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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JEFFREY ELLINGSON, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

MUELLER NICHOLLS, INC., a California
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: RG21114800

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

- (1) MEAL PERIOD VIOLATIONS;
- (2) REST PERIOD VIOLATIONS;
- (3) FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENDITURES;
- (4) WAGE STATEMENT VIOLATIONS;
- (5) WAITING TIME PENALTIES; and
- (6) UNFAIR COMPETITION
- (7) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Jeffrey Ellingson (“Plaintiff”) on behalf of himself, and all other similarly situated
2 non-exempt employees, alleges and complains of defendant Mueller Nicholls, Inc., doing business as
3 MN Builders; and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendants are a corporation that specializes in millwork and constructing custom
6 residential and commercial buildings, as well as cabinetry, throughout California.

7 2. Plaintiff brings this class and PAGA representative action against Defendants for
8 alleged violations of the California Labor Code and Business and Professions Code.

9 3. As set forth below, Plaintiff alleges Defendants’ meal and rest period policies and
10 practices failed to provide him and all other similarly situated employees with compliant meal and
11 rest periods or pay premium wages in lieu thereof.

12 4. Additionally, Plaintiff alleges that Defendants failed to reimburse him and other non-
13 exempt employees for necessary business expenditures.

14 5. Finally, Plaintiff alleges that Defendants failed to provide non-exempt employees with
15 accurate written itemized wage statements and failed to timely pay all final wages upon separation of
16 employment.

17 6. Based on these alleged Labor Code violations, Plaintiff now brings this class and
18 PAGA representative action to recover unpaid wages, restitution, penalties, and other related relief
19 on behalf of himself and all others similarly situated.

20 **JURISDICTION AND VENUE**

21 7. Plaintiff, on behalf of himself and all others similarly situated non-exempt employees
22 hereby brings this class action for recovery of unpaid wages and penalties under California Labor
23 Code §§ 200, 201-203, 204, 226a, 226(e), 226.3, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199, 2802
24 and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to seeking
25 declaratory relief and restitution pursuant to California Business and Professions Code § 17200, *et*
26 *seq.* This class action is brought pursuant to California Code of Civil Procedure § 382.

27 8. This Court has jurisdiction over Defendants’ violations of the California Labor Code
28 and applicable Wage Orders because the amount in controversy exceeds this Court’s jurisdictional

1 minimum.

2 9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
3 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the City of
4 Oakland, County of Alameda. Defendants have their principal place of business within the County of
5 Alameda, and/or otherwise are found within the County of Alameda, and Defendants are within the
6 jurisdiction of this Court for purposes of service of process.

7 **PARTIES**

8 10. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a
9 California resident residing in the State of California. Defendants employed Plaintiff as a non-exempt
10 employee in Oakland, California in the County of Alameda.

11 11. Plaintiff is informed and believes and thereon alleges that defendant Mueller Nicholls,
12 Inc., doing business as MN Builders, is a California Corporation authorized and doing business in
13 Alameda County, California; and is and/or was the legal employer of Plaintiff and the Class Members
14 during the applicable statutory periods.

15 12. Further, Plaintiff is informed, and believes, and thereon alleges, that all Defendants
16 were joint employers for all purposes of Plaintiff and the other Class Members.

17 13. Defendants' policies and/or practices outlined herein has deprived Plaintiff and other
18 similarly situated employees of the rights afforded to them by California Labor Code §§ 201-203,
19 204, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 1194, 1197.1, 1199, 2802, and California Business
20 and Professions Code § 17200 *et seq.*, and applicable Wage Order(s).

21 14. Plaintiff is informed and believes, and based thereon alleges, that during the four years
22 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
23 do) business in the State of California, County of Alameda. Defendants, each of them, own and/or
24 operate a manufacturing facility on 2400 Union Street, in Oakland, California.

25 15. Plaintiff does not know the true names or capacities, whether individual, partner, or
26 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
27 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
28 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and

1 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
2 corporate, were responsible in some manner for the acts and omissions alleged herein, and
3 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
4 alleged herein.

5 16. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned
6 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
7 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
8 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
9 them, were the agents, servants, and employees of each and every one of the other Defendants, as
10 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
11 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
12 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

13 17. At all times mentioned herein, Defendants, and each of them, were members of and
14 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
15 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
16 alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the
17 Classes.

18 **COMMON FACTUAL ALLEGATIONS**

19 18. Defendants specialize in millwork and constructing custom residential and commercial
20 buildings as well as cabinetry. Defendants are based in Oakland and provides customized carpentry
21 and construction services throughout California.

