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FILED

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MARIN CO. SUPERIOR COURT
BY: N. JOHNSON

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MARIN**
12

13 EKATERINA NETSVETAYEVA and
14 VALERIE BUTLER, individually, on behalf of
15 the State of California, as private attorney
16 generals, and on behalf of all Aggrieved
17 Employees,

18 **PLAINTIFFS,**

19 v.

20 AUTODESK, INC., a California Corporation;
21 DOES 1 to 50, inclusive,

22 **DEFENDANT.**
23
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25
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27
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CASE NO. CIV2200451

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

- (1) FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR CODE §
2802);
- (2) FAILURE TO PAY MINIMUM
WAGES (LABOR CODE § 1194);
- (3) FAILURE TO AUTHORIZE AND
PROVIDE COMPLIANT MEAL
PERIODS (LABOR CODE §§ 226.7, 512;
IWC WAGE ORDER 4-2001);
- (4) FAILURE TO AUTHORIZE AND
PROVIDE COMPLIANT REST
PERIODS (LABOR CODE § 226.7; IWC
WAGE ORDER 4-2001);
- (5) FAILURE TO ISSUE ACCURATE
ITEMIZED WAGE STATEMENTS
(LABOR CODE § 226);
- (6) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210;
- (7) WAITING TIME PENALTIES
(LABOR CODE § 201-203);
- (8) UCL VIOLATIONS (CAL. BUS. AND
PROF. CODE §§ 17200-17204); AND
- (9) PENALTIES PURSUANT TO LABOR
CODE § 2699, *ET SEQ.*



1 Plaintiffs EKATERINA NETSVETAYEVA and VALERIE BUTLER (“Plaintiffs”), on
2 behalf of the Aggrieved Employees, the State of California, and all others similarly situated
3 (hereinafter “Class Members”) complains of Defendant AUTODESK, INC. and DOES 1 to 50
4 (collectively, “Defendant” or “Autodesk”) and each of them, and alleges the following upon
5 information and belief:

6 **INTRODUCTION**

7 1. This is a class action brought pursuant to Code of Civil Procedure section 382 and a
8 representative action brought pursuant to Labor Code § 2699, *et seq.*, on behalf of the State of
9 California against Defendant for its (1) failure to reimburse its current and former employees for
10 their home office expenses in California for which they have not been fully reimbursed; (2) failure
11 to pay minimum wages; (3) failure to authorize and provide compliant meal periods; (4) failure to
12 authorize and provide compliant rest periods; (5) failure to issue accurate itemized wage
13 statements; (6) failure to pay timely wages; (7) failure to pay final wages; (8) unfair business
14 practices based on the foregoing; and (9) PAGA penalties based on the foregoing:

15 2. The Class is defined as follows: all current and former employees of Autodesk
16 employed in California during the time period beginning March 17, 2020 through March 5, 2022
17 (the “Class Period”) who were subject to stay-at-home orders and/or whose offices were closed due
18 to COVID-19 for at least one pay period during the Class Period and did not receive a fully paid
19 wireless internet device for work purposes.

20 3. The Aggrieved Employees are defined as follows: all current and former employees
21 of Autodesk employed in California during the time period beginning March 17, 2020 through
22 March 5, 2022 (the “PAGA Period”) who were subject to stay-at-home orders and/or whose offices
23 were closed due to COVID-19 for at least one pay period during the PAGA Period and did not
24 receive a fully paid wireless internet device for work purposes

25 **THE PARTIES**

26 4. Plaintiff Katerina Netsvetayeva is a resident of California and at all times pertinent
27 hereto worked for Defendant.

28 5. Plaintiff Valerie Butler Katerina Netsvetayeva is a resident of California and at all

1 times pertinent hereto worked for Defendant.

2 6. Plaintiffs, Class Members, and all Aggrieved Employees are, and at all times
3 pertinent hereto, have been classified as exempt or non-exempt employees by Defendant, and have
4 been hired to work for Defendant in California.

5 7. Autodesk is an American multinational software corporation that makes software
6 products and services for the architecture, engineering, construction, manufacturing, media,
7 education, and entertainment industries. Autodesk is headquartered in San Rafael, California, and
8 upon information and belief has one office in San Rafael, California and two offices in San
9 Francisco, California. Defendant employed Plaintiffs and similarly situated persons as employees
10 within California. Defendant has done and do business throughout the State of California including
11 in San Francisco County.

12 8. The true names and capacities, whether individual, corporate, associate, or
13 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
14 Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure §
15 474. Plaintiffs are informed and believe, and based thereon alleges, that each of the Defendants
16 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
17 herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
18 capacities of the Defendants designated hereinafter as DOES when such identities become known.

19 9. Plaintiffs are informed and believe, and based thereon alleges, that each Defendant
20 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
21 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
22 legally attributable to the other Defendants. Accordingly, all Defendants engaged, suffered, and
23 permitted Plaintiffs, the Class, and all other Aggrieved Employees to perform services from which
24 they benefitted. Moreover, the aforementioned entities had the right to exercise control over the
25 wages, hours and/or working conditions over Plaintiffs, the Class, and all Aggrieved Employees at
26 all relevant times herein, so as to be considered the joint employers of all of the Class Members and
27 Aggrieved Employees. By reason of their status as joint employers, they are each liable for civil
28 penalties for violation of the California Labor Code as to the Plaintiffs, the Class, and other

1 Aggrieved Employees as set forth herein.

2 **JURISDICTION AND VENUE**

3 10. This Court has subject matter jurisdiction over any and all causes of action asserted
4 herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil
5 Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
6 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
7 laws of the State of California or is subject to adjudication in the courts of the State of California.

