

ACKERMANN & TILAJEF, P.C.

Craig J. Ackermann, CA Bar No. 229832

cja@ackermanntilajef.com

1180 South Beverly Drive, Suite 610

Los Angeles, California 90035

Phone: (310) 277-0614

Fax: (310) 277-0635

EMPLOYMENT RIGHTS LAW GROUP, APC

Amir Seyedfarshi (301656)

1180 South Beverly Drive, Suite 610

Los Angeles, California 90035

424-777-0964

Attorneys for Plaintiffs and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF PLACER

Monica Denton and Paul Nguyen, as
individuals, on behalf of all others similarly
situated, on behalf of the State of California,
as a private attorney general, and on behalf
of all Aggrieved Employees,

Plaintiffs,

vs.

SAMUEL MERRITT UNIVERSITY, a
California non-profit institution of higher
education,

Defendant.

CASE NO. 8-CV-0048133

**CLASS & PAGA REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Pay Meal Break;
4. Failure to Pay Rest Break;
5. Failure to Furnish Accurate Wage
Statements ;
6. Failure to Pay Timely Wages;
7. Failure to Pay waiting time penalties;
8. Failure to Reimburse business expenses;
9. UCL Violations; and,
10. Penalties Pursuant to PAGA (Labor Code §
2699, *et seq.*)

1 Plaintiffs Monica Denton and Paul Nguyen (“Plaintiffs”) bring this action against Defendant
2 Defendant SAMUEL MERRITT UNIVERSITY (“Defendant” or “University”) as a class action pursuant
3 to California Code of Civil Procedure § 382, and as a PAGA representative action under the Labor Code
4 Private Attorneys General Act of 2004, § 2699, *et seq.* (“PAGA”), and allege as follows upon information
5 and belief:

6 **INTRODUCTION**

7 1. This is a class action pursuant to California Code of Civil Procedure § 382 on behalf of a
8 putative “Class” comprised of: to (1) all individuals who are or were employed by Defendant Samuel
9 Merritt University in California as adjunct professors and/or instructors and/or in any similar capacity,
10 from September 20, 2017 to and including January 4, 2022; and (2) not otherwise qualified as exempt (a)
11 as a salaried professional who earned a monthly salary equivalent to no less than two times the state
12 minimum wage for employment in which the employee was employed for at least 40 hours per week or
13 (b) as a salaried professional employed on a course or laboratory basis who earned a salary calculated on
14 the basis of classroom hours as allowed by California law as a salaried professional earning the minimum
15 compensation to be considered exempt. Plaintiffs allege that the class from September 17, 2017 until and
16 including January 4, 2022 (the “Class Period”) that the class members were misclassified as exempt and
17 thus underpaid and not given complete wage statements as required by law.

18 2. This is also a representative action brought pursuant to Labor Code § 2699, *et seq.*, on
19 behalf of the State of California and the groups of “Aggrieved Employees” defined as: all individuals who
20 are or were employed by Defendant Samuel Merritt University in California as adjunct professors and/or
21 instructors and/or in any similar capacity during the PAGA Period and who had or may have had any
22 claims under PAGA and not otherwise qualified as exempt (1) as a salaried professional who earned a
23 monthly salary equivalent to no less than two times the state minimum wage for employment in which the
24 employee was employed for at least 40 hours per week or (2) as a salaried professional employed on a
25 course or laboratory basis who earned a salary calculated on the basis of classroom hours as allowed by
26 California law from September 20, 2020 to and including January 4, 2022 (the “PAGA Covered Period”).
27 Plaintiffs allege that the Aggrieved Employees have claims to civil penalties under PAGA based on the
28 same claims of the class described above.

29 **JURISDICTION AND VENUE**

30 3. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant
31 to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by
32 virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds
33

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

3 4. This Court has personal jurisdiction over Defendant because Defendant has caused injuries
4 in the county in which this Court is situated through their acts, and by their violation of the California
5 Labor Code and California state common law.

6 5. Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil Procedure
7 § 395. Some class members live and work from Placer County. The unlawful acts alleged herein have a
8 direct effect on Plaintiff and all employees within the State of California and Placer County.

9 **THE PARTIES**

10 6. Plaintiff Monica Denton is a resident of California and at all times pertinent hereto worked
11 for Defendant as an adjunct professor throughout the Class Period.

12 7. Plaintiff Paul Nguyen is a resident of California and at all times pertinent hereto worked
13 for Defendant as a clinical adjunct professor throughout the Class Period

14 8. Plaintiff, the Class Members, and all Aggrieved Employees¹ at all times pertinent hereto,
15 have been classified as employees by Defendant. Defendant has hired employees to work in California
16 during the Class Period.

17 9. Upon information and belief, Plaintiffs, the Class Members, and all Aggrieved Employees
18 are covered by California Industrial Welfare Commission Occupational Wage Order No. 4-2001.

19 10. Defendant SAMUEL MERRITT UNIVERSITY is a California Non-Profit Organization,
20 which has operated within the State of California at all relevant times and has engaged in providing nursing
21 programs to students. Upon information and belief, Defendant employed Plaintiffs, the Class and the
22 Aggrieved Employees within California during the Class Period and the Covered PAGA Period.
23 Defendant has done business throughout the State of California including Placer County.

