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By A. Amaral
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ASSIGNED TO
JUDGE Alesia Jones
FOR ALL PURPOSES

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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF SOLANO**

17 **FC S 058423**

18 PAUL NGUYEN, an individual, on behalf
19 of all persons similarly situated on behalf of
20 the State of California, as a private attorney
21 general, and on behalf of all Aggrieved
22 Employees,

23 PLAINTIFF,

24 v.

25 DOMINICAN UNIVERSITY OF
26 CALIFORNIA, a California non-profit
27 institution of higher education,

28 DEFENDANT.

29 CASE NO.

30 **PLAINTIFF'S CLASS ACTION & PAGA
31 REPRESENTATIVE ACTION COMPLAINT
32 FOR:**

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



1 Plaintiff PAUL NGUYEN (“Plaintiff”) brings this action against Defendant DOMINICAN
2 UNIVERSITY OF CALIFORNIA (“Defendant” or “University”) as a class action pursuant to California
3 Code of Civil Procedure § 382, and as a PAGA representative action under the Labor Code Private
4 Attorneys General Act of 2004, § 2699, *et seq.* (“PAGA”), and alleges as follows upon information and
5 belief:
6

7 **INTRODUCTION**

8 1. This is a class action pursuant to California Code of Civil Procedure § 382 on behalf of a
9 putative “Class” comprised of: to (1) all individuals who are or were employed by Defendant Dominican
10 University of California as adjunct clinical faculty members and/or clinical instructors from August 17,
11 2020 to May 31, 2022. Plaintiff alleges that from August 17, 2020 to May 31, 2022 (the “Class Period”)
12 the class members were misclassified as exempt and were thus underpaid and not given complete wage
13 statements as required by law. Here, the class is estimated to include 50 individuals.
14

15 2. This is also a representative action brought pursuant to Labor Code § 2699, *et seq.*, on
16 behalf of the State of California and the groups of “Aggrieved Employees” defined as: all individuals who
17 are or were employed by Defendant Dominican University of California as clinical faculty adjunct
18 professors and/or clinical instructors and/or in any similar capacity during the PAGA Period from August
19 17, 2020 to May 31, 2022 (the “PAGA Covered Period”). Plaintiff alleges that the Aggrieved Employees
20 have claims to civil penalties under PAGA based on the same misclassification and derivative claims of
21 the class described above.
22

23 **JURISDICTION AND VENUE**

24 3. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant
25 to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by
26 virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds
27 \$25,000, and because each cause of action asserted arises under the laws of the State of California or is
28 subject to adjudication in the courts of the State of California.
29

30 4. This Court has personal jurisdiction over Defendant because Defendant has caused injuries
31 in the county in which this Court is situated through their acts, and by their violation of the California
32 Labor Code and California state common law.
33

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

THE PARTIES

6. Plaintiff Paul Nguyen is a resident of California and at all times pertinent hereto worked for Defendant as an adjunct clinical faculty member during the Class Period.

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

8. Upon information and belief, Plaintiff, the Class Members, and all Aggrieved Employees are covered by California Industrial Welfare Commission Occupational Wage Order Nos. 4 and 5-2001.

9. Defendant Dominican University of California is a California Non-Profit Organization, which has operated within the State of California at all relevant times and has engaged in providing clinical programs to students. Upon information and belief, Defendant employed Plaintiff, the Class and the Aggrieved Employees within California during the Class Period and the Covered PAGA Period. During the Class Period, some class members resided in Solano county.

FACTUAL BACKGROUND

10. Plaintiff was employed by Defendant as an adjunct clinical faculty member at Dominican University of California teaching clinical courses during the Class Period and the PAGA Covered Period.

11. During the Class Period and the Covered PAGA Period, Defendant has uniformly compensated Class members on the basis of a certain flat rate per course per course taught, which would be paid out over the duration of the semester.