8 11. This Court has personal jurisdiction over Defendant because Defendant has caused
9 injuries in the County of San Francisco and State of California through their acts, and by their
10 violation of the California Labor Code and California state common law.

11 12. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
12 Civil Procedure § 395. Defendant operates within California and do business within San Francisco
13 County, California. The unlawful acts alleged herein have a direct effect on Plaintiffs and all
14 “employees” within the State of California and San Francisco County.

15 13. Further, to the extent that Defendant may claim that Plaintiffs have signed an
16 arbitration agreements or severance agreements, venue is still appropriate in the Superior Court of
17 San Francisco County as PAGA claims are not arbitrable as a matter of law *Iskanian v. CLS*
18 *Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 383 (2014) (holding “a PAGA claim lies outside the
19 FAA’s coverage because it is not a dispute between an employer and an employee arising out of
20 their contractual relationship. It is a dispute between an employer and the *state*”).

21 **COMMON ALLEGATIONS**

22 14. From at least March 17, 2020 and continuing into the present, during which time
23 various work from home orders were in effect, Plaintiffs, the Class, and the Aggrieved Employees,
24 at the direction of Defendant and/or with Defendant’s knowledge and acquiescence, have incurred
25 home office expenses including, among other things, home internet expenses, cell phone expenses,
26 equipment expenses, electricity, and home office infrastructure expenses, in order to perform
27 necessary work-related duties. Plaintiffs, who were employed by Defendant, were not able to work
28 on premises at Defendant’s offices but instead were expected to, and did, work from home, like the

1 other aggrieved employees. To be clear, Defendant sent home their California-resident office-
2 based employees during the Class Period without affirmatively reimbursing them for a reasonable
3 portion of their monthly home internet and cell phone expenses.

4 15. During the Class Period, Plaintiffs, the Class, and the aggrieved employees were
5 thus expected by Defendant to pay for, and have personally paid for, among other things, home
6 internet service, cell phone service, home electricity, and the purchase and maintenance of
7 hardware used for work-purposes, including keyboards, mice, Bluetooth headsets, and/or cell
8 phones, as well as to allocate home office space, in the discharge of their job duties (the “home
9 office expenses”). These expenses ranged, but typically amounted from \$100 to \$200 per month
10 per Class Members and aggrieved employee.

11 16. During the Class Period, Defendant had no policy to affirmatively reimburse all of
12 its employees who were forced to work from home during the COVID-19 pandemic for their
13 monthly recurring home office expenses, other than one initial \$500 stipend designated for home
14 office equipment. Notably, Defendant did not affirmatively provide any monthly recurring
15 reimbursement thereafter for monthly home office, home internet, home electricity, or cell phone
16 expenses. In sum, Defendant’s expense-related policies and/or practices require and expect, and/or
17 with Defendant’s knowledge thereof permit, Plaintiffs, the Class, and the Aggrieved Employees to
18 pay for monthly home internet, cell phone, and home office infrastructure expenses incurred in
19 direct consequence of discharging their necessary, reasonable and business-related job duties on
20 behalf of Defendant, without reimbursement in full by Defendant for such expenses, as required by
21 California law.

22 17. California Labor Code section 2802 requires an employer to "indemnify his or her
23 employee for all necessary expenditures or losses incurred by that employee in direct consequence
24 of the discharge of his or her duties." See Cal. Labor Code section 2802(a); *see also* 2802(c) where
25 necessary is defined to include all “reasonable” costs. “The elements of a claim under Section
26 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses
27 were incurred in direct consequence of the employee's discharge of his or her duties, or obedience
28 to the directions of the employer; and (iii) the expenditures or losses were reasonable and

necessary.” *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. March 8, 2011) (citing *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007). “In addition, the employer ‘must either know or have reason to know that the employee has incurred [the] expense.’” *Id.* (citing *Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal. 2009). Where an employer has knowledge that employees are incurring a reimbursable expense, the employer must “exercise due diligence to ensure each employee is reimbursed.” *Marr*, at *1. The right of an employee to expense reimbursements is not waivable. *See* Cal. Labor Code sections 2804 and 219(a). Any contract to waive them is null and void. *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008)

18. Furthermore, under Labor Code section 2802, employers must reimburse employees for all necessary and/or reasonable work-related expenses, regardless of whether or not the employees incurred any additional out-of-pocket expense from that work-related use. *See, Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014) (“We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”); *see also, Herrera v. Zumiez*, F.3d, 2020 WL 1301057, at *11 (9th Cir. Mar. 19, 2020) (same). The same logic would obviously apply to monthly home internet expenses.

19. Where, as here, employees in California are expected or mandated to use their internet at home for work, courts have held that they incurred cell phone expenses in “direct consequence of the discharge of his or her duties” and were entitled to reimbursement. *See Aguilar v. Zep, Inc.*, 2014 US Dist LEXIS 120315, *54 (N.D.Cal. Aug. 27, 2014) (Hon. Edward Chen) (where outside sales reps used home internet and computers for work, and even admitted that they would have incurred the same expenses without work duties, the court nevertheless held that the employer was obligated to reimburse some reasonable portion of these expenses); *see also Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of home office claims processors with 2802 phone reimbursement claims for landline reimbursements where company required claims processors working from home to have a landline, but rejecting certification of claims for home office supplies as individualized).