24 **FACTUAL BACKGROUND**

25 11. Plaintiffs were employed by Defendant as Adjunct Professors at Samuel Merritt University
26 teaching clinical instructions to the students during the Class Period and the PAGA Covered Period.

27 12. At all relevant times, Defendant has uniformly compensated Class members on the basis
28 of a certain flat rate per course per course taught, which would be paid out over the duration of the
29 semester.

30 13. Defendants, however, misclassified the Aggrieved Employees and the Class as *exempt*
31 professional employees despite the fact that they did not meet the criteria for the professional or any other
32 exemption under California state law. Aggrieved Employees and Class members should have been
33

¹ All references herein to the "Class" or "Class members" are inclusive of Plaintiff and the Aggrieved Employees.

properly classified as non-exempt employees under state law, because Defendant failed to pay them the minimum salary required for exempt status (i.e., twice the state minimum wage for full-time employment, that is, twice the state minimum wage based on a 40 hour work week). *See* Labor Code, § 515, subd. (a); Cal. Code of Regs., tit. 8, § 11040 (providing that, for each exempted category, the employee must earn “a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment”); see also labor Code 515(c).

14. Under Labor Code Section 515(a), the Industrial Welfare Commission (“IWC”) is empowered to create and implement exemptions in its Wage Orders, including Wage Order No. 4 covering educators, for *inter alia* professional employees, provided that such individuals exercise discretion and independent judgment in their teaching jobs, meet other criteria for the exemption, and earn a monthly salary equivalent to two times the state minimum wage for “full-time employment.” The phrase “Full time employment” is defined in Section 515(c) of the Labor Code as “40 hours per week.” *See also*, Wage Order No. 4, section 1(A)(3)(d) (incorporating the twice state minimum wage requirement into the Wage Order’s exemptions).

15. Thus, in order to meet the elements of the professional exemption under California state law, since the applicable state minimum wage was \$12 per hour in 2019 and \$14 per hour in 2020, a California university or private college would have had to pay its adjunct professors in 2020 no less than \$1,120 on a weekly basis (i.e., 40 hours * \$14 per hour * 2), and no less than \$4,853.33 on a monthly basis (40 hours per week * \$14 per hour * 2 * 4 weeks).

16. However, during the Class Period, Defendant’s adjuncts, including all Class members, earned far less than \$2,240 on a bi-weekly basis and far less than \$ 4,853.33 on a monthly basis. As a result, the Class and the Aggrieved Employees were wrongfully misclassified as salaried, professional exempt employees for purposes of California law.

17. As a result, Defendant violated certain wage statement requirements set forth in the Labor Code with respect to Class members and Aggrieved Employees throughout the Class Period and PAGA Period by failing to comply with all requirements of Labor Code section 226(a) applicable to non-exempt employees.

18. Labor Code § 226(a) requires the issuance of bi-monthly or more frequent wage statements containing various information, specifically including “the total hours worked except as provided in (j).” Section 226(j) provides an exception to the requirement to include total hours worked on wage statements if the employee is exempt from overtime under Section 515(a) or the applicable IWC Wage Order, and is therefore inapplicable to Class members and Aggrieved Employees. *See Id.* section 2269(j)(1).

1 19. Labor Code section 515.7 sets out an exemption where employees employed to provide
2 instruction for a course or laboratory at an independent institution of higher education are exempt from
3 paragraphs (2), (3) and (9) of subdivision (a) of Labor section 226 and Labor Code sections 510 and 512.
4 In this case, Plaintiffs, the Class, and the Aggrieved Employees cannot meet the exemption. The second
5 prong of Labor Code section 515.7(a)(2) requires:

6
7 (2) The employee is paid on a salary basis, as defined by Section 541.602 of Title 29 of the Code
8 of Federal Regulations, and receives one of the following minimum compensations:

9 (A) A monthly salary equivalent to no less than two times the state minimum wage for employment
10 in which the employee is employed for at least 40 hours per week.

11 (B) When employed per course or laboratory, a salary for a course or laboratory that is calculated
12 on the basis of classroom hours as set forth in subdivision (b).

13 (C) When employed under a collective bargaining agreement, payment pursuant to that collective
14 bargaining agreement, if the classification of employment in a professional capacity is expressly
15 included in the collective bargaining agreement in clear and unambiguous terms. The requirements
16 of Section 514 that mandate provisions of a collective bargaining agreement shall not apply.