12. Defendant, however, misclassified the Aggrieved Employees and the Class as *exempt* salaried professional employees despite the fact that they did not meet the criteria for the professional or any other exemption under California state law. Aggrieved Employees and Class members should have been properly classified as non-exempt employees under state law, because Defendant failed to pay him 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, §

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

1 515, subd. (a); Cal. Code of Regs., tit. 8, § 11040 (providing that, for each exempted category, the
2 employee must earn “a monthly salary equivalent to no less than two (2) times the state minimum wage
3 for full-time employment”); see also Labor Code 515(c).

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

12 14. Thus, in order to meet the elements of the professional exemption under California state
13 law, since the applicable state minimum wage was \$12 per hour in 2019 and \$14 per hour in 2020, a
14 California university or private college would have had to pay its adjunct professors in 2020 no less than
15 \$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
16 (40 hours per week * \$14 per hour * 2 * 4 weeks).

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

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

25 17. Labor Code § 226(a) requires the issuance of bi-monthly or more frequent wage statements
26 containing various information, specifically including “the total hours worked except as provided in (j).”
27 Section 226(j) provides an exception to the requirement to include total hours worked on wage statements
28 if the employee is exempt from overtime under Section 515(a) or the applicable IWC Wage Order, and is
29

1 therefore inapplicable to Class members and Aggrieved Employees. See *Id.* section 2269(j)(1).

2 18. Labor Code section 515.7 sets out an exemption, effective September 2020, where
3 employees employed to provide instruction for a course or laboratory at an independent institution of
4 higher education are exempt from paragraphs (2), (3) and (9) of subdivision (a) of Labor section 226 and
5 Labor Code sections 510 and 512. However, in this case, Plaintiff, the Class, and the Aggrieved
6 Employees cannot meet the exemption. The second prong of Labor Code section 515.7(a)(2) requires:
7

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

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

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

14 (C) When employed under a collective bargaining agreement, payment pursuant to that
15 collective bargaining agreement, if the classification of employment in a professional capacity
16 is expressly included in the collective bargaining agreement in clear and unambiguous terms.

17 The requirements of Section 514 that mandate provisions of a collective bargaining agreement
18 shall not apply.
19

20 (b) The minimum salary required by subparagraph (B) of paragraph (2) of subdivision (a) shall be
21 calculated using classroom hours as follows:
22

23 (1) The minimum payment that is calculated using classroom hours shall encompass payment for
24 all classroom or laboratory time, preparation, grading, office hours, and other course- or
25 laboratory-related work for that course or laboratory and no separate payment shall be required.

26 The following minimum rates shall be used in this calculation:
27

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

29 19. Here, because Plaintiff, the Class, and the Aggrieved Employees do not earn a salary
30 equivalent to no less than two times the state minimum wage based on a forty-hour workweek –indeed,
31 they are not paid on a salary basis at all –, they do not fall under the exemption. To meet the new Section
32 515.7 exemption, as a threshold matter, Plaintiff, the Class, and the Aggrieved Employees must have
33

1 earned at least \$117 per hour for each classroom hour in 2020. However, Plaintiff, the Class, and the
2 Overtime Aggrieved Employees did not earn at least \$117 per hour for each classroom hour at any point
3 during the Class and PAGA Periods. Thus, they are not exempt.

4 20. During the Class Period and the PAGA Covered Period, Defendant systematically violated
5 provisions of Labor Code § 510 as to all Class members and Aggrieved Employees since the significant
6 number of the Class members worked in excess of eight hours per day and did not receive the
7 corresponding overtime pay for each additional hour worked in excess of eight hours.
8

9 21. During the Class Period and the PAGA Covered Period, Defendant systematically violated
10 provisions of Labor Code § 1198 as to all Class members and Aggrieved Employees since Plaintiff and
11 Class Members worked several hours of the off-the-clock work. The off-the-clock work consisted of
12 grading papers for each student, responding to emails, preparing and drafting letters of recommendation
13 and responding to phone calls.
14