20. Defendant is aware or should have been aware that Plaintiffs, the Class, and the Aggrieved Employees regularly incurred and incur monthly home office internet, cell phone, and home electricity and other infrastructure expenses in the discharge of their duties as employees by virtue of Defendant's instructions to Plaintiffs, the Class, and the Aggrieved Employees to work from home order and/or their announcements of office closures during the COVID-19 pandemic¹. Specifically, Plaintiffs regularly communicated with managers on their personal cell phones, and Plaintiffs, the Class, and all other Aggrieved Employees were required to use their personal cell phones for VPN authentication to access Defendant's servers from their home/remote locations. Plaintiffs, the Class, and the Aggrieved Employees could not perform their job duties for Defendant without accessing Defendant's servers and network. Defendant nevertheless has, throughout the Class and PAGA Periods, failed and refused to affirmatively reimburse Plaintiffs, the Class, and the Aggrieved Employees for such monthly home internet, cell phone, and home office expenses incurred by them in connection with their work.

21. Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this

¹ Numerous employment firms advised their clients to make monthly reimbursements to workers working from home during the pandemic. See, <https://www.fisherphillips.com/news-insights/covid-19-litigation-testing-limits-california-expense.html> ("When remote work is mandatory – even if ordered by California or local authorities – employees must be reimbursed for the necessary expenses they incur while working at home.") (3/21/21); <https://www.morganlewis.com/-/media/files/publication/presentation/webinar/2020/californiaemploymentlawupdatejasscwebinar92920.pdf> ("In response to lockdowns, employers have required employees to work from home. Strong argument that many expenses needed to facilitate work from home are reimbursable.") (Slide at p. 52); <https://www.acc.com/sites/default/files/2020-04/COVID-19%20CA%20Slides.pdf> ("Telecommuting Considerations Q. Must employers reimburse employees for expenses incurred while teleworking? A. Yes. California employers are required to reimburse employees for "all necessary expenditures or losses incurred by the employee" in the course of the employee's job, as well as for any expenses arising out of an employer's directive. Cal. Labor Code section 2802. This question is likely to be implicated if employees are asked to work from home. ...") (Cozen O'Connor; Slide 23/28, 3/26/20); and <https://www.jdsupra.com/legalnews/when-how-much-to-pay-for-work-from-home-8302177/> ("During the pandemic when workplaces were closed and employees had to work from home due to Covid-19 restrictions, employers were required to either provide the equipment needed to work from home (such as internet access and a computer/phone), or to reimburse employees for those costs. Case law interpreting Cal. Labor Code Section 2802 holds that employers cannot benefit from employees' use of their own equipment, even if it doesn't cost the employee extra to use their phone or internet. Bottomline: Some portion must be paid, typically in some sort of Work From Home or Phone Allowance.").

1 minimum wage.” IWC Wage Order No. 4 also obligates employers to pay each employee minimum
2 wages for all hours worked.

3 22. These minimum wage standards apply to each hour employees worked for which
4 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
5 by an employee is unlawful, ***even if averaging an employee’s total pay over all hours worked, paid***
6 ***or not, results in an average hourly wage above minimum wage.*** *Armenta v. Osmose, Inc.* (2005)
7 135 Cal.App.4th 314, 324.

8 23. Labor Code § 1194.2 authorizes employees to recover wages to recover liquidated
9 damages for violations of Labor Code § 1194. Where employees, such as Plaintiff, the Class, and
10 the Aggrieved Employees, are not paid for all hours worked under Labor Code § 1194, the
11 employee may recover minimum wages for the time associated with the time for which they
12 received no compensation. See *Sillah v. Command Int’l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp.
13 3d 891 [holding that employees suing for failure to pay overtime could recover liquidated damages
14 under § 1194.2 if they also showed they were paid less than minimum wage]; *accord Andrade v.*
15 *Arby’s Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) 2016 U.S. Dist. LEXIS 172319, at *20-21.

16 24. During the Class Period and PAGA Period, Plaintiffs, the Class, and the Aggrieved
17 Employees were not paid for all hours worked while employed by Defendant and thus were not
18 paid all minimum wages owed. As a result, Plaintiffs, the Class, and the Aggrieved Employees
19 were denied compensation for all hours worked, in violation of Cal. Labor Code § 1194, and
20 Plaintiffs, the Class, and the Aggrieved Employees were also denied compensation at the minimum
21 wage in violation of Cal. Labor Code §§1197 and 1199.

22 25. Labor Code § 512 and Section 11 of the applicable IWC Wage Order require
23 employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period
24 within the first five (5) hours of an employee’s shift. Moreover, an employee who works more than
25 ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free
26 meal period

27 26. During the Class Period and PAGA Period, Defendant violated and continues to
28 violate Labor Code § 512 and IWC Wage Order 4-2001 § 11 by, among other things, failing to

1 provide and schedule duty-free meal breaks on or before the fifth hour of work to Aggrieved
2 Employees and Class Members and failing to advise all other Aggrieved Employees and Class
3 Members of their meal break rights with respect to the timing of meal breaks, and failing to pay
4 meal break premiums for late meal breaks. As a result of Defendant's failure to authorize or permit
5 lawful and timely meal periods, Plaintiffs and the other Class Members and Aggrieved Employees
6 frequently did not receive compliant duty-free meal periods within the first five (5) hours of their
7 work.

8 27. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
9 authorize and permit the amount of rest time on the schedule called for under the law (as specified
10 in Section 12 of the applicable Wage Order), "it has violated the wage order and is liable."

11 28. During the Class Period and PAGA Period, Defendant did not authorize Plaintiffs,
12 the Class Members, and the Aggrieved Employees to take their ten-minute rest breaks during each
13 4 hours of work or major fraction thereof during their shifts.