17 (b) The minimum salary required by subparagraph (B) of paragraph (2) of subdivision (a) shall be
18 calculated using classroom hours as follows:

19 (1) The minimum payment that is calculated using classroom hours shall encompass payment for
20 all classroom or laboratory time, preparation, grading, office hours, and other course- or
21 laboratory-related work for that course or laboratory and no separate payment shall be required.
22 The following minimum rates shall be used in this calculation:

23 (A) For each classroom hour in 2020: one hundred seventeen dollars (\$117).
24

25 20. Here, because Plaintiffs, the Class, and the Aggrieved Employees do not earn a salary
26 equivalent to no less than two times the state minimum wage based on a forty-hour workweek –indeed,
27 they are not paid on a salary basis at all – and they are not employed under a collective bargaining
28 agreement, they do not fall under the exemption. To meet the exemption, as a threshold matter, Plaintiffs,
29 the Class, and the Aggrieved Employees must have earned at least \$117 per hour for each classroom hour
30 in 2020. However, Plaintiffs, the Class, and the Overtime Aggrieved Employees did not earn at least \$117
31 per hour for each classroom hour at any point during the Class and PAGA Periods. Thus, they are not
32 exempt.
33

21. During the Class Period and the PAGA Covered Period, Defendant systematically violated provisions of Labor Code § 510 as to all Class members and Aggrieved Employees since the significant number of the Class members worked in excess of eight hours per day and did not receive the corresponding overtime pay for each additional hour worked in excess of eight hours.

22. During the Class Period and the PAGA Covered Period, Defendant systematically violated provisions of Labor Code § 1198 as to all Class members and Aggrieved Employees since Plaintiffs and Class Members worked several hours of the off-the-clock work. The off-the-clock work consisted of grading papers for each student, responding to emails, preparing and drafting letters of recommendation and responding to phone calls.

23. During the Class Period and the PAGA Covered Period, Defendant systematically violated provisions of Labor Code § 226(a)(2) as to all Class members and Aggrieved Employees. The wage statements issued to the Class by Defendants during the Class Period have not indicated the amount of total hours worked, gross and/or net wages earned, the inclusive dates of the period for which the employee is paid, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5), (6) and (9). Defendants arguably also violated Labor Code § 226.2(a)(2), which required Defendant's wage statements to separately state the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, as well as the total amount of non-productive working time. must also appear on the wage statement.

CLASS ACTION ALLEGATIONS

24. 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 Plaintiffs, a non-exempt employee of Defendant, subject to Defendant's policies and practices, was subject to all the violations of the California Labor Code and Wage Order alleged herein, is a proper representative of the Class:

(1) 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 of Class Members has not been determined at this time, Plaintiffs are informed and believe that Defendant has employed over 550 Class members in California. The Class Members are dispersed throughout California. Joinder of all members of the proposed classes is therefore not practicable.

(2) Commonality: There are questions of law and fact common to Plaintiffs and the Class that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

- i. Whether Defendants improperly misclassified Class members as exempt professional employees under California law;
- ii. Whether Defendants failed to provide Plaintiffs and the members of the Class complete wage statements with information in violation of Labor Code Section 226(a) and each relevant subsection thereunder, including 226(a)(2);
- iii. The proper formula(s) for calculating damages, interest, and penalties owed to the Class;
- iv. The nature and extent of class-wide damages.

b. Typicality: Plaintiffs' claims are typical of the claims of the Class. Plaintiffs and the Class members similarly sustained injuries and damages, and were deprived of property rightly belonging to them, arising out of and caused by Defendant's common course of conduct in violation of law as alleged herein, in similar ways and for the same types of expenses.

c. Adequacy of Representation: Plaintiffs are members of the Class and will fairly and adequately represent and protect the interests of the Class. Plaintiffs' interests do not conflict with those of the Class. Counsel who represents Plaintiffs are competent and experienced in litigating large wage and hour class actions, including actions similar to this one, and will devote sufficient time and resources to the case and otherwise adequately represent the Class.

d. 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 as described herein. 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 adjudication of the wage statement claims at issue (where the maximum amount that any Class Member could recover would be \$4,000), and it would effectuate California's strong public policy of protecting employees from violations of the Labor Code 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 penalties 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 §§ 226.2, 1194]

On behalf of Plaintiffs and the Class

25. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

26. 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 correct or the Class is certified.

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

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

(a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

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

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

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

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

28. Thus, according to Cal. Labor Code §226.2, which codifies the decision in *Armenta v. Osmose, Inc.* (Cal. App. 2d Dist. 2005) 135 Cal. App. 4th 314, employees who are paid on a piece-rate basis, such as Plaintiffs, the Class, and the Aggrieved Employees, must be compensated for all the hours that they work, including non-productive time.

29. However, and due to Defendant’s misclassification of Plaintiff and the Class as exempt, Plaintiffs and the Class were not paid for non-productive time while employed by the Defendant. Instead, they only received compensation for each class taught through Defendant’s interface. Thus, time spent preparing for the class, making reports, planning their lessons and all other nonproductive tasks typically taking up to an hour or more per day, was not compensated separately and hourly, as required by law. As a result, Plaintiffs and the Class, were denied compensation for all hours worked, in violation of Cal. Labor Code §1194, 226.2, and were denied compensation at the minimum wage in violation of Cal. Labor Code §§1197, 1199, 1199.5.

30. Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover liquidated damages for violations of Labor Code § 1194. Where an employee, as Plaintiffs and the Class are not paid for all hours worked under Labor Code § 1194 and/or 226.2, the employee may recover minimum wages for the time associated with the overtime for which they received no compensation. (See *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage]; accord *Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-21.) Since Defendant failed to provide Plaintiffs, the Class, and all Aggrieved Employees with compensation for all hours worked, each are entitled to recover liquidated damages under Labor Code §§ 1194.2 and 226.2 through PAGA. Based upon these same factual allegations, Plaintiffs also seek on behalf of all Aggrieved Employees penalties under Labor Code §§ 1199 and 1199.5.