22 19. Plaintiff was employed by Defendants as a non-exempt employee from approximately
23 September 2017, until his termination on or about the September 10, 2021. Plaintiff and other non-
24 exempt employees were responsible for all aspects of Defendants' millwork, carpentry, and
25 construction services.

26 20. From at least one year ago and continuing into the present, Plaintiff and other non-
27 exempt employees regularly worked shifts in excess of 6.0 hours, and often shifts in excess of 10.0
28 hours, and that Defendants failed and continue to fail to authorize and permit Plaintiff and other non-

1 exempt employees from taking lawful meal periods. Plaintiff and other non-exempt employees were
2 often unable to take timely first meal periods before the fifth hour of work and second meal periods
3 before the tenth hour of work, due to the demands of the job, staffing shortages and job
4 responsibilities. On other occasions, non-exempt employees had their meal periods cut
5 short/interrupted by managers and supervisors.

6 21. Moreover, Plaintiff alleges that he and other non-exempt employees were not provided
7 legally compliant meal period premiums for missed meal periods. Indeed, as stated in Defendants'
8 meal period policy, "Meal and Rest Periods. . . If a non-exempt employee is required to work through
9 a meal break, they will be paid for the 30-minute period. . ." Defendants' policy is facially unlawful
10 as Defendants do not ensure that non-exempt employees are provided with one hour of pay at the
11 regular rate of pay for each non-complaint meal period. Instead, Defendants provide only 30 minutes
12 of pay, as stated above.

13 22. Additionally, Defendants' meal policies/practices delegate authority for the scheduling
14 of meal to supervisors/managers and does not provide that meal periods will be provided at code-
15 compliant times. Plaintiff alleges that he and other non-exempt employees would have their meal
16 periods interrupted or rescheduled by supervisors/managers according to Defendants' work demands.
17 This included have meal periods after the 5th and 10th hours of work, in violation of the Labor Code.

18 23. Accordingly, for each day that Plaintiff and other non-exempt employees did not
19 receive compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor
20 Code § 226.7 and the applicable Wage Order. As a result of Defendants' unlawful meal period
21 policy/practices, Plaintiff seeks to recover on behalf of himself and all non-exempt employees' meal
22 period premiums and penalties under Labor Code § 226.7 and § 512. Plaintiff and other non-exempt
23 employees would be entitled to recover penalties under Labor Code §226.7.

24 24. At all relevant times, Plaintiff alleges that he and other non-exempt employees were
25 not provided legally compliant off-duty meal periods of at least thirty (30) minutes before the end of
26 the fifth and tenth hour of work when working in excess of 10 hours in a day. The above policy, and
27 Defendants' practices, were unlawful as Defendants did not and does not ensure that non-exempt
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1 employees are provided with timely first and second meal periods before the end of the 5th and 10th
2 hours of work respectively.

3 25. Additionally, at all relevant times, Defendants failed and continue to fail to authorize
4 and permit Plaintiff and other non-exempt employees from taking legally compliant rest periods.
5 Plaintiff and other non-exempt employees were often unable to take legally compliant rest periods,
6 or have their rest periods cut short, due to the demands of the job, interruption by supervisors, staffing
7 shortages and job responsibilities. As a result, Plaintiff and other non-exempt employees were and
8 are routinely unable to take (10) minute duty free rest periods for every major fraction of four hours
9 worked. This includes a second rest period for shifts in excess of six hours, and a third rest period for
10 shifts in excess of 10 hours in a workday.

11 26. By not relieving all non-exempt employees of all duties during rest periods, Defendants
12 failed to provide code compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016) 2
13 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all duties
14 and relinquish control over how employees spend their time.”]. In *Augustus*, the court expressly
15 rejected the employers’ assertion that it could provide an on-duty rest period to employees who
16 worked as security guards and further explained “that employers [must] relinquish any control over
17 how employees spend their break time and relieve their employees of all duties.” Id. at 273.

18 27. Further, the policy above has no procedure in place to provide rest period premiums
19 for missed rest periods. As such, each time Plaintiff and other non-exempt employees were unable to
20 take a compliant rest period, Defendants failed and continue to fail to adequately pay rest period
21 premium payments at the “regular rate of pay” as required by Labor Code § 226.7. As a result of
22 Defendants’ unlawful rest period policy/practices, Plaintiff seeks to recover on behalf of himself and
23 all non-exempt employees’ rest period premiums and penalties under Labor Code § 226.7 and § 512.
24 Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code
25 §226.7.