15 22. During the Class Period and the PAGA Covered Period, Defendant systematically violated
16 provisions of Labor Code § 226(a)(2) as to all Class members and Aggrieved Employees. The wage
17 statements issued to the Class by Defendants during the Class Period did not indicate the amount of total
18 hours worked, gross and/or net wages earned, the inclusive dates of the period for which the employee is
19 paid, or the applicable hourly rates in effect during the pay period and the corresponding number of hours
20 worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5), (6) and (9). Defendants
21 arguably also violated Labor Code § 226.2(a)(2), which required Defendant's wage statements to
22 separately state the total hours of compensable rest and recovery periods, the rate of compensation, and
23 the gross wages paid for those periods during the pay period, as well as the total amount of non-productive
24 working time. must also appear on the wage statement.
25

26 **CLASS ACTION ALLEGATIONS**

27 23. This action has been brought and may properly be maintained as a class action under Code
28 of Civil Procedure § 382 because there is a well-defined community of interest in the litigation, the
29 proposed class is easily ascertainable, and Plaintiff, a non-exempt employee of Defendant, subject to
30 Defendant's policies and practices, was subject to all the violations of the California Labor Code and
31 Wage Order alleged herein, is a proper representative of the Class:
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1 (1) Numerosity: The potential members of the Class as defined are so numerous that
2 joinder of all the members of the Class is impracticable. While the precise number of Class
3 Members has not been determined at this time, Plaintiff is informed and believe that Defendant
4 has employed 50 Class members in California. The Class Members are dispersed throughout
5 California. Joinder of all members of the proposed classes is therefore not practicable.
6

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

- 10 i. Whether Defendants improperly misclassified Class members as salaried exempt
11 professional employees under California law;
- 12 ii. Whether Defendants failed to provide Plaintiff and the members of the Class
13 complete wage statements with information in violation of Labor Code Section
14 226(a) and each relevant subsection thereunder, including 226(a)(2);
- 15 iii. Whether Defendants failed to pay all minimum wages and overtime wages due to
16 Plaintiff and the members of the Class in violation of Labor Code sections 510,
17 1194 and 1197;
- 18 iv. Whether Defendants failed to provide Labor Code compliant meal and rest breaks
19 to Plaintiff and the members of the Class in violation of Labor Code sections
20 226.7, 510 and Sections 11 and 12 of the applicable IWC Wage Order;
- 21 v. Whether Defendants failed to make timely payments of all wages due during
22 employment and following termination of employment in violations of Labor
23 Code sections 203, 204 and 210;
- 24 vi. Whether Defendants failed to reimburse Class members for a reasonable portion
25 of their work-related cell phone expenses in violation of Labor Code section
26 2802;
- 27 vii. The proper formula(s) for calculating damages, interest, and penalties owed to
28 the Class;
- 29 viii. The nature and extent of class-wide damages.
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1 b. Typicality: Plaintiff's claims are typical of the claims of the Class. Plaintiff and the
2 Class members similarly sustained injuries and damages, did not receive all wages due, and were deprived
3 of property rightly belonging to them, arising out of and caused by Defendant's common course of conduct
4 in violation of law as alleged herein, in similar ways and for the same types of wage, wage statements and
5 expenses.

6
7 c. Adequacy of Representation: Plaintiff is a member of the Class and will fairly and
8 adequately represent and protect the interests of the Class. Plaintiff's interests do not conflict with those
9 of the Class. Counsel who represents Plaintiff is competent and experienced in litigating large wage and
10 hour class actions, including actions similar to this one, and will devote sufficient time and resources to
11 the case and otherwise adequately represent the Class.