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
[Cal. Labor Code § 510]

On behalf of Plaintiffs and the Class

31. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

32. 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 correct or the Class is certified.

33. Labor Code § 510 provides that any work in excess of eight hours on any day, as well as all hours worked on the seventh consecutive day of a workweek, shall be compensated at the rate of no less than 1.5 times the regular rate of pay. See also Section 3(A) of IWC Wage Order No. 4.

34. Here, Defendant hired Plaintiffs and the Class to work as adjunct professors in California. Plaintiffs and the Class occasionally worked in excess of 8 hours and over 40 hours per week when teaching clinical classes. Each clinical class required Plaintiffs and the Class members to show up at least an hour earlier to prepare for the clinical rounds. Moreover, Plaintiffs and the Class members had to remain at their job after the completion of their clinical instructions. Defendant only paid Plaintiffs and the Class their regular salaries. Plaintiffs and the Class did not receive any separate or additional compensation for the overtime hours that they worked beyond their classes per day.

35. Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order No. 4, Defendant did not pay Plaintiffs and the Class any overtime wages corresponding to one and a half time of Plaintiffs and the Class' hourly rates of pay. Plaintiffs and the Class often worked eight hours per day and often worked over 40 hours per week. Defendant violated Labor Code § 510 by failing to pay Plaintiffs

1 and the Class their overtime wages at the applicable overtime rates, including daily overtime and weekly
2 overtime, and instead merely paid Plaintiff and the Class straight time wages for all hours worked.

3
4 **THIRD CAUSE OF ACTION**
5 **FAILURE TO PROVIDE COMPLIANT REST PERIODS**
6 **AND PAY MISSED REST BREAK PREMIUMS**

7 **[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order No. 4]**
8 **On behalf of Plaintiffs and the Class**

9 36. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
10 preceding paragraphs.

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

13 38. As a result of their misclassification of Plaintiffs and the Class as exempt employees,
14 Defendant failed to provide Plaintiffs and the other Class with compensated, duty-free rest periods of not
15 less than ten (10) minutes for every major fraction of four hours worked pursuant to Labor Code § 226.7,
16 and the applicable IWC Wage Order.

17 39. Under the applicable IWC Wage Orders 4-2001 an employer must authorize and permit all
18 employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked. Labor
19 Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or
20 recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of
21 the Industrial Welfare Commission (“IWC”).” Thus, the Wage Orders set when and for how long the rest
22 period must take place, and the Labor Code establishes that violations of the Wage Order violate California
23 law, and sets forth the premium pay employers must pay their employees when employers fail to provide
24 rest periods.

25 40. Because Defendant misclassified Plaintiffs and the Class as exempt employees without the
26 proper compensation, Defendant failed to implement a lawful rest period policy that informed Plaintiffs
27 and the Class of their right to receive lawful rest periods for shifts that were more than at least a major
28 fraction of four hours worked. Specifically, Defendant failed to advise Plaintiffs and the Class of their
29 right to take paid duty-free ten (10) minute rest periods when working on a piece-rate basis and failed to
30 separately compensate Plaintiffs and the Class for the non-productive time associated with their rest
31 periods.

32 41. Pursuant to Labor Code § 226.7 and Wage Orders 4-2001, Defendant failed to provide
33 Plaintiff and the Class with duty-free rest periods of not less than ten (10) minutes for every major
fraction of four (4) hours worked. Specifically, as a result of their misclassification of Plaintiffs and

1 the Class as exempts, Defendant failed to have a lawful rest period policy in place that informed
2 Plaintiffs and the Class of their right to take rest periods for shifts that were a major fraction of a four
3 (4) hour work period and to make rest breaks available to these employees.

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

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

20 44. Here, Defendant did not have a rest period policy and did not compensate Plaintiffs
21 and the Class for their rest periods. Often Plaintiffs and the Class had to work several classes back to
22 back, frequently in excess of 3.51 hours, which would trigger a paid rest break Plaintiffs and the
23 Class were not compensated with one (1) hour's worth of pay at their regular rate of compensation
24 when they were not provided with a compliant rest period.

25 **FOURTH CAUSE OF ACTION**

26 **FAILURE TO PROVIDE COMPLIANT MEAL PERIODS AND PAY MISSED MEAL 27 BREAK PREMIUMS**

28 **[Cal. Labor Code §§ 226.7, 512; Section 11 of IWC Wage Order No. 4]**
29 **On behalf of Plaintiffs and the Class**

30 45. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
31 preceding paragraphs.