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

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

30. Due to Defendant's failure to pay Plaintiffs, the Class Members, and the Aggrieved
Employees for all minimum wages and meal and rest break premiums owed, the wage statements
issued by Defendant to Plaintiffs, the Class Members, and the Aggrieved Employees do not indicate
the correct amount of gross wages earned, net wages earned, or the applicable hourly rates in effect
during the pay period and the corresponding number of hours worked at each hourly rate in

1 violation of Labor Code § 226(a)(1), (2), (5) and (9).

2 31. Defendant's violation of Labor Code § 226 was knowing and intentional. *See*
3 *Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the
4 defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew
5 that it was not providing total hours worked to plaintiff or other employees paid on commission"
6 even though it believed that employees paid solely on commission or commission and salary "are
7 exempt and therefore we do not record hours on a wage statement").

8 32. Defendant's failure to furnish accurate itemized wage statements has caused
9 Plaintiffs, the Class Members, and the Aggrieved Employees to incur economic damages in that
10 they were not aware that they were owed and not paid appropriate premiums for their non-
11 compliant statutory rest breaks and meal periods and all minimum wages. *See Cicairos v. Summit*
12 *Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee to add up the daily hours shown
13 on the time cards or other records so that the employee must perform arithmetic computations to
14 determine the total hours worked during the pay period, the requirements of section 226 would not
15 be met"); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage
16 statements violated California Labor Code by not including, inter alia, total hours worked giving
17 rise to claims under both Section 226 and for PAGA penalties); Labor Code § 226(e)(2)(B)
18 (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or
19 (5), among other provisions, and where employees cannot easily determine the gross or net wages
20 earned by the employee during the pay period).

21 33. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial
22 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not
23 to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in
24 which the employer fails to provide accurate itemized statements to the employee causing the
25 employee to suffer injury.

26 34. Aggrieved Employees need not show "injury" or a "knowing and intentional" as
27 ordinarily required by Labor Code section 226(e) to establish a violation sufficient to trigger PAGA
28 penalties under Labor Code § 226(a). *See Lopez v. Friant & Associates, LLC*, 15 Cal. App. 773,

1 788 (Cal. App. 2017) (“Consistent with the PAGA statutory framework and the plain language and
2 legislative history of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a
3 violation of section 226(a) does not have to satisfy the “injury” and “knowing and intentional”
4 requirements of section 226(e)(1)”); *Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D.
5 Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of
6 section 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765
7 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA
8 penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e)
9 injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3,
10 2013) (“Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties
11 under § 2699(f) of PAGA.”).

12 35. Further and in addition to the penalties outlined above, Labor Code § 226.3 provides
13 that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty
14 in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation
15 and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for
16 which the employer fails to provide the employee a wage deduction statement or fails to keep the
17 required in subdivision (a) of Section 226.” As explained in detail above, Defendant failed to
18 provide Plaintiffs, the Class Members, and the Aggrieved Employees with accurate itemized wage
19 statements. Accordingly, Defendant is additionally liable for Labor Code § 226.3 penalties for their
20 violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No.
21 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 [“the weight of authority counsels that
22 violations of Section 226.3 may be the basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No.
23 ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code §
24 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil
25 penalties.”).²

26 36. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any

27 ² *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D.Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326,
28 *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7–9, 2011 WL 2434043; *Willis v.*
Xerox Bus. Servs., LLC (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

1 employment are due and payable twice during each calendar month, on days designated in advance
2 by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are
3 “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the
4 wages are paid not more than seven calendar days following the close of the payroll period.

5 37. Due to Defendant’s failure to pay Plaintiffs, the Class, and the other Aggrieved
6 Employees all minimum wages owed and meal and rest break period premiums owed,³ Defendant
7 violated Labor Code § 204 by failing to pay all wages due, including meal and rest break premiums
8 due, within seven (7) days of the close of the payroll period on a regular and consistent basis. *See*
9 *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D.
10 Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims
11 under Labor Code §§ 203 and 204).

12 38. Labor Code § 210 provides that “in addition to, an entirely independent and apart
13 from, any other penalty provided in this article, every person who fails to pay the wages of each
14 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
15 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
16 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
17 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
18 faulty compensation policies and practices described in detail above, Plaintiffs, the Class, and the
19 other Aggrieved Employees are entitled to recover penalties under Labor Code § 210.

20 39. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of
21 an employee who is discharged or who quits, the wages of the employee shall continue as a penalty.

22 ³ Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting
23 time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal.
24 Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time
25 penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals
26 decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section
27 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under
28 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.

1 .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

2 40. Due to Defendant’s faulty policies described above, including its failure to pay for
3 all minimum wages owed and meal and rest break premiums, Defendant violated Labor Code §
4 203, for those employees whose employment ended within the Class Period and PAGA Period by
5 willfully failing to pay them all wages due upon the termination of their employment.

6 **CLASS ACTION ALLEGATIONS**

7 41. Plaintiffs brings this action, on behalf of themselves and all others similarly situated,
8 as a class action pursuant to Code of Civil Procedure § 382. Plaintiffs seeks to represent a Class
9 composed and defined as: all current and former employees of Autodesk employed in California
10 during the Class Period who were subject to stay-at-home orders and/or whose offices were closed
11 due to COVID-19 for at least one pay period during the Class Period and did not receive a fully
12 paid wireless internet device for work purposes.