12 d. Superiority of Class Action: A class action is superior to other available means for
13 the fair and efficient adjudication of this controversy. Individual joinder of all Class members is not
14 practicable, and questions of law and fact common to the Class predominate over any questions affecting
15 only individual members of the Class. Each Class member has been damaged or may be damaged in the
16 future by reason of Defendants unlawful policies and/or practices as described herein. Certification of this
17 case as a class action will allow those similarly situated persons to litigate their claims in the manner that
18 is most efficient and economical for the parties and the judicial system. Certifying this case as a class
19 action is superior because it allows for efficient and full adjudication of the wage statement claims at issue
20 (where the maximum amount that any Class Member could recover would be \$4,000), and it would
21 effectuate California's strong public policy of protecting employees from violations of the Labor Code in
22 their employment. If this action is not certified as a Class Action, it will be impossible as a practical
23 matter, for many or most Class Members to bring individual actions to recover penalties due from
24 Defendants, due to the relatively small amounts of such individual recoveries relative to the costs and
25 burdens of litigation.

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29 **FIRST CAUSE OF ACTION**
30 **FAILURE TO PAY MINIMUM WAGES**
31 **[Cal. Labor Code §§ 226.2, 1194]**
32 **On behalf of Plaintiff and the Class**

33 24. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the

preceding paragraphs.

25. 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.

26. 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.

27. 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 Plaintiff, the Class, and the Aggrieved Employees, must be compensated for all the hours that they work, including non-productive time.

28. However, and due to Defendant’s misclassification of Plaintiff and the Class as exempt, Plaintiff 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

1 a result, Plaintiff and the Class, were denied compensation for all hours worked, in violation of Cal. Labor
2 Code §1194, 226.2, and were denied compensation at the minimum wage in violation of Cal. Labor Code
3 §§1197, 1199, 1199.5.

4 29. Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover
5 liquidated damages for violations of Labor Code § 1194. Where an employee, as Plaintiff and the Class
6 are not paid for all hours worked under Labor Code § 1194 and/or 226.2, the employee may recover
7 minimum wages for the time associated with the overtime for which they received no compensation. (See
8 *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees suing
9 for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were
10 paid less than minimum wage]; *accord Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No.
11 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-2 I.)

12 30. Since Defendant failed to provide Plaintiff, the Class, and all Aggrieved Employees with
13 compensation for all hours worked, each are entitled to recover liquidated damages under Labor Code §§
14 1194.2 and 226.2 through PAGA. Based upon these same factual allegations, Plaintiff also seek on behalf
15 of all Aggrieved Employees penalties under Labor Code §§ 1199 and 1199.5.

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18 **SECOND CAUSE OF ACTION**
19 **FAILURE TO PAY OVERTIME WAGES**
20 **[Cal. Labor Code § 510]**
21 **On behalf of Plaintiff and the Class**

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

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

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

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

6
7 35. Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order Nos. 4 and 5,
8 Defendant did not pay Plaintiff and the Class any overtime wages corresponding to one and a half time of
9 Plaintiff and the Class's hourly rates of pay. Plaintiff and the Class often worked eight hours per day and
10 often worked over 40 hours per week. Defendant violated Labor Code § 510 by failing to pay Plaintiff
11 and the Class their overtime wages at the applicable overtime rates, including daily overtime and weekly
12 overtime, and instead merely paid Plaintiff and the Class straight time wages for all hours worked.

13
14 **THIRD CAUSE OF ACTION**
15 **FAILURE TO PROVIDE COMPLIANT REST PERIODS**
16 **AND PAY MISSED REST BREAK PREMIUMS**
17 **[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order Nos. 4-5]**
18 **On behalf of Plaintiff and the Class**

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

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

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

27 39. Under the applicable IWC Wage Orders 4/5-2001 an employer must authorize and permit
28 all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.
29 Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest
30 or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order
31 of the Industrial Welfare Commission ("IWC")." Thus, the Wage Orders set when and for how long the
32 rest period must take place, and the Labor Code establishes that violations of the Wage Order violate
33

California law, and sets forth the premium pay employers must pay their employees when employers fail to provide rest periods.