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

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

3 48. As with rest periods, under Labor Code § 512, if an employer maintains a uniform policy
4 that does not authorize and permit the amount of meal time called for under the law (as specified in the
5 applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the
6 context of rest breaks that employer liability attaches from adopting an unlawful policy:

7 An employer is required to authorize and permit the amount of rest break time called for
8 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
9 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.***

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

11 49. As a result of Defendant misclassifying Plaintiffs and the Class as exempts, Defendant
12 violated Labor Code § 512 by failing to advise Plaintiffs and the Class of their right to receive thirty (30)
13 minute uninterrupted meal periods within the first five hours of the employee’s shift. In fact, because
14 Defendant misclassified Plaintiffs and the Class as exempts adjunct professors, they did not set any
15 policies providing meal periods to Plaintiffs and the Class. To the contrary, Plaintiffs and the Class were
16 informed that they had to start a class within an allotted time, or they would be subject to a penalty (which
17 was the ability to book for a class for 48 hours). Defendant’s policies were such that Plaintiffs and the
18 Class were prevented from taking meal periods of 30 minutes as required by law.

19 50. As a result of Defendant’s failure to authorize or permit lawful meal periods because
20 Defendant misclassified Plaintiffs and the Class as exempts, Plaintiffs and the Class did not receive duty-
21 free meal periods when they worked occasionally more than five (5) hours. Defendant also failed to pay
22 Plaintiff and the Class, meal period premiums for each workday that the employees did not receive a
23 compliant duty-free meal period.

24 51. Similarly, the applicable IWC Wage Order 4-2001, prohibits an employer from
25 “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less
26 than 30 minutes. The applicable IWC Wage Order 4-2001 further obligates employers to provide an
27 employee to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for
28 each workday that the meal period is not provided. Labor Code § 226.7 provides “an employer shall not
29 require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable
30 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”).
31 Accordingly, for each day that Plaintiffs and the Class did not receive compliant meal periods, they are
32 entitled to receive meal period premiums pursuant to Labor Code § 226.7 and Wage Orders 4-2001.

33 **FIFTH CAUSE OF ACTION**

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

On behalf of Plaintiffs and the Class

52. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

53. 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 following the close of the payroll period.

54. Due to Defendant’s failure to pay Plaintiffs and the other Class Members for minimum and overtime wages and meal and rest period premiums owed,² Defendant violated Labor Code § 204 by failing to pay all wages due 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 after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

55. 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, Plaintiffs and the Class are entitled to recover penalties under Labor Code § 210.

SIXTH CAUSE OF ACTION

² Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5’”); *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 after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7, 2013) 2013 WL 4038617, at *3–4 [distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay wages...can be based on amounts owed under section 226.7.”). The issue is currently before the California Supreme Court in the *Naranjo* case. *See Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No. S258966.

FAILURE TO PAY BUSINESS EXPENSES
[Cal. Labor Code § 2802]

On behalf of Plaintiffs and the Class

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

57. 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.

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

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

Section 2802 (c) defines “necessary to include “reasonable”.

59. Thus, employees such as Plaintiffs and the Class, are entitled to reimbursement for the expenses they incur during the course of their duties. The duty to reimburse even extends to the use of equipment the employee may already own, and would be required to pay for anyway. *Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal. App. 4th 1137, 1144 (“The threshold question in this case is this: Does an employer always have to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in which the employee incurred an extra expense that he or she would not have otherwise incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer would receive a windfall because it would be passing its operating expenses on to the employee.”) After all, the purpose of 2802 is to “prevent employers from passing along their operating expenses onto their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, (2007) 42 Cal. 4th 554, 562.

60. Here, Defendant did not have a reimbursement policy for Plaintiffs and the Class for their reasonable and necessary business expenses. Instead, the opposite was true: Such expenses are not waivable. See Labor Code Section 2802. Defendant’s contracts with Plaintiffs and the Class specifically required Plaintiffs and the Class to pay for their own expenses, including personal cell phone and computer usage for work-related functions, while performing their duties. Often, Plaintiffs and the Class Members were required to respond to the emails, phone call while at home, or prepare for the classes using their own materials. Thus, it is clear that not only did Plaintiffs and the Class incur expenses as a result of their employment, but that Defendant had an actual and/or constructive knowledge of those expenses, and

1 anticipating them, informed Plaintiffs and the Class that it would not provide any reimbursement.
2 Therefore, Defendant has violated § 2802 with respect to Plaintiffs and the Class.

3 **SEVENTH CAUSE OF ACTION**
4 **WAITING TIME PENALTIES FOR**
5 **FAILURE TO PAY WAGES DUE ON TERMINATION**

6 **[Cal. Labor Code §§ 201-203]**
7 **On Behalf of Plaintiffs and the Waiting Time Penalty Subclass**

8 61. Plaintiffs re-alleges and incorporates by reference each and every allegation set forth in the
9 preceding paragraphs.

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

12 63. Sections 201 and 202 of the California Labor Code require Defendant to pay all
13 compensation due and owing to former teachers in the Class during the actionable period for this cause of
14 action, at or around the time that their employment is terminated.

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

18 65. By virtue of its willful misclassification of adjunct professors, Defendant willfully failed
19 to pay Plaintiffs and other members of the waiting time penalty Subclass (i.e., those members of the Class
20 whose employment with Defendant ended the actionable period for this cause of action) who are no longer
21 employed by Defendant minimum wages, overtime wages and meal and rest break premiums as required
22 by California Labor Code §§ 201 and 202.