26 28. Moreover, at all relevant times, Plaintiff and other non-exempt employees, at the
27 direction of Defendants and/or with Defendants’ knowledge and acquiescence, have used their
28 personal cell phones in the discharge of their duties, including but not limited to downloading and

1 using a tracking application which monitors non-exempt employees' location via GPS. Defendants
2 require Plaintiff and other non-exempt employees to have this GPS tracking software on their devices
3 to verify whether they are on-site, otherwise Defendants would dock their pay for alleged tardiness.
4 Defendants required Plaintiff and other non-exempt employees to incur the costs associated with
5 business use of their personal cell phones and only provided \$1.38 per 2-week pay period.

6 29. Defendants did not and do not maintain a policy or practice to adequately reimburse
7 non-exempt employees for the reasonable portion of their monthly personal cell phone bills and
8 expenses necessarily incurred in their discharge of their duties, as required by *Cochran v. Schwan's*
9 *Home Service, Inc.* (2014) 228 Cal.App.4th 1137 ("We hold that when employees must use their
10 personal cell phones for work-related calls, Labor Code section 2802 requires the employer to
11 reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited
12 minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.") (reversing
13 denial of class certification in cell phone reimbursement class action and setting forth the applicable
14 law for these claims); *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. 2014) (granting
15 Plaintiff's motion for partial summary judgment on the Mr. Toys' cell phone reimbursement claim);
16 *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of
17 cell phone reimbursement claim and adopting the logic of *Cochran*).

18 30. Although Plaintiff and other non-exempt employees used their personal cell phones in
19 the discharge of their job duties with the knowledge and/or acquiescence of Defendants, they were
20 not adequately reimbursed for an appropriate amount for expenses incurred throughout the relevant
21 liability period. By way of example, Plaintiff's wage statements reflect only \$1.38 in cell phone
22 reimbursement per two-week pay period during his employment.

23 31. However, the U.S. Bureau of Labor Statistics reports the national average cost of cell
24 phone service in 2018 was approximately \$115.00 per month per person from age 25 to 64. (*See*
25 <https://www.bls.gov/cex/2018/combined/age.pdf>.) Clearly, Defendants have failed to adequately
26 reimburse Plaintiff and other non-exempt employees a reasonable portion of their monthly personal
27 cell phone bills and expenses necessarily incurred in violation of the California Labor Code Section
28 2802-2804.

1 32. As a result of Defendants' unlawful reimbursement policy/practices, Plaintiff seeks to
2 recover on behalf of himself and all non-exempt employees' necessary expenditures, losses, and
3 penalties under Labor Code § 2802.

4 33. Moreover, as a result of Defendants' failure to pay for meal period and rest period
5 premiums for missed/non-compliant meal periods and rest periods, Defendants issued wage
6 statements which failed to accurately identify the gross wages earned, the total hours worked, the net
7 wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation
8 of Labor Code §226(a) (1, 2, 5, and 9).

9 34. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
10 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
11 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
12 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
13 deduction statement or fails to keep the required in subdivision (a) of Section 226."

14 35. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
15 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants' violations of
16 Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other non-
17 exempt employees are in violation of Labor Code §§ 226 (a)(1, 2, 5, 9). Defendants have violated
18 Labor Code §§ 226(a)(1, 2, 5, 9) with respect to Plaintiff and other non-exempt employees.
19 Consequently, because Defendants failed to comply with Labor Code § 226(a) and applicable Wage
20 Orders, Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor
21 Code §§ 226(e).

22 36. Finally, because of, Defendants' failure to pay meal period premiums for non-
23 compliant meal periods, failure to pay rest period premiums for non-compliant rest periods, and for
24 Defendants' failure to reimburse for a reasonable percentage of cellular phone costs, Defendants also
25 failed and continue to fail to pay Plaintiff and other non-exempt employees all wages owed at their
26 time of separation from employment in violation of Labor Code §§ 201-203 and applicable Wage
27 Orders. Thus, non-exempt employees would be entitled to recover penalties under Labor Code §§
28 201-203.

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CLASS ACTION ALLEGATIONS

37. Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

All non-exempt employees who work or worked for Defendants in California, during the four years immediately preceding the filing of the Complaint through the date of trial. (“Class”)

All non-exempt employees who work or worked for Defendants in California and received at least one wage statement, during the year immediately preceding the filing of the Complaint through the date of the trial. (“Wage Statement Subclass”)

All non-exempt employees who worked for Defendants in California and separated from employment during the year immediately preceding the filing of the Complaint through the date of the trial. (“Waiting Period Penalty Subclass”)

38. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants’ employment and payroll records.

39. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- 1. Whether Defendants provided legally compliant meal and rest periods or proper compensation in lieu thereof to members of the Classes;
- 2. Whether Defendants properly reimbursed members of the Class for all necessary business expenditures.
- 2. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Subclass pursuant to Labor Code § 226(a);

1 4. Whether the timing and amount of payment of final wages to members of the Waiting
2 Period Penalty Subclass at the time of separation from employment were unlawful; and

3 40. **Predominance of Common Questions:** Common questions of law and fact
4 predominate over questions that affect only individual members of the Classes. The common
5 questions of law set forth above are numerous and substantial and stem from Defendants' policies
6 and/or practices applicable to each individual class member, such as Defendants' uniform policy of
7 failing to provide complaint meal and rest periods or adequate compensation in lieu thereof,
8 Defendants' uniform policy of failing to compensate non-exempt employees appropriately for their
9 cell phone expenses incurred at the behest of Defendant, and Defendants' resulting failure to provide
10 accurate itemized wage statements, and to pay for all wages due upon separation of employment. As
11 such, the common questions predominate over individual questions concerning each individual class
12 member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

13 41. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
14 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
15 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
16 Plaintiff, like the members of the Classes was deprived of meal and rest period premium wages, was
17 subject to Defendants' uniform meal and rest period policies/practices, was not reimbursed for
18 required work expenses, was not provided accurate itemized wage statements, and was not paid all
19 wages owed at the time of his separation of employment.

20 42. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
21 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
22 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
23 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
24 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
25 members of the Classes.

26 43. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
27 important public interest in establishing minimum working conditions and standards in California.
28 These laws and labor standards protect the average working employee from exploitation by

1 employers who have the responsibility to follow the laws and who may seek to take advantage of
2 superior economic and bargaining power in setting onerous terms and conditions of employment. The
3 nature of this action and the format of laws available to Plaintiff and members of the Classes make
4 the class action format a particularly efficient and appropriate procedure to redress the violations
5 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
6 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
7 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

8 44. Moreover, requiring each member of the Classes to pursue an individual remedy would
9 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
10 against their former and/or current employer for real and justifiable fear of retaliation and permanent
11 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
12 the individual class members, even if possible, would create a substantial risk of inconsistent or
13 varying verdicts or adjudications with respect to the individual class members against Defendants
14 herein; and which would establish potentially incompatible standards of conduct for Defendants;
15 and/or legal determinations with respect to individual class members which would, as a practical
16 matter, be dispositive of the interest of the other class members not parties to adjudications or which
17 would substantially impair or impede the ability of the class members to protect their interests.
18 Further, the claims of the individual members of the class are not sufficiently large to warrant
19 vigorous individual prosecution considering all of the concomitant costs and expenses attending
20 thereto. As such, the Classes identified in Paragraph 36 are maintainable as Classes under § 382 of
21 the Code of Civil Procedure.

22 **FIRST CAUSE OF ACTION**

23 **MEAL PERIOD VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

25 44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
27 their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff
28 and members of the Classes, with all required meal periods in accordance with the mandates of the

1 California Labor Code and applicable Wage Orders, for the reasons set forth in the Common
2 Allegations section of this Complaint.

3 46. As a result, Defendants are responsible for paying premium compensation for meal
4 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
5 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

6 **SECOND CAUSE OF ACTION**

7 **REST PERIOD VIOLATIONS**

8 **(AGAINST ALL DEFENDANTS)**

9 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 48. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish
11 the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for
12 each four (4) hour period worked, or major fraction thereof.

13 49. Due to their unlawful rest period policy and practices, Defendants did not authorize
14 and permit Plaintiff and members of the Classes to take any rest periods to which they were legally
15 entitled, including failing to allow non-exempt employees to leave the premises during rest periods.
16 Despite Defendants' violations, Defendants have not paid an additional hour of pay at the "regular
17 rate of pay" to Plaintiff and members of the Classes at their respective regular rates of pay for each
18 violation, in accordance with California Labor Code § 226.7.

