein; specifically,
2 violations of §§ 204, 210, 226(a), 226.7, 1194, 1197, 1197.1, 1198, 1199, and 2802 of the Labor
3 Code as well as section 12 of IWC Wage Order 5-2001 bring claims under PAGA. Plaintiff was
4 employed by Defendants during the one year preceding the submission of a PAGA letter to the
5 LDWA on or around July 8, 2021. As such, he seeks to recover, on behalf of himself and all other
6 current and former aggrieved employees of Defendants, the civil penalties provided by PAGA.

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

10 \$100 for the initial violation per employee per pay period; and

11 \$200 for each subsequent violation per employee per pay period.

12 These penalties will be allocated 75% to the Labor Workforce Development Agency and
13 25% to the affected Aggrieved Employees.

14 93. The Aggrieved Employees are all individuals who worked for Defendants as
15 hourly-paid employees in California during the PAGA Period. These employees were subject to
16 the aforementioned Labor Code violations, during the period of time from one year prior to the
17 submission of Plaintiff's letter to the LDWA on July 8, 2021 through to the present and on-going,
18 i.e., from July 8, 2020 to the present.

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

26 95. Further, Plaintiff, and the Aggrieved Employees, need not demonstrate or prove that
27 Defendants' conduct in refusing to provide itemized wage statements was knowing, intentional, or
28 willful. *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017); *see also Willner v.*

1 *Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA
2 claim, “all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as
3 discussed above.”); *McKenzie v. Fed. Express Corp.*, 765 F.Supp.2d 1222, 1231-1232 (C.D. Cal.
4 2011) (holding that “for the purposes of recovering PAGA penalties, one need only prove a
5 violation of Section 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis*
6 *Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiffs do not need
7 to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

8 96. Plaintiff seeks to recover the PAGA civil penalties through a representative action
9 as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*. 46 Cal.4th
10 969 (2009). Therefore, class certification hereby of the PAGA claims is not required. *Id.*

11 97. Pursuant to Labor Code § 2699.3 (a), on July 8, 2021, Plaintiff gave written notice
12 by certified mail to Defendants, and to the Labor and Workforce Development Agency (“LWDA”)
13 of his claims, including the facts and theories supporting all claims outlined in this Complaint.
14 Accordingly, Plaintiff has or soon will have fulfilled all administrative prerequisites to the pursuit
15 of his PAGA claim on behalf of himself and all other current and former aggrieved employees of
16 Defendants.

17 JURY DEMAND

18 98. Plaintiff hereby demands trial by jury of his and the Class Members’ claims against
19 Defendants, except for the PAGA and UCL claims which will be tried to the Court.

20 PRAYER FOR RELIEF

21 Wherefore, Plaintiff, on behalf of himself and the members of the Class, and the LWDA
22 and the Aggrieved Employees, prays for judgment against Defendants as follows:

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

24 2. On the First Cause of Action:

25 a. A declaratory judgment that Defendants have violated California Labor
26 Code Sections 1194 and 1197 in failing to pay Plaintiff, the Class and the Aggrieved Employees
27 all minimum wages due;

28 b. An award to Plaintiff and the other members of the Class in the amount of

1 their unpaid minimum wages owed, plus interest and/or liquidated damages under 1194.2 during
2 the Class Period, as well as attorneys' fees under Labor Code Section 1194;

3 3. On the Second Cause of Action:

4 a. A declaratory judgment that Defendants have violated California Labor
5 Code § 226.7 and IWC Wage Order 5-2001 section 12 by failing to provide compliant rest periods
6 to Plaintiff, the Class, and the Aggrieved Employees;

7 b. An award to Plaintiff and the other members of the Class in the amount of
8 their unpaid rest period premiums owed during the Class Period under Labor Code Section 226.7;

9 4. On the Third Cause of Action:

10 a. A declaratory judgement that Defendants violated Labor Code § 2802 as to
11 Plaintiff, the Class and the Aggrieved Employees;

12 b. Pursuant to Labor Code § 2802 (a)-(c), reimbursement for all at the
13 unreimbursed business expenses incurred by Plaintiff and the Class, plus interest and attorney's
14 fees.

15 5. On the Fourth Cause of Action:

16 a. A declaratory judgment that Defendants violated California Labor Code §
17 226 by failing to issue compliant wage statements to Plaintiff, the Aggrieved Employees and the
18 Wage Statement Subclass members;

19 b. An award to Plaintiff and Wage Statement Subclass Members of \$50 for
20 each initial pay period in which a violation of Section 226 occurred and \$100 for each subsequent
21 pay period in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of
22 the Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code §
23 226(e).

24 6. On the Fifth Cause of Action:

25 a. A declaratory judgment that Defendants violated California Labor Code §§
26 204 and 210;

27 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiff and the Late
28 Wage Subclass for penalties pursuant to Labor Code § 210.

1 7. On the Sixth Cause of Action:

2 a. That the Court find and declare that Defendants have violated the UCL and
3 committed unfair and unlawful business practices by failing to pay minimum wages, rest period
4 premiums, and by failing to reimburse Plaintiff and the Class for all their business-related
5 expenses;

6 b. Restitution, including, but not limited to, the relief permitted by sections
7 226.7, 1194, and 2802 of the California Labor Code (i.e., unpaid minimum and rest period
8 premiums owed and reimbursement of all business-related expenses by Plaintiff and the members
9 of the Class during the Class Period).

10 8. On the Seventh Cause of Action:

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

16 b. A civil penalty against Defendants in the amount of \$250 per employee for
17 the initial violation and \$1,000 per employee for each subsequent violation as specified in Section
18 226.3 of the California Labor Code for Plaintiff and the Aggrieved Employees during all of the pay
19 periods in the one year preceding the submission of Plaintiff's LWDA letter through the present
20 and on-going until the violations are correct or this subclass is certified;

21 c. An award of reasonable attorney's fees against Defendants as specified in
22 Labor Code § 2699(g)(1), for all the work performed by Plaintiff's counsel in connection with the
23 PAGA claims;

24 d. An award of all costs incurred by the undersigned counsel for Plaintiff in
25 connection with Plaintiff's and Class Members' PAGA claim against Defendants, as provided for
26 in Labor Code § 2699(g)(1); and

27 ///

28 ///

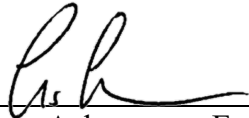
1 9. All other relief as this Court deems proper.
2

3 Dated: September 10, 2021

Respectfully submitted,

4 ACKERMANN & TILAJEF, P.C.
5 PROXY LAW FIRM LLP

6
7 By:



Craig Ackermann, Esq.

Rana Nader, Esq.

Hengameh Safaei, Esq.

*Attorneys for Plaintiff, the Putative Class, and the
Aggrieved Employees*