23 66. As a result, Defendant is liable to Plaintiffs and other members of the waiting time penalty
24 subclass who are no longer employed by Defendant for waiting time penalties amounting to thirty (30)
25 days wages for Plaintiff and each such subclass member pursuant to California Labor Code § 203. See,
26 e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to
27 recover waiting time penalties).

28 **EIGHTH CAUSE OF ACTION**
29 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
30 **[Cal. Labor Code § 226(a) and 226.2]**
31 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

32 67. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
33 preceding paragraphs.

68. Labor Code § 226 obligates employers, semi-monthly or at the time of each payment, to furnish an itemized wage statement in writing showing:

(1) gross wages earned;

(2) total hours worked by the employee, except as provided in subdivision (j);

///

(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;

(4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;

(5) net wages earned;

(6) the inclusive dates of the period for which the employee is paid;

(7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;

(8) the name and address of the legal entity that is the employer...;

(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

69. During the Class Period, Defendant issued uniform wage statements to all Class members.

70. The wage statements Defendant issued to Class members during the Class Period failed to include hours worked and the accurate gross wages earned in violation of Labor Code § 226(a)(1).

71. The wage statements Defendants issued to Class members during the Class Period failed to indicate the total hours worked by each employee Class member in violation of Labor Code § 226(a)(2) and the elements for exemption under 226(j) cannot be satisfied here since Class members did not earn twice the minimum wage based on a 40 hour work week.

72. Whereas Class members were arguably paid on a piece rate basis, the wage statements Defendants issued to Class members during the Class Period failed to indicate the number of piece-rate units earned and any applicable piece rate in violation of Labor Code § 226(a)(3).

73. The wage statements Defendant issued to Class members during the Class Period failed to indicate the accurate net wages earned by the employee in violation of Labor Code § 226(a)(5).

74. The wage statements Defendant issued to Class members during the Class Period failed to indicate the inclusive dates of the period for which the employee is paid in violation of Labor Code § 226(a)(6). Instead, Defendant offers a flat sum per course to its adjuncts, payable in equally divided portions spread over the course of the semester. However, the amounts paid are not reflective of the actual working hours performed within the inclusive dates listed on the wage statement.

1 75. The wage statements that Defendants issued to Class members during the Class Period
2 failed to set forth all applicable hourly rates in effect during the pay period and the corresponding number
3 of hours worked at each hourly rate by the employee in violation of Labor Code § 226(a)(9).

4 76. Moreover, Labor Code Section 226.2(a)(2)(A) provides that, for piece-rate workers, “The
5 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified
6 in that subdivision, separately state the following to which Section 226 shall also be applicable: (A) The
7 total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid
8 for those periods during the pay period.” The total amount of non-productive working time must also
9 appear on the wage statement. *See*, Labor Code Section 226.2(a)(2)(B). Here, and as described above,
10 the wage statements provided to Plaintiffs and the other Class members failed to include the total hours
11 worked, including time for non-teaching tasks and rest periods, and the corresponding number of hours
12 worked at each hourly rate in violation of Labor Code Sections 226(a) and 226.2. The wage statement also
13 did not include the number of piece rate units earned and the applicable piece rate in effect.

14 77. Labor Code § 226(e) provides:

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

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

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

23 (i) The amount of the gross wages or net wages paid to the employee during the pay
24 period or any of the other information required to be provided on the itemized wage
statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

25 (ii) Which deductions the employer made from gross wages to determine the net wages
26 paid to the employee during the pay period. Nothing in this subdivision alters the ability
27 of the employer to aggregate deductions consistent with the requirements of item (4)
of subdivision (a).

28 (iii) The name and address of the employer and, if the employer is a farm labor
29 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
legal entity that secured the services of the employer during the pay period.

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

32 78. Defendant failure to comply with section 226(a) of the Labor Code was knowing and
33 intentional. There is no question, for example, that the Class members do not qualify for the state

professional exemption, since there is no plausible argument that they earned two times the minimum wage based on a 40 hour work week, yet the wage statements issued do not contain total hours worked information that is required by section 226(a)(2). Moreover, under section 226(e)(2)(B), an employee is deemed to suffer injury by virtue of the omission of the information required in 226(a)(1)-(9).

79. As a result of Defendant's issuance of inaccurate itemized wage statements to Plaintiff and the other Class members in violation of section 226(a) of the California Labor Code, Class members are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every member of the Class from Defendants pursuant to section 226(e) of the Labor Code, as well as costs and reasonable attorneys' fees.

NINTH CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
(BUS. & PROF. CODE § 17200, ET SEQ.)
On Behalf of Plaintiffs and the Class

80. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

81. 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.

82. 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 from July 24, 2016 through the present, and on-going until the violations are corrected or the Class is certified.

83. 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.

84. As a direct and proximate result of Defendant's unlawful business practices, Plaintiffs and the Class Members have suffered economic injuries. Defendant has profited from its unlawful, unfair, and/or fraudulent acts and practices.

85. Plaintiffs and similarly situated Class Members are entitled to monetary relief pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid minimum wages and overtime, and

1 unpaid meal and rest period premiums, from at least four years prior to the filing of this complaint through
2 to the date of such restitution, at rates specified by law. Defendant should be required to disgorge all the
3 profits and gains it has reaped and restore such profits and gains to Plaintiff and Class Members, from
4 whom they were unlawfully taken.