19 50. The foregoing violations create an entitlement to recovery by Plaintiff and members of
20 the Classes in a civil action for the unpaid amount of rest period premiums owing, including interest
21 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
22 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

23 **THIRD CAUSE OF ACTION**

24 **FAILURE TO REIMBURSE FOR CELL PHONE USAGE**

25 **(AGAINST ALL DEFENDANTS)**

26 51. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 52. Labor Code 2208(a) states in pertinent part the following:
28

1 “(a) An employer shall indemnify his or her employee for all necessary
2 expenditures or losses incurred by the employee in direct consequence of
3 the discharge of his or her duties, or of his or her obedience to the directions
4 of the employer, even though unlawful, unless the employee, at the time of
obeying the directions, believed them to be unlawful.”

5 53. As set forth above, Plaintiff and members of the Classes must be compensated for a
6 reasonable portion of their monthly personal cell phone bills and expenses necessarily incurred in
7 their discharge of their duties, as required by *Cochran v. Schwan’s Home Service, Inc.* (2014) 228
8 Cal.App.4th 1137 (“We hold that when employees must use their personal cell phones for work-
9 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
10 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed
11 is a reasonable percentage of their cell phone bills.”) (reversing denial of class certification in cell
12 phone reimbursement class action and setting forth the applicable law for these claims); *Aguilar v.*
13 *Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. 2014) (granting Plaintiff’s motion for partial summary
14 judgment on the Mr. Toys’ cell phone reimbursement claim); *Ritchie v. Blue Shield of California*,
15 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement claim and
16 adopting the logic of *Cochran*).

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
19 **(AGAINST ALL DEFENDANTS)**

20 54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 55. Labor Code 226(a) states in pertinent part the following:

22 “(a) An employer, semimonthly or at the time of each payment of wages,
23 shall furnish to his or her employee, either as a detachable part of the check,
24 draft, or voucher paying the employee’s wages, or separately if wages are
25 paid by personal check or cash, an accurate itemized statement in writing
26 showing (1) gross wages earned, (2) total hours worked by the employee,
27 except as provided in subdivision (j), (3) the number of piece-rate units
28 earned and any applicable piece rate if the employee is paid on a piece-rate
basis, (4) all deductions, provided that all deductions made on written orders
of the employee may be aggregated and shown as one item, (5) net wages
earned, (6) the inclusive dates of the period for which the employee is paid,
(7) the name of the employee and only the last four digits of his or her social

1 security number or an employee identification number other than a social
2 security number, (8) the name and address of the legal entity that is the
3 employer and, if the employer is a farm labor contractor, as defined in
4 subdivision (b) of Section 1682, the name and address of the legal entity that
5 secured the services of the employer, and (9) all applicable hourly rates in
6 effect during the pay period and the corresponding number of hours worked
7 at each hourly rate by the employee. . .”

8 56. As set forth above, during the Class Period, Defendants issued and continues to issue
9 wage statements to its employees including Plaintiff and members of the Wage Statement Penalty
10 Subclass, which are inadequate under Labor Code Section 226(a).

11 57. As a result of Defendants failure to pay Plaintiff and the Classes for missed meal and
12 rest period premiums, Defendants failed to include required information on Plaintiff and the Classes’
13 wage statements, including, but not limited to, the gross wages earned, the net wages earned in
14 violation of Labor Code section 226(a).

15 58. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing and
16 intentional.

17 59. As a result of Defendants’ issuance of inaccurate itemized wage statements to Plaintiff
18 and members of the Classes in violation of section 226(a) of the California Labor Code, Plaintiff and
19 members of the Classes are each entitled to recover an initial penalty of \$50, and subsequent penalties
20 of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every
21 member of the Classes from Defendants pursuant to section 226(e) of the Labor Code, costs and
22 reasonable attorneys’ fees.

23 **FIFTH CAUSE OF ACTION**

24 **WAITING TIME PENALTIES**

25 **(AGAINST ALL DEFENDANTS)**

26 60. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

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

62. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing to Plaintiff and the Waiting Time Penalty Subclass during the actionable period for this cause of action at or around the time that their employment is or was terminated or ended.

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

64. Defendants willfully failed to pay Plaintiff and the Waiting Time Penalty Subclass for meal and rest period premiums at the “regular rate of pay”, and a reasonable percentage of their monthly cell phone bills, prior to or upon termination or separation from employment with Defendants as required by Labor Code §§ 201 and 202.

