

1 **ACKERMANN & TILAJEF, P.C.**
2 Craig J. Ackermann (SBN 229832)
3 cja@ackermanntilajef.com
4 1180 South Beverly Drive, Suite 610
5 Los Angeles, California 90035
6 Telephone: (310) 277-0614
7 Facsimile: (310) 277-0635

Electronically Filed
4/8/2022 6:44 PM
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Sonia Krohn, Deputy

\$435 PAID
\$1,000 COMPLEX CASE FEE PAID

8 *Attorneys for Plaintiff, the Class, the LWDA, and the Aggrieved Employees*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTRY OF STANISLAUS**

11 **BENEDICTO A. RODRIGUEZ,**
12 individually and on behalf of all others
13 similarly situated,

14 Plaintiff,

15 v.

16 **JON CASEY CONSTRUCTION, INC., a**
17 California corporation; and DOES 1-10,
18 inclusive.

19 Defendant.

CASE NO: CV-22-001553

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

- (1) **FAILURE TO PAY ALL MINIMUM WAGES
(LABOR CODE §§ 1194, 1197, 1197.1, 1198,
1199)**
- (2) **FAILURE TO PAY OVERTIME WAGES
(LABOR CODE §§ 510, 1198; IWC WAGE
ORDER NO. 16)**
- (3) **FAILURE TO PAY PREVAILING WAGES
(LABOR CODE § 1771)**
- (4) **FAILURE TO PROVIDE COMPLIANT
MEAL PERIODS AND/OR PAY MISSED
MEAL PERIOD PREMIUMS (LABOR CODE
§§ 226.7, 512; IWC WAGE ORDER NO. 16-
2001 § 11)**
- (5) **FAILURE TO FINAL PAY WAGES (LABOR
CODE §§ 201-203)**
- (6) **FAILURE TO PROVIDE COMPLETE
ITEMIZED WAGE STATEMENTS (LABOR
CODE § 226)**
- (7) **FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210)**
- (8) **UCL VIOLATIONS (BUS. & PROF. CODE §§
17200-17204)**
- (9) **PAGA AND OTHER PENALTIES (LABOR
CODE §§ 2698 – 2699.5)**

DEMAND FOR JURY TRIAL

20
21
22
23
24
25
26
27
28
This case has been assigned to Judge Sandhu, Sonny S.
Dept. 24
Department _____, for all purposes including Trial.

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

4 **OVERVIEW OF CLAIMS**

5 1. Plaintiff brings this action on behalf of himself and all others similarly situated, as a
6 class action, as a representative action pursuant to the California Private Attorneys General Act,
7 Labor Code § 2699, *et seq.* (“PAGA”), and on behalf of the California general public, against
8 Defendant Jon Casey Construction, Inc. and DOES 1 to 10 (collectively, “Defendant”) for (1) failure
9 to pay all minimum wages due for time spent in pre shift COVID temperature checks and
10 questioning; (2) failure to pay overtime wages; (3) failure to pay prevailing wages; (4) failure to
11 provide compliant meal periods and pay missed meal period premiums; (5) failure to final pay
12 wages; (6) failure to provide complete and accurate wage statements to current and former
13 employees in California within the one year prior to the filing of this Complaint; (7) failure to pay
14 timely wages to employees based on the foregoing; (8) unfair business practices based on the
15 foregoing; and (9) PAGA and other penalties based on the foregoing. As a result of the foregoing,
16 Defendant have violated California statutory laws as described below.

17 2. The “Class Period” is designated as the period from four years prior to the filing of
18 this action through the trial date. The PAGA Period is one year from the date of Plaintiff’s PAGA
19 letter to the LWDA (i.e., from February 1, 2021) through the present and on-going. Defendant’s
20 violations of California’s wage-hour laws and unfair competition laws, as described more fully
21 below, have been ongoing throughout the Class Period and PAGA Periods.

22 **VENUE**

23 3. Venue is proper in this county under Section 395.5 of the California Code of Civil
24 Procedure. The Plaintiff is a resident of Stanislaus County. Many of the putative Class Members
25 were performed work during the Class Period for Defendant in Stanislaus County and throughout
26 California. Defendant operates a construction company headquartered in the county of Fresno. Many
27 of the acts alleged herein occurred in Stanislaus County, where the Plaintiff resided at all relevant
28 times. Venue is therefore proper in Stanislaus County.

1 **JURISDICTION**

2 4. Defendant is within the jurisdiction of this Court. Defendant conducts business by
3 operating a construction company in California. Thus, Defendant has obtained the benefits of the
4 laws of the State of California. In addition, Plaintiff asserts no claims arising under federal law.
5 Rather, Plaintiff brings causes of action based solely on, and arising from, California law. The claims
6 of the class are also based solely on California law described herein. Therefore, jurisdiction is
7 appropriate in Stanislaus County Superior Court.