5 86. Through its actions alleged herein, Defendant has engaged in unfair competition within the
6 meaning of section 17200 of the California Business & Professions Code, because Defendant's conduct,
7 as herein alleged has damaged Plaintiff and the Class Members by wrongfully denying them minimum
8 wages and overtime and wrongfully denying them missed meal and rest period premiums, and therefore
9 was substantially injurious to Plaintiff and the Class Members.

10 87. Defendant engaged in unfair competition in violation of sections 17200 et seq. of the
11 California Business & Professions Code by violating Section 1194 of the California Labor Code, and
12 Section 12 of the IWC Wage Order No. 4.

13 88. Defendant's course of conduct, act and practice in violation of the California laws
14 mentioned above constitute independent violations of sections 17200 et seq. of the California Business
15 and Professions Code.

16 89. Plaintiffs and similarly situated Class Members are entitled to enforce all applicable
17 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

18 90. Plaintiffs have assumed the responsibility of enforcement of the laws and public policies
19 specified herein by suing on behalf of themselves and other similarly situated Class Members previously
20 or presently employed by Defendant in California. Plaintiffs' success in this action will enforce important
21 rights affecting the public interest. Plaintiffs will incur a financial burden in pursuing this action in the
22 public interest. Therefore, an award of reasonable attorneys' fees to Plaintiffs are appropriate pursuant to
23 Code of Civil Procedure §1021.5.

24
25 **TENTH CAUSE OF ACTION**
PENALTIES PURSUANT TO PAGA

26 [Cal. Labor Code § 2699 *Et Seq.* based on violation of Section 226(a)]
27 **PLAINTIFFS AND THE AGGRIEVED EMPLOYEES AGAINST DEFENDANT**

28 91. Plaintiffs reallege and incorporate by reference all previous paragraphs.

29 92. Based on the above allegations incorporated by reference, Defendant has systematically
30 violated Labor Code §§ 226(a)(1), (2), (3), (5), (6), (9) and 226.2 throughout the Class Period.

31 93. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other
32 Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the
33 following formula:

- (1) \$100 for the initial violation per employee per pay period; and
- (2) \$200 for each subsequent violation per employee per pay period.

94. These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce Development Agency (LWDA) and twenty-five percent (25%) to the affected employees. These penalties may be stacked separately for each of Defendants' violations of the California Labor Code. *See e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S. Dist. LEXIS 86975, at *59, fn. 77 (C.D. Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked PAGA penalties, that "PAGA penalties can be 'stacked,' i.e., multiple PAGA penalties can be assessed for the same pay period for different Labor Code violations."); *See Lopez v. Friant & Assocs., LLC*, No. A148849, 2017 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26, 2017) ("hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1) and acknowledging that a Plaintiff could recover separately under PAGA for violations of Labor Code §§ 226(a) and 226(e)); *accord Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at * 2-3 (E.D. Cal. Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

95. In addition, to the extent permitted by law, Plaintiffs seek PAGA penalties for Defendant's violations of Labor Code § 226(a). *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017); *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after Friant that "[t]o the extent the Court's Order [granting summary judgment to Home Depot] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs' derivative claim for [PAGA] penalties under section 226(e)...the Court's Order should not be read to grant summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section 226(a)."]. For violations of Labor Code § 226(a), Plaintiff seeks the default penalty provided by Labor Code § 226.3. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." Accordingly, through PAGA and to the extent permitted by law Plaintiffs and the Aggrieved Employees are entitled to recover penalties per Labor Code § 226.3 and PAGA for each of Defendants' numerous violations of Labor Code § 226(a).

96. Pursuant to Labor Code § 2699.3 (a), on **September 20, 2021**, Plaintiffs gave written notice by certified mail to Defendant, and via e- filing to the LWDA of their claims for violations alleged herein and the theories supporting them. The LWDA has not responded to Plaintiffs' PAGA letter within 65 days. All required fees have also been paid to the LWDA. Accordingly, Plaintiffs has fulfilled all administrative prerequisites to the filing and pursuit of their PAGA claims on himself and all other current and former Aggrieved Employees of Defendant.

97. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code § 2699, et seq. because of Defendant's above-described Labor Code violations and IWC Wage Orders 4-2001.

PRAYER FOR RELIEF

Wherefore, Plaintiffs, on behalf of herself and the members of the Class, prays for judgment against Defendant as follows:

1. An Order that this action may proceed and be maintained as a class action;
2. On the First Cause of Action:
 - a. A Declaratory judgment that Defendant has violated California Labor Code sections 226.2 and 1194;
 - b. An award to Plaintiffs and the other members of the Class in the amount of their unpaid minimum wages.
3. On the Second Cause of Action:
 - a. A Declaratory judgment that Defendant has violated California Labor Code § 510;
 - b. An award to Plaintiffs and the other members of the Class in the amount of their unpaid overtime compensation for worked performed, plus interest and/or liquidated damages during the Class Period;
4. On the Third Cause of Action:
 - a. A declaratory judgment that Defendant has violated California Labor Code § 226.7, and Section 12 of IWC Wage Order No. 4-2001;
 - b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiffs and the Class Members for an hour of pay for each day that a compliant rest period was not provided during the Class Period;