13 42. This action has been brought and may properly be maintained as a class action under
14 Code of Civil Procedure § 382 because there is a well-defined community of interest in the
15 litigation, the proposed class is easily ascertainable, and Plaintiffs are proper representatives of the
16 Class:

17 a. Numerosity: The potential members of the Class as defined are so numerous
18 that joinder of all the members of the Class is impracticable. According to Defendant there are an
19 over 2,000 Class Members. The Class Members are dispersed throughout California. Joinder of all
20 members of the proposed classes is therefore not practicable.

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

24 i. Whether Plaintiffs and Class Members incurred unreimbursed business
25 expenses in the discharge of their duties, including but not limited to home office expenses, in
26 violation of Labor Code § 2802;

27 ii. Whether Defendant intended, suffered and/or permitted, and/or knew and/or
28 should have known that Plaintiffs and Class Members incurred unreimbursed home office expenses,

1 in the discharge of their duties;

2 iii. Whether Defendant violated Labor Code section 1194 by failing to pay all
3 minimum wages owed to Plaintiffs and the Class during the Class Period;

4 iv. Whether Defendant violated Labor Code sections 226.7 and 512 and Section
5 11 of IWC Wage Order No. 4 by failing to provide timely, duty-free meal periods to Plaintiffs and
6 the members of the Class in California during the Class Period;

7 v. Whether Defendant violated Labor Code section 226.7 by failing to provide
8 one hour of premium pay to each member of the Class for each day that a timely, duty-free meal
9 period was not provided in California during the Class Period;

10 vi. Whether Defendant violated Labor Code section 226.7 and Section 12 of
11 IWC Wage Order No. 4 by failing to provide timely, duty-free rest periods to Plaintiffs and the
12 members of the Class in California during the Class Period;

13 vii. Whether Defendant violated Labor Code section 226.7 by failing to provide
14 one hour of premium pay to each member of the Class for each day that a timely, duty-free rest period
15 was not provided in California during the Class Period;

16 viii. Whether Defendant failed to provide Class Members complete wage
17 statements in violation of Labor Code Section 226(a);

18 ix. Whether Defendant violated Sections 204 and 210 of the Labor Code by
19 failing to pay member of the Class all wages due on a timely basis;

20 x. Whether Defendant violated Section 203 of the Labor Code by failing to pay
21 members of the Class for all wages due to them (including all minimum wages owed and their
22 unpaid meal and rest break premiums) upon their separation of employment from Defendant;

23 xi. Whether Defendant engaged in an unfair practice and violated section 17200
24 of the California Business and Professions Code by failing to provide Plaintiffs and the members of
25 the Class with all minimum wages owed during the Class Period;

26 xii. Whether Defendant engaged in an unfair practice and violated section 17200
27 of the California Business and Professions Code by failing to provide Plaintiffs and the members of
28 the Class with timely, duty-free meal breaks during the Class Period;

1 xiii. Whether Defendant engaged in an unfair practice and violated section 17200
2 of the California Business and Professions Code by failing to provide Plaintiffs and members of the
3 Class with meal period premiums for each day they were not provided a compliant meal break;

4 xiv. Whether Defendant engaged in an unfair practice and violated section 17200
5 of the California Business and Professions Code by failing to provide Plaintiffs and the members of
6 the Class with timely, duty-free rest breaks during the Class Period;

7 xv. Whether Defendant engaged in an unfair practice and violated section 17200
8 of the California Business and Professions Code by failing to provide Plaintiffs and members of the
9 Class with rest period premiums for each day they were not provided a compliant meal break;

10 xvi. Whether Plaintiffs and the Class are entitled to restitution under Business and
11 Professions Code § 17200;

12 xvii. The proper formula(s) for calculating damages, interest, and restitution owed
13 to Plaintiffs and the Class Members;

14 xviii. The nature and extent of class-wide damages.

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

19 d. Adequacy of Representation: Plaintiffs are members of the Class and will
20 fairly and adequately represent and protect the interests of the Class and Class Members. Plaintiffs'
21 interests do not conflict with those of Class and Class Members. Counsel who represent Plaintiffs
22 are competent and experienced in litigating large wage and hour class actions, including numerous
23 cases virtually identical to this one (i.e., wage and hour class action cases), and other employment
24 class actions, and will devote sufficient time and resources to the case and otherwise adequately
25 represent the Class and Class Members.

26 43. Superiority of Class Action: A class action is superior to other available means for
27 the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is
28 not practicable, and questions of law and fact common to the Class predominate over any questions

1 affecting only individual members of the Class. Each Class Member has been damaged or may be
2 damaged in the future by reason of Defendant's unlawful policies and/or practices. Certification of
3 this case as a class action will allow those similarly situated persons to litigate their claims in the
4 manner that is most efficient and economical for the parties and the judicial system. Certifying this
5 case as a class action is superior because it allows for efficient and full disgorgement of the ill-
6 gotten gains Defendant has enjoyed by maintaining its unlawful break, compensation, and non-
7 reimbursement policies and will thereby effectuate California's strong public policy of protecting
8 employees from deprivation or offsetting of compensation earned in their employment. If this
9 action is not certified as a Class Action, it will be impossible as a practical matter, for many or most
10 Class Members to bring individual actions to recover monies unlawfully withheld from their lawful
11 compensation due from Defendant, due to the relatively small amounts of such individual
12 recoveries relative to the costs and burdens of litigation.