40. Because Defendant misclassified Plaintiff and the Class as exempt employees without the proper compensation, Defendant failed to implement a lawful rest period policy that informed Plaintiff and the Class of their right to receive lawful rest periods for shifts that were more than at least a major fraction of four hours worked. Specifically, Defendant failed to separately compensate Plaintiff and the Class for the non-productive time associated with their rest periods.

41. Pursuant to Labor Code § 226.7 and Wage Orders 4/5-2001, Defendant failed to provide 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 Plaintiff and the Class as exempts, Defendant failed to make rest breaks available to these employees.

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

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

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE COMPLIANT MEAL PERIODS AND PAY
MISSED MEAL BREAK PREMIUMS
[Cal. Labor Code §§ 226.7, 512; Section 11 of IWC Wage Order No. 4/5]
On behalf of Plaintiff and the Class

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

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

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

5 47. As with rest periods, under Labor Code § 512, if an employer maintains a uniform policy
6 that does not authorize and permit the amount of mealtime called for under the law (as specified in the
7 applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the
8 context of rest breaks that employer liability attaches from adopting an unlawful policy:
9

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

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

15 48. As a result of Defendant misclassifying Plaintiff and the Class as exempts, Defendant
16 violated Labor Code § 512 by failing to advise Plaintiff and the Class of their right to receive thirty (30)
17 minute uninterrupted meal periods within the first five hours of the employee’s shift. Defendant’s policies
18 were such that Plaintiff and the Class were prevented from taking meal periods of 30 minutes as required
19 by law.

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

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

FIFTH CAUSE OF ACTION
FAILURE TO PAY WAGES ON A TIMELY BASIS
[Cal. Labor Code §§ 204, 210]
On behalf of Plaintiff and the Class

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

52. 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.

53. Due to Defendant’s failure to pay Plaintiff and the other Class Members for minimum and overtime wages and meal and rest period premiums owed, 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).

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

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SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES FOR
FAILURE TO PAY WAGES DUE ON TERMINATION
[Cal. Labor Code §§ 201-203]
On Behalf of Plaintiff and the Waiting Time Penalty Subclass

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

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

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

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

59. By virtue of its misclassification of Class Members, Defendant willfully failed to pay Plaintiff and other class members of the waiting time penalty who are no longer employed by Defendant minimum wages, for their regular and overtime wages due, and meal and rest break premiums as required by California Labor Code §§ 201 and 202.

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

SEVENTH CAUSE OF ACTION
FAILURE TO PAY BUSINESS EXPENSES
[Cal. Labor Code § 2802]
On behalf of Plaintiff and the Class

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

62. The actionable period for this cause of action is three years prior to the filing of the

1 Complaint through the present, and on-going until the violations are corrected or the Class is certified.

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

3
4 An employer shall indemnify his or her employee for all necessary expenditures or losses
5 incurred by the employee in direct consequence of the discharge of his or her duties, or of
6 his or her obedience to the directions of the employer, even though unlawful, unless the
7 employee, at the time of obeying the directions, believed them to be unlawful.

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

9 64. Thus, Class Members are entitled to reimbursement for the expenses they incur during the
10 course of their duties. The duty to reimburse even extends to the use of equipment the employee may
11 already own, and would be required to pay for anyway. *Cochran v. Schwan's Home Serv., Inc.* (2014) 228
12 Cal. App. 4th 1137, 1144 (“The threshold question in this case is this: Does an employer always have to
13 reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, or is the
14 reimbursement obligation limited to the situation in which the employee incurred an extra expense that he
15 or she would not have otherwise incurred absent the job? The answer is that reimbursement is always
16 required. Otherwise, the employer would receive a windfall because it would be passing its operating
17 expenses on to the employee.”) After all, the purpose of 2802 is to “prevent employers from passing along
18 their operating expenses onto their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, (2007) 42 Cal.
19 4th 554, 562.