1 5. On the Fourth Cause of Action:

2 c. A declaratory judgment that Defendant has violated California Labor Code
3 sections 226.7, 512, and Section 11 of IWC Wage Order No. 4-2001;

4 d. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiffs and the Class
5 Members for an hour of pay for each day that a compliant meal period was not provided during the
6 Class Period;

7
8 6. On the Fifth Cause of Action:

9 a. A declaratory judgment that Defendant violated California Labor Code §226(a)
10 by issuing inaccurate and/or incomplete wage statements that failed to include total hours worked and
11 all applicable hourly rates in effect during the pay period and the corresponding number of hours
12 worked at each hourly rate to Plaintiff and the wage statement and penalty subclass members;

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

17
18 9. On the Sixth Cause of Action:

19 a. A declaratory judgment that Defendant violated California Labor Code §§201
20 through 203;

21 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiff and the
22 waiting time penalty subclass members for waiting time penalties in the amount of 30 days' wages
23 per waiting time penalty subclass Class Member.

24
25 10. On the Seventh Cause of Action:

26 a. A declaratory judgment that Defendant violated California Labor Code § 203;

27 b. Pursuant to Labor Code §203, an award to Plaintiffs and the Class for penalties
28 pursuant to Labor Code § 203.

29
30 11. On the Eighth Cause of Action:

31 a. A declaratory judgment that Defendant violated California Labor Code section
32 2802;

33 b. Pursuant to Labor Code section 2802, an award to Plaintiff and the Class of all

unreimbursed business expenses, and interest thereon, that they are owed pursuant to Labor Code section 2802.

12. On the Ninth Cause of Action:

a. That the Court find and declare that Defendants have violated the UCL and committed unfair and unlawful business practices by misclassifying Plaintiff and Class Members, by failing to pay minimum wages and overtime and by failing to pay missed meal and rest break premiums;

b. Restitution, including, but not limited to, the relief permitted by sections 1194, 510, 226.7 of the California Labor Code (i.e., pay as specified for unpaid minimum wages and overtime and meal and rest period premiums to Plaintiff and the members of the Class during the Class Period);

13. On the Tenth Cause of Action:

a. A civil penalty against Defendant in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code for Plaintiffs and for member of the Wage Statement and PAGA Penalty Subclass during all of the pay periods in the one year preceding the filing of this Complaint through the present and on-going until the violations are corrected or this subclass is certified;

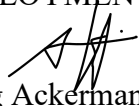
b. An award of reasonable attorney's fees against Defendant as specified in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA claims;

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

14. All other relief as this Court deems proper.

Dated: March 4, 2022

Respectfully,
ACKERMANN & TILAJEF, P.C.
EMPLOYMENT RIGHTS LAW GROUP, APC


Craig Ackermann, Esq.
Amir Seyedfarshi, Esq.
Counsel for Plaintiffs, the Class, and the
Aggrieved Employees

Superior Court of the State of California
In and For The County of Placer

CASE NO. S-CV-0048133

A CASE MANAGEMENT CONFERENCE HAS BEEN SCHEDULED:

DATE: **July 11th, 2022**

TIME: ☐ **2:00 P.M. If your case number starts with "S-CV"**

☒ **3:00 P.M. If your case number starts with "S-CV" and is deemed Complex**

☐ **3:00 P.M. If your case number starts with "M-CV"**

DEPT: **40 - 10820 Justice Center Drive, Roseville, California**

IF YOU DO NOT HAVE AN ATTORNEY, READ THIS:

The judge does **not** decide whether you win or lose your case at this court date. If you do not file an "Answer," or other "responsive pleading," you will automatically lose this case, usually before this court date. The Answer or responsive pleading must be given to the court clerk within 30 days of the day you received the Summons, along with a filing fee or application for waiver of court fees.

You can get free help filling out your Answer or responsive pleading at the court's Legal Help Center. For more information or to schedule an appointment, go to the court's website at www.placer.courts.ca.gov and select "Legal Help Center."

INFORMATION ABOUT CASE MANAGEMENT CONFERENCES:

15 calendar days before the Case Management Conference, you must file and serve a completed Case Management Statement (CM-110).

You do not need to come to court for the first Case Management Conference. You can see the court's proposed orders 12 calendar days before the Case Management Conference on the court's website, www.placer.courts.ca.gov. Select "Tentative Rulings and Calendar Notes," then "Civil Case Management Conference." If you do not have Internet access, call the court at 916-408-6000 to get the information.

The court does not provide a court reporter at Case Management Conferences or Law & Motion hearings. If you want the proceedings reported, you must provide your own court reporter at your own expense.

IF YOU WANT TO APPEAR BY TELEPHONE, you must schedule your telephonic appearance through the court's website, www.placer.courts.ca.gov. Select "Telephonic Appearance System." For more information on the telephonic appearance system, please visit our "[How to](#)" guide on the website. **YOU MUST PAY ONLINE TO USE THIS SERVICE UNLESS YOU HAVE BEEN GRANTED A FEE WAIVER BY THE COURT.**