13 **FIRST CAUSE OF ACTION**
14 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**
15 **[Cal. Labor Code section 2802)**
16 **On Behalf of Plaintiffs and the Class Against Defendant**

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

19 45. Labor Code § 2802(a) provides that "[a]n employer shall indemnify his or her
20 employee for all necessary expenditures or losses incurred by the employee in direct consequence
21 of the discharge of his or her duties." Section 2802(c) defines "necessary" to include all "reasonable
22 costs."

23 46. In order to discharge their duties for Defendant during stay-at-home orders and/or
24 when Defendant's offices were closed, Plaintiffs and similarly situated Class Members regularly
25 incurred home office and cell phone expenses in the discharge of their duties as employees by
26 virtue of Defendant's instructions to Plaintiffs and the Class. Defendant nevertheless has,
27 throughout the Class Period, failed and refused to affirmatively reimburse Plaintiffs, the Class, and
28 the aggrieved employees for such home office and cell phone expenses incurred by them in
connection with their work.

47. Although having knowledge of such usage, Defendant did not reimburse Plaintiffs and similarly situated Class Members for a reasonable percentage of their work-related expenses, as required by California law as stated in *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (August 12, 2014) ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."). *See also, Aguilar v. Zep, Inc.*, 2014 US Dist LEXIS 120315, *54 (N.D.Cal. Aug. 27, 2014) (Hon. Edward Chen) (where outside sales reps used home internet and computers for work, and even admitted that they would have incurred the same expenses without work duties, the court nevertheless held that the employer was obligated to reimburse some reasonable portion of these expenses); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of home office claims processors with 2802 phone reimbursement claims for landline reimbursements where company required claims processors working from home to have a landline, but rejecting certification of claims for home office supplies as individualized).

48. Defendant's failure to pay for or reimburse the work-related business expenses of Plaintiffs and Class Members violated non-waivable rights secured to Plaintiffs and Class Members by Labor Code §2802. See Labor Code §2804. Plaintiffs and similarly situated Class Members are entitled to reimbursement for these necessary expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802(c).

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
[Labor Code § 1194]
On Behalf of Plaintiffs and the Class Against Defendant

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

50. Section 1194 of the Labor Code provides, in relevant part, “[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than minimum wage...applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this

1 minimum wage ..., including interest thereon, reasonable attorney's fees, and costs of suit."

2 51. Section 1194.2 of the Labor Code provides, in relevant part, "[i]n any action
3 under...Section 1194 to recover wages because of the payment of a wage less than the minimum
4 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated
5 damages in an amount equal to the wages unlawfully unpaid and interest thereon."

6 52. During the Class Period, Plaintiffs and other Class members were not paid at least
7 minimum wage while employed by the Defendant. As a result, Plaintiffs and other Class members
8 were denied compensation for all hours suffered or permitted to work.

9 53. Consequently, Defendant violated California Labor Code laws and minimum wage
10 laws, *inter alia*, Labor Code §§ 1194.

11 54. Plaintiffs are informed and believes and thereon alleges that Defendant intentionally,
12 willfully, and improperly failed to pay wages to Plaintiffs and other Class members.

13 55. Defendant's conduct was willful, as Defendant knew that Plaintiffs and other class
14 members were entitled to be paid wages for each hour worked, including proper minimum wages,
15 yet Defendant chose not to pay them in accordance thereto.

16 56. As a result of Defendant's wrongful conduct, Plaintiffs and other Class members
17 have been damaged in amounts to be proven at trial.

18 57. Accordingly, pursuant to sections 1194 and 1194.2 of the California Labor Code,
19 Plaintiffs and other class members are entitled to recover, either his unpaid hourly wages due, or
20 minimum wage plus interest and/or liquidated damages in an additional amount equal to the total
21 amount of wages unlawfully withheld for rest period time.

22 58. Plaintiffs and other class members seek recovery of all unpaid minimum wages,
23 liquidated damages, penalties, interest, attorneys' fees and costs of suit, pursuant to Labor Code §§
24 1194, 1194.2, and 1197, against Defendant in an amount to be proven at trial.

25 **THIRD CAUSE OF ACTION**

26 **FAILURE TO PROVIDE AND AUTHORIZE COMPLIANT MEAL PERIODS**

27 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order 4-2001 Section 11]**

28 **On behalf of Plaintiffs and the Class Against Defendant**

59. Plaintiffs re-allege and incorporate by reference each and every allegation set forth

1 in the preceding paragraphs.

2 60. California Labor Code § 226.7(a) provides, “No employer shall require any
3 employee to work during any meal or rest period mandated by an applicable order of the Industrial
4 Welfare Commission.”

5 61. Section 512(a) of the California Labor Code provides, in relevant part, that: An
6 employer may not employ an employee for a work period of more than five hours per day without
7 providing the employee with a meal period of not less than 30-minutes, except that if the total work
8 period per day of the employee is no more than six hours, the meal period may be waived by
9 mutual consent of both the employer and employee. An employer may not employ an employee for
10 a work period of more than 10 hours per day without providing the employee with a second meal
11 period of not less than 30-minutes, except that if the total hours worked is no more than 12 hours,
12 the second meal period may be waived by mutual consent of the employer and the employee only if
13 the first meal period was not waived.

14 62. During the Class Period, Defendant violated and continues to violate Labor Code §
15 512 and IWC Wage Order 4-2001 § 11 by, among other things, failing to provide and schedule
16 duty-free meal breaks on or before the fifth hour of work to Class Member and failed to advise all
17 other Class Members of their meal break rights with respect to the timing of meal breaks, failed to
18 provide Class Members with thirty-minute, uninterrupted meal periods within the first five (5)
19 hours of their shifts, and failed to pay meal break premiums for late meal breaks.