20 65. Here, Defendant did not reimburse Plaintiff and the Class Members for their reasonable
21 and necessary cell phone expenses related to their work-related cell phone usage.

22 66. Defendant specifically required Plaintiff and the Class Members to pay for their own
23 expenses, including personal cell phone and computer usage for work-related functions, while performing
24 their duties. Often, Plaintiff and the Class Members were required to respond to the emails, phone call
25 while at home, or prepare for the classes using their own materials.

26 67. Therefore, Defendant has violated § 2802 with respect to Plaintiff and the Class.

27
28 **EIGHTH CAUSE OF ACTION**
29 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
30 **[Cal. Labor Code § 226(a) and 226.2]**
31 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

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

69. 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...

70. During the Class Period, Defendant issued uniform wage statements to all Class Members.

71. 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).

72. 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.

73. 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).

74. 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).

75. The wage statements Defendant issued to Class Members during the Class Period failed to

1 indicate the inclusive dates of the period for which the employee is paid in violation of Labor Code §
2 226(a)(6). Instead, Defendant offers a flat sum per course to the Class Members, payable in equally
3 divided portions spread over the course of the semester. However, the amounts paid are not reflective of
4 the actual working hours performed within the inclusive dates listed on the wage statement.

5
6 76. The wage statements that Defendants issued to Class Members during the Class Period
7 failed to set forth all applicable hourly rates in effect during the pay period and the corresponding number
8 of hours worked at each hourly rate by the employee in violation of Labor Code § 226(a)(9).

9 77. Moreover, Labor Code Section 226.2(a)(2)(A) provides that, for piece-rate workers, “The
10 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified
11 in that subdivision, separately state the following to which Section 226 shall also be applicable: (A) The
12 total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid
13 for those periods during the pay period.” The total amount of non-productive working time must also
14 appear on the wage statement. *See*, Labor Code Section 226.2(a)(2)(B). Here, and as described above,
15 the wage statements provided to Plaintiff and the other Class Members failed to include the total hours
16 worked, including time for non-teaching tasks and rest periods, and the corresponding number of hours
17 worked at each hourly rate in violation of Labor Code Sections 226(a) and 226.2. The wage statement also
18 did not include the number of piece rate units earned and the applicable piece rate in effect.
19

20
21 78. Labor Code § 226(e) provides:

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

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

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

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

(ii) Which deductions the employer made from gross wages to determine the net wages
paid to the employee during the pay period. Nothing in this subdivision alters the ability

of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

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

(iv) 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.

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

80. 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 Plaintiff and the Class

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

82. 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.

83. 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

1 of action is from May 20, 2018 through the present, and on-going until the violations are corrected or the
2 Class is certified.

3 84. Section 90.5(a) of the Labor Code states that it is the public policy of California to enforce
4 vigorously minimum labor standards in order to ensure employees are not required to work under
5 substandard and unlawful conditions, and to protect employers who comply with the law from those who
6 attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum
7 labor standards.
8

9 85. As a direct and proximate result of Defendant's unlawful business practices, Plaintiff and
10 the Class Members have suffered economic injuries. Defendant has profited from its unlawful, unfair,
11 and/or fraudulent acts and practices.
12

13 86. Plaintiff and similarly situated Class Members are entitled to monetary relief pursuant to
14 Business & Professions Code §§ 17203 and 17208 for all unpaid minimum wages and overtime, and
15 unpaid meal and rest period premiums, from at least four years prior to the filing of this complaint through
16 to the date of such restitution, at rates specified by law. Defendant should be required to disgorge all the
17 profits and gains it has reaped and restore such profits and gains to Plaintiff and Class Members, from
18 whom they were unlawfully taken.
19