65. As a result, Defendants are liable to Plaintiff and the Waiting Time Penalty Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time Subclass pursuant to Labor Code § 203. *See, e.g.,* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

66. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

67. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to provide all legally required meal and rest periods or pay premium payments at the regular rate of pay in lieu thereof, by failing to reimburse non-exempt employees a reasonable percentage of their monthly cell phone bills, by failing to provide accurate wage statements, and by failing to pay all earned wages at the time of separation from employment.

68. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to

1 do so in honest compliance with applicable wage and hour laws.

2 69. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
3 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
4 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
5 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

6 70. The acts complained of herein occurred within the last four years immediately
7 preceding the filing of the Complaint in this action.

8 71. Plaintiff was compelled to retain the services of counsel to file this court action to
9 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
10 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
11 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
12 he is entitled to recover under Code of Civil Procedure § 1021.5.

13 **SEVENTH CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

15 **(AGAINST ALL DEFENDANTS)**

16 72. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

17 73. Defendants have committed several Labor Code violations against Plaintiff and other
18 similarly non-exempt employees. Plaintiff, an "aggrieved employee" within the meaning of Labor
19 Code § 2698 *et seq.*, acting on behalf of himself and other non-exempt employees, brings this
20 representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly
21 non-exempt employees, and the State of California according to proof pursuant to Labor Code § 2699
22 (a) and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each
23 subsequent violation per employee per pay period for those violations of the Labor Code for which
24 no civil penalty is specifically provided based on the following Labor Code violations:

25 a. Failing to provide Plaintiff and other non-exempt employees with all of their statutorily
26 mandated meal periods or compensation in lieu thereof in violation of Labor Code §§ 204, 510, 558,
27 1194 and 1198;

28 (b) Failing to authorize and permit Plaintiff and other non-exempt employees with all of

1 their statutorily mandated rest periods or compensation in lieu thereof in violation of Labor Code §§
2 226.7, and 516;

3 (c) Failing to furnish Plaintiff and other similarly situated employees with complete,
4 accurate, itemized wage statements in violation of Labor Code § 226(a);

5 (d) Failing to reimburse incurred business expenses in violation of Labor Code § 2802; and

6 (e) Failing to timely compensate Plaintiff and similarly non-exempt employees with all
7 earnings at their separation of employment in violation of Labor Code §§ 201-203.

8 74. On or about September 28, 2021, Plaintiff notified Defendant Mueller Nicholls, Inc.,
9 doing business as MN Builders via certified U.S. Mail, and the California Labor and Workforce
10 Development Agency (“LWDA”) via its website of Defendant’s violations of the California Labor
11 Code § 2698 *et seq.*, with respect to violations of the California Labor Code identified in Paragraph
12 81 (a)-(f). Now that sixty-five days have passed from Plaintiff notifying Defendant of these violations,
13 Plaintiff will have exhausted his administrative requirements for bringing a claim under the Private
14 Attorneys General Act with respect to these violations.

15 75. Plaintiff was compelled to retain the services of counsel to file this court action to
16 protect his interests and the interests of similarly non-exempt employees, and to assess and collect
17 the civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys’ fees and costs, which
18 she is entitled to receive under California Labor Code § 2699.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff prays for judgment for himself and for all others on whose behalf
21 this suit is brought against Defendants, as follows:

- 22 1. For an order certifying the proposed Classes;
- 23 2. For an order appointing Plaintiff as representative of the Classes;
- 24 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 25 4. Upon the First Cause of Action, for compensatory, consequential, general and special
26 damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 27 5. Upon the Second Cause of Action, for compensatory, consequential, general and
28 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

1 6. Upon the Third Cause of Action, penalties pursuant to Labor Code § 2208, and
2 reasonable costs and attorneys' fees;

3 7. Upon the Fourth Cause of Action, penalties pursuant to Labor Code § 226(a), and
4 reasonable costs and attorneys' fees;

5 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor
6 Code §§ 201-203.

7 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the Classes
8 of all money and/or property unlawfully acquired by Defendants by means of any acts or practices
9 declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

10 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other non-
11 exempt aggrieved employees, and the State of California according to proof pursuant to Labor Code
12 § 2699, including, but not limited to (1) \$100.00 for each initial violation and (2) \$200 for each
13 subsequent violation per employee per pay period for those violations of the Labor Code for which
14 no civil penalty is specifically provided

15 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
16 § 218.6 and Civil Code §§ 3287 and 3289;

17 12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
18 218.5, 226, and Code of Civil Procedure § 1021.5; and

19 13. For such other relief that the Court may deem just and proper.

20 Dated: December 2, 2021

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

21
22
23 By: _____

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff and the Putative Classes