20 63. As a result of Defendant’s failure to authorize or permit lawful and timely meal
21 periods, Plaintiffs and the other Class Members frequently did not receive compliant duty-free meal
22 periods within the first five (5) hours of their work.

23 64. As a result, for each day on which Plaintiffs and other Class members were not
24 provided a timely meal break, Plaintiffs and the Class Members are entitled to recover one hour of
25 premium pay pursuant to Labor Code section 226.7 and Section 11 of the IWC Wage Order.

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FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE AND AUTHORIZE COMPLIANT REST PERIODS
[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order 4-2001]
On behalf of Plaintiffs and the Class Against Defendant

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

66. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time on the schedule called for under the law (as specified in Section 12 of the applicable Wage Order), “it has violated the wage order and is liable.”

67. During the Class Period , Defendant did not authorize Plaintiffs and the Class Members to take their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their shifts. As a result, for each day on which Plaintiffs and other Class members were not provided a timely rest breaks, Plaintiffs and the Class Members are entitled to recover one hour of premium pay pursuant to Labor Code section 226.7 and Section 12 of the IWC Wage Order.

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS
[Cal. Labor Code § 226(a)]
On behalf of Plaintiffs and the Class Members Against Defendant

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

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

Every employer shall...furnish each of his or her employees...an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all -deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

70. As set forth above, Defendant’s failure to pay Plaintiffs and the Class Members for

1 all minimum wages and meal and rest break premiums during the Class Period, the wage statements
2 issued by Defendant to Plaintiffs and the other Class Members do not indicate the correct amount of
3 gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay period
4 and the corresponding number of hours worked at each hourly rate in violation of Labor Code §
5 226(a)(1), (2), (5) and (9).

6 71. Defendant's violation of Labor Code § 226 was knowing and intentional. *See*
7 *Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the
8 defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew
9 that it was not providing total hours worked to plaintiff or other employees paid on commission"
10 even though it believed that employees paid solely on commission or commission and salary "are
11 exempt and therefore we do not record hours on a wage statement").

12 72. Defendant's failure to furnish accurate itemized wage statements has caused
13 Plaintiffs and the other Class Members to incur economic damages in that they were not aware that
14 they were owed and not paid appropriate premiums for their non-compliant statutory rest breaks
15 and meal periods. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the
16 employee to add up the daily hours shown on the time cards or other records so that the employee
17 must perform arithmetic computations to determine the total hours worked during the pay period,
18 the requirements of section 226 would not be met"); *McKenzie v. Federal Express Corp.*, 765 F.
19 Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by not including,
20 inter alia, total hours worked giving rise to claims under both Section 226 and for PAGA penalties);
21 Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated
22 Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily
23 determine the gross or net wages earned by the employee during the pay period).

24 73. In addition, Defendant's failure to furnish accurate itemized wage statements has
25 caused Plaintiffs and the other Aggrieved Employees to incur economic injuries in that they were
26 not aware of the specific inclusive dates for which their wages were being paid, so that that needed
27 to resort to other documents and to make various calculations to understand their wage and pay
28 history and to assess its accuracy. This violates Section 226 of the Labor Code. *See e.g., Cicairos v.*

1 *Summit Logistics*, 133 Cal.App.4th 949, 954 (“If it is left to the employee to add up the daily hours
2 shown on the timecards or other records so that the employee must perform arithmetic
3 computations to determine the total hours worked during the pay period, the requirements of
4 section 226 would not be met”).

5 74. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial
6 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not
7 to exceed \$4,000, as well as an award of costs and reasonable attorney’s fees, for all pay periods in
8 which the employer fails to provide accurate itemized statements to the employee causing the
9 employee to suffer injury.

10 **SIXTH CAUSE OF ACTION**
11 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
12 **[Cal. Labor Code §§ 204, 210]**
13 **On Behalf of Plaintiffs and the Class Against Defendant**

14 75. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
15 in the preceding paragraph.

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

21 77. Due to Defendant’s failure to pay Plaintiffs and the Class Members all minimum
22 wages and meal and rest break period premiums owed,⁴ Defendant violated Labor Code § 204 by

23 ⁴ Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting
24 time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal.
25 Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time
26 penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals
27 decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section
28 203 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.

1 failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and
2 consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL
3 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period
4 premiums can support claims under Labor Code §§ 203 and 204).

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

13 **SEVENTH CAUSE OF ACTION**
14 **WAITING TIME PENALTIES FOR**
15 **FAILURE TO PAY WAGES DUE ON TERMINATION**
16 **[Cal. Labor Code §§ 201-203]**
17 **On Behalf of Plaintiffs and the Class Against Defendant**

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

20 80. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of
21 an employee who is discharged or who quits, the wages of the employee shall continue as a penalty.
22 . . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

23 81. Due to Defendant’s faulty policies described above, including its failure to pay for
24 all minimum wages owed and meal and rest break premiums, Defendant violated Labor Code §
25 203, for those employees whose employment ended during the Class Period by willfully failing to
26 pay them all wages due upon the termination of their employment.

27 82. As a result, Plaintiffs and those Class Members who are former employees of
28 Defendant are entitled to collect 30 days each of wages due as waiting time penalties.

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EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
[Bus. & Prof. Code § 17200]
On Behalf of Plaintiffs and the Class Against Defendant

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

84. 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.

85. The actionable period for this cause of action is the Class Period.

86. 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.