20 87. Through its actions alleged herein, Defendant has engaged in unfair competition within the
21 meaning of section 17200 of the California Business & Professions Code, because Defendant's conduct,
22 as herein alleged has damaged Plaintiff and the Class Members by wrongfully denying them minimum
23 wages and overtime and wrongfully denying them missed meal and rest period premiums, and therefore
24 was substantially injurious to Plaintiff and the Class Members.
25

26 88. Defendant engaged in unfair competition in violation of sections 17200 et seq. of the
27 California Business & Professions Code by violating Section 1194 of the California Labor Code, and
28 Section 12 of the IWC Wage Order No. 4.
29

30 89. Defendant's course of conduct, act and practice in violation of the California laws
31 mentioned above constitute independent violations of sections 17200 et seq. of the California Business
32 and Professions Code.
33

90. Plaintiff and Class Members are entitled to enforce all applicable penalty provisions of the

1 Labor Code pursuant to Business & Professions Code § 17202.

2 91. Plaintiff has assumed the responsibility of enforcement of the laws and public policies
3 specified herein by suing on behalf of themselves and other Class Members previously or presently
4 employed by Defendant in California. Plaintiff's success in this action will enforce important rights
5 affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public
6 interest. Therefore, an award of reasonable attorneys' fees to Plaintiff are appropriate pursuant to Code
7 of Civil Procedure §1021.5.
8

9 **TENTH CAUSE OF ACTION**

10 **PENALTIES PURSUANT TO PAGA**

11 **[Cal. Labor Code § 2699 *Et Seq.* based on violation of Section 226(a)]**

12 **PLAINTIFF AND THE AGGRIEVED EMPLOYEES AGAINST DEFENDANT**

13 92. Plaintiff realleges and incorporates by reference all previous paragraphs.

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

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

19 (1) \$100 for the initial violation per employee per pay period; and

20 (2) \$200 for each subsequent violation per employee per pay period.

21 95. These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
22 Development Agency (LWDA) and twenty-five percent (25%) to the affected employees. Arguably, these
23 penalties may be stacked separately for each of Defendants' violations of the California Labor Code. *See*
24 *e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S.Dist. LEXIS 86975, at
25 *59, fn. 77 (C.D.Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked PAGA
26 penalties, that "PAGA penalties can be 'stacked,' *i.e.*, multiple PAGA penalties can be assessed for the
27 same pay period for different Labor Code violations."); *See Lopez v. Friant & Assocs., LLC*, No. A148849,
28 2017 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26, 2017) ("hold[ing] a plaintiff seeking civil penalties
29 under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the 'injury' and
30 'knowing and intentional' requirements of section 226(e)(1) and acknowledging that a Plaintiff could
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32
33

1 recover separately under PAGA for violations of Labor Code §§ 226(a) and 226(e)); *accord Schiller v.*
2 *David's Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July
3 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008
4 WL 3863489, at * 2-3 (E.D. Cal. Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW,
5 2010 U.S. Dist. LEXIS 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

6
7 96. In addition, to the extent permitted by law, Plaintiff seek PAGA penalties for Defendant's
8 violations of Labor Code § 226(a). *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017); *Bell*
9 *v. Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS
10 204493, at *5 [finding after Friant that "[t]o the extent the Court's Order [granting summary judgment to
11 Home Depot] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiff's
12 derivative claim for [PAGA] penalties under section 226(e)...the Court's Order should not be read to grant
13 summary judgment on Plaintiff's claim for PAGA penalties based on violation of section 226(a)."]]. For
14 violations of Labor Code § 226(a), Plaintiff seeks the default penalty provided by Labor Code § 226.3.
15 Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be
16 subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in
17 an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
18 citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep
19 the required in subdivision (a) of Section 226." Accordingly, through PAGA and to the extent permitted
20 by law Plaintiff and the Aggrieved Employees are entitled to recover penalties per Labor Code § 226.3
21 and PAGA for each of Defendants' numerous violations of Labor Code § 226(a).
22
23