8 **THE PARTIES**

9 5. Plaintiff is a California resident of Stanislaus County who worked for Defendant as
10 a construction worker during the relevant time period, from March 2017 through February 2022.

11 6. From at least four years from the filing of this Complaint through the present, and
12 on-going, Defendant's employees, at various times throughout the Class Period, including Plaintiff
13 during his employment, were not paid all minimum wages owed for the time spent in pre shift
14 COVID temperature checks and questioning; were not paid all overtime wages; were not paid for
15 all prevailing wages; were not provided compliant meal periods nor paid missed meal period
16 premiums; were not provided final pay wages; were not provided accurate and/or complete itemized
17 wage statements; and did not receive timely wages.

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

20 Plaintiff and all other individuals who are or were employed by Defendant Jon Casey
21 Construction, Inc. as non-exempt hourly-paid employees who worked at least one shift in
22 California from February 1, 2021 to the present and ongoing (hereinafter referred to as
"Aggrieved Employees").

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

24 Plaintiff and all other individuals who are or were employed by Defendant Jon Casey
25 Construction, Inc. as non-exempt hourly-paid employees who worked at least one shift in
26 California during the Class Period from four years prior to the filing of this complaint through
27 the end of the class certification (hereinafter referred to as the "Class" or "Class Members").

28 a. The members of the Class who worked for Defendant during the one year preceding
the filing of this Complaint constitute the "Wage Statement and Penalty Subclass."

9. Defendant Jon Casey Construction, Inc. is a California corporation doing business in Fresno County, Stanislaus County and throughout California. Defendant operates a construction company.

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

11. Plaintiff is informed and believes, and based thereon alleges, that Defendant in all respects acted as the employer of Plaintiff, the Class, and the Aggrieved Employees.

12. Defendant employed Plaintiff, the Class, and the Aggrieved Employees as non-exempt, hourly-paid employees in California at various times during the Class Period and PAGA Period. On information and belief, Defendant employed approximately 70 to 100 current and former hourly-paid employees in California during the Class Period.

FACTUAL ALLEGATIONS

13. Defendant operates and, at all times during the Class Period and PAGA Periods, have done business in California as a construction company. Defendant, in the course of operating their business in California during the Class Period and PAGA Period, employed Plaintiff, the Class, and the Aggrieved Employees as hourly-paid workers.

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

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

8 16. Here, Defendant required Plaintiff, the Class, and all Aggrieved Employees to
9 regularly perform work-off-the-clock for which they did not receive any compensation. Specifically,
10 as part of the Class's and Aggrieved Employees' employment, Defendant required and continues to
11 require Plaintiff, the Class, and all Aggrieved Employees to undergo COVID-19 temperature checks
12 and screenings before the start of their shifts, when they are not "clocked in." Specifically, from
13 around March 2020 and continuing to the present, Plaintiff, the Class, and Aggrieved Employees
14 were given a temperature check by Defendant, while off-the- clock and pre-shift, before being
15 allowed to clock in for their shifts. From around March 2020 and continuing to the present, Plaintiff,
16 the Class, and the Aggrieved Employees underwent the same temperature checks on Defendant's
17 premises off the clock. Although Defendant maintained a common policy and practice of requiring
18 Plaintiff, the Class, and the Aggrieved Employees to stand/wait in line pre-shift for COVID-19
19 temperature checks and screenings during the Class and PAGA Periods, Defendant failed to
20 compensate Plaintiff, the Class, and the other Aggrieved Employees for such time.

21 17. Employees must be paid for all "hours worked." Hours worked is considered "the
22 time during which an employee is subject to the control of an employer, and includes all the time
23 the employee is suffered or permitted to work, whether or not required to do so...." *See* Wage Order
24 5-2001, subd. 2(K); *see also Mendiola v. CPS Security Solutions, Inc.*, 60 Cal.4th 833 (2015). "[I]t
25 is only necessary that the worker be subject to the control of the employer in order to be entitled to
26 compensation." *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 584 (2000) (internal citations
27 omitted). An employee is under the employer's control and entitled to compensation when the
28 employer "'directs, commands or restrains' an employee." *Morillion*, 22 Cal.4th at 583 (internal

1 citation omitted).

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

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

16 We also emphasize that whether an activity is required remains probative in
17 determining whether an employee is subject to the employer’s control. But, at least
18 with regard to cases involving *onsite* employer-controlled activities, the mandatory
19 nature of an activity is not the only factor to consider. We conclude that courts may and
20 should consider additional relevant factors—including, but not limited to, the location
21 of the activity, the degree of the employer’s control, whether the activity primarily
22 benefits the employee or employer, and whether the activity is enforced through
23 disciplinary measures—when evaluating such employer-controlled conduct.

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

23 20. To be free of the employer’s control for purposes of “hours worked,” the employee
24 must be free to use his or her time “effectively for his or her own purposes.” *Morillion*, 22 Cal.4th
25 at 583.

26 21. Here, as in *Frlekin*, the Class and Aggrieved Employees could not avoid Defendant’s
27 pre-shift COVID-19 temperature checks and questioning (which took place on Defendant’s premises
28 and before employees could clock in) and could not then use their time effectively for their own

1 purposes. As such, Defendant exercised compensable control over the Class and Aggrieved
2 Employees undergoing and who underwent COVID-19 temperature checks, and then sometimes,
3 stood in line to do so, and owes wages to the Class and Aggrieved Employees for this time.

4 22. Notably, there is no de minimis defense for such time. *See, Troester v. Starbucks*
5 *Corp.*, 5 Cal.5th 829 (2018) (the California Supreme Court held that, in light of new technologies
6 allowing time-tracking with specificity, the de minimis principle was not applicable in the context
7 of an alleged policy requiring employees to work minutes off the clock routinely); *see also, Frlekin*,
8 8 Cal.5th at 1046 (“hours work is defined as the time during which an employee is subject to the
9 control of an employer, and includes all the time the employee is suffered or permitted to work,
10 whether or not required to do so[,]” including time spent on-site undergoing security checks”).

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

16 **“Q: Must my employer pay me for time spent at my employer’s worksite completing**
17 **certain medical checks (including temperature checks) before beginning a shift?**

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

22 The term “hours worked” means the time during which a worker is subject to the control
23 of an employer and includes all the time the worker is suffered or permitted to work,
24 whether or not required to do so. Under this definition, one way to determine whether
25 time a worker spends performing a task is compensable—that is, whether it is time
26 “worked”—is whether the employer exercised control over the worker by requiring the
27 worker to perform that task.

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

24. Defendant’s policy and practice of requiring Plaintiff, the Class, and the Aggrieved
Employees to undergo pre-shift COVID-19 temperature checks and questioning, clearly violated

1 Labor Code Section 1194. As a result of Defendant's policy and practices described above,
2 Defendant regularly failed to pay Plaintiff, the Class, and all Aggrieved Employees for all hours
3 worked in violation of Labor Code Sections 1194 and 1197.

4 25. Labor Code Section 1197.1, subdivision (a), authorizes employees who are paid less
5 than the minimum fixed by an applicable state or local law, or by an order of the commission a civil
6 penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
7 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
8 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same
9 specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period
10 for which the employee is underpaid regardless of whether the initial violation is intentionally
11 committed. As set forth above, Defendant failed to compensate Plaintiff, the Class, and all
12 Aggrieved Employees for all hours worked. Accordingly, through PAGA and to the extent permitted
13 by law Plaintiff, the Class, and all Aggrieved Employees are entitled to recover liquidated damages
14 for violations of Labor Code § 1197.1. Based upon these same factual allegations, Plaintiff, the
15 Class, and all Aggrieved Employees are entitled to penalties under Labor Code Sections 203 and
16 1197.1 and 1199.

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

22 27. Labor Code § 510 requires an employer to compensate an employee who works more
23 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
24 worked on the seventh consecutive day no less than one and one-half times the "regular rate of Pay"
25 for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no
26 less than twice the regular rate of pay when an employee works more than twelve (12) hours in a
27 day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor
28 Code §§ 1194, Plaintiff, the Class, and the Aggrieved Employees could not agree to work for a lesser

1 wage than the amount proscribed by Labor Code § 1194.

2 28. On a regular basis until December 2020, Plaintiff, the Class, and the Aggrieved
3 Employees worked more than 8 hours in a day and more than 40 hours in a week; however,
4 Defendant failed to pay overtime wages at the appropriate rate due to the fact that Defendant often
5 paid regular hours at different rates and only paid overtime wages at 1.5 times the \$14 per hour base
6 rate even when Plaintiff, Class Members and Aggrieved Employees often worked hours at rates as
7 high as \$60.65 per hour. Additionally, Defendant also failed to pay overtime wages for time spent
8 by Plaintiff, the Class, and the Aggrieved Employees undergoing pre-shift COVID-19 temperature
9 screenings. Therefore, Defendant violated Labor Code § 510 and Section 3(A) of the applicable IWC
10 Wage Order by failing to pay all overtime wages due at the applicable overtime rate, and by failing
11 to pay overtime for overtime hours spent on COVID-19 temperature checks and screenings.

12 29. Labor Code section 1771 requires, except for public works projects of \$1,000 or less,
13 not less than the general prevailing rate of per diem wages for work of a similar character in the
14 locality in which the public work is performed, and not less than the general prevailing rate of per
15 diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all
16 workers employed on public works.

17 30. Here, Plaintiff, the Class, and the Aggrieved Employees worked on public works
18 projects of more than \$1,000 and were not paid the prevailing rate of per diem wages for work of a
19 similar character in the locality in which the public work is performed. Therefore, Defendant violated
20 Labor Code section 1771 by failing to pay the required prevailing wages to Plaintiff, the Class, and
21 the Aggrieved Employees