87. As a direct and proximate result of Defendant’s unlawful, unfair, and/or fraudulent acts and practices described herein, Defendant has received and continue to hold unlawfully obtained property and money belonging to Plaintiffs and the Class in the form of unreimbursed employee cell phone and home office business expenses that reduced or offset compensation earned by Plaintiffs and Class Members.

88. Plaintiffs and similarly situated Class Members are entitled to monetary relief pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid minimum wages, meal and rest period premiums, and unreimbursed business expenses, and interest thereon during the Class Period, at rates specified by law. Defendant should be required to disgorge all the profits and gains it has reaped and restore such profits and gains to Plaintiffs and Class Members from whom they were unlawfully taken.

89. During the Class Period, Defendant committed, and continue to commit, acts of

1 unfair competition, as defined in sections 17200 *et seq.* of the California Business and Professions
2 Code because Defendant's conduct, as herein alleged has damaged Plaintiffs and the Class
3 Members by wrongfully denying them reimbursement for business expenses, and wrongfully
4 denying them minimum wages and meal and rest period premiums, and therefore was substantially
5 injurious to Plaintiffs and the Class Members.

6 90. Defendant's course of conduct, act, and practice in violation of the California laws
7 mentioned above constitute independent violations of sections 17200 *et seq.* of the California
8 Business and Professions Code.

9 91. The unlawful, unfair and fraudulent business practices and acts of Defendant, as
10 described above, have injured Plaintiffs and the Class.

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

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

19 **NINTH CAUSE OF ACTION**
20 **PENALTIES PURSUANT PAGA. LABOR CODE § 2699, *ET SEQ.***
21 **FOR VIOLATIONS OF LABOR CODE § 201, 202, 203, 204, 210, 226, 226.7, 512, 1194, 2802**
22 **PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST DEFENDANT**

23 94. Plaintiffs, on behalf of themselves and all Aggrieved Employees, reallege and
24 incorporate by reference all previous paragraphs.

25 95. Based on the above allegations incorporated by reference, Defendant has violated
26 Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 512, 1194, 2802.

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

1 Pursuant to 1194, an award to Plaintiffs and the Class for penalties pursuant to Labor Code § 1194.

2 4. On the Third Cause of Action:

3 a. A declaratory judgment that Defendant violated California Labor Code §§
4 226.7, 512 and Section 11 of IWC Wage Order 4-2001;

5 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiffs and the Class
6 Members for an hour of pay for each day that a timely, duty-free meal period was not provided
7 during the Class Period.

8 5. On the Fourth Cause of Action:

9 a. A declaratory judgment that Defendant violated California Labor Code §
10 226.7, and Section 12 of IWC Wage Order 4-2001;

11 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiffs and the Class
12 Members for an hour of pay for each day that a timely, duty-free rest period was not provided
13 during the Class Period.

14 6. On the Fifth Cause of Action:

15 a. A declaratory judgment that Defendant violated California Labor Code §226
16 by issuing inaccurate and/or incomplete wage statements that failed to include the correct amount
17 of gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay
18 period and the corresponding number of hours worked at each hourly rate to Plaintiffs and the wage
19 statement Class Members;

20 b. An award to Plaintiffs and Class Members of \$50 for each initial pay period,
21 one year prior to the filing of this Complaint through the date of trial, in which a violation of
22 Section 226 occurred and \$100 for each subsequent pay period, one year prior to the filing of this
23 Complaint through the date of trial, in which a violation of Section 226 occurred, not to exceed
24 \$4,000 for each member of the Class, as well as an award of costs and reasonable attorney's fees,
25 pursuant to Labor Code § 226(e).

26 7. On the Sixth Cause of Action:

27 a. A declaratory judgment that Defendant violated California Labor Code §§
28 204 and 210;

1 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiffs and the Class
2 for penalties pursuant to Labor Code § 210.

3 8. On the Seventh Cause of Action:

4 a. A declaratory judgment that Defendant violated California Labor Code §§
5 201 through 203;

6 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiffs and
7 the Waiting Time Class members for waiting time penalties in the amount of 30 days' wages per
8 waiting time Class Member.

9 9. On the Eighth Cause of Action:

10 a. That the Court find and declare that Defendant have violated the UCL and
11 committed unfair and unlawful business practices by failing to pay meal and rest break premiums,
12 and by failing to reimburse Plaintiffs and the Class for all their business expenses;

13 b. Restitution, including, but not limited to, the relief permitted by sections
14 226.7, and 2802 of the California Labor Code (i.e., pay as specified for meal and rest period
15 premiums and reimbursement of all business-related expenses by Plaintiffs and the members of the
16 Class during the Class Period.

17 10. On the Ninth Cause of Action:

18 a. A civil penalty against Defendant in the amount of \$100 for the initial
19 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California
20 Labor Code for Plaintiffs and the Aggrieved Employees during all of the pay periods in the PAGA
21 Period and on-going until the violations are corrected, or this subclass is certified;

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

25 c. An award of all costs incurred by the undersigned counsel for Plaintiffs in
26 connection with Plaintiffs' and Aggrieved Employees' PAGA claim against Defendant, as provided
27 for in Labor Code § 2699(g)(1).

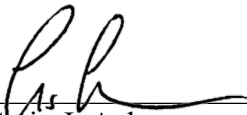
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1 11. All other relief as this Court deems proper.

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3 Respectfully submitted,

4 ACKERMANN & TILAJEF, P.C.

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6 Dated: February 22, 2022

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8 _____
9 Craig J. Ackermann, Esq.
10 Attorneys for Plaintiffs, the LWDA, and the Aggrieved
11 Employees
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