24 97. Pursuant to Labor Code § 2699.3 (a), on **January 14, 2022**, Plaintiff gave written notice
25 by certified mail to Defendant, and via e- filing to the LWDA of their claims for violations alleged herein
26 and the theories supporting them. The LWDA has not responded to Plaintiff's PAGA letter within 65
27 days. All required fees have also been paid to the LWDA. Accordingly, Plaintiff has fulfilled all
28 administrative prerequisites to the filing and pursuit of their PAGA claims on himself and all other current
29 and former Aggrieved Employees of Defendant.
30

31 98. As a result of the acts alleged above, Plaintiff seek penalties under Labor Code § 2699, et
32 seq. because of Defendant's above-described Labor Code violations and IWC Wage Orders 4-2001.
33

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff, on behalf of herself and the members of the Class, and on behalf of the
3 LWDA and the aggrieved employees, prays for judgment against Defendant as follows:

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

5 2. On the First Cause of Action:

6 a. A Declaratory judgment that Defendant has violated California Labor Code
7 sections 226.2 and 1194;

8 b. An award to Plaintiff and the other members of the Class in the amount of their
9 unpaid minimum wages, plus liquidated damages;

10 3. On the Second Cause of Action:

11 a. A Declaratory judgment that Defendant has violated California Labor Code § 510;

12 b. An award to Plaintiff and the other members of the Class in the amount of their
13 unpaid overtime compensation for worked performed, plus interest during the Class Period;

14 4. On the Third Cause of Action:

15 a. A declaratory judgment that Defendant has violated California Labor Code § 226.7,
16 and Section 12 of IWC Wage Order No. 4-2001;

17 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class Members
18 for an hour of pay for each day that a compliant rest period was not provided during the Class Period;

19 5. On the Fourth Cause of Action:

20 a. A declaratory judgment that Defendant has violated California Labor Code sections
21 226.7, 512, and Section 11 of IWC Wage Order No. 4-2001;

22 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class Members
23 for an hour of pay for each day that a compliant meal period was not provided during the Class Period;

24 6. On the Fifth Cause of Action:

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

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

1 7. On the Sixth Cause of Action:

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

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

7 8. On the Seventh Cause of Action:

8 a. A declaratory judgment that Defendant violated California Labor Code § 2802;

9 b. Pursuant to Labor Code §2802, an award to Plaintiff and the Class for penalties
10 pursuant to Labor Code § 2802;

11 9. On the Eighth Cause of Action:

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

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

20 10. On the Ninth Cause of Action:

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

24 b. Restitution, including, but not limited to, the relief permitted by sections 1194, 510,
25 226.7 of the California Labor Code (i.e., pay as specified for unpaid minimum wages and overtime and
26 meal and rest period premiums to Plaintiff and the members of the Class during the Class Period);

27 11. On the Tenth Cause of Action:

28 a. A civil penalty against Defendant in the amount of \$100 for the initial violation and
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1 \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code for
2 Plaintiff and for member of the Wage Statement and PAGA Penalty Subclass during all of the pay periods
3 in the one year preceding the filing of this Complaint through the present and on-going until the violations
4 are corrected or this subclass is certified;

5 b. An award of reasonable attorney's fees against Defendant as specified in Labor
6 Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA
7 claims; and
8

9 c. An award of all costs incurred by the undersigned counsel for Plaintiff in
10 connection with Plaintiff's and Class Members' PAGA claim against Defendant, as provided for in Labor
11 Code § 2699(g)(1);
12

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

14
15 Dated: June 16, 2022

Respectfully,

16 **ACKERMANN & TILAJEF, P.C.**
17 **EMPLOYMENT RIGHTS LAW GROUP, APC**

18
19 By:



20 Craig Ackermann, Esq.

21 Amir Seyedfarshi, Esq.

22 *Attorneys for Plaintiff and all others similarly*
23 *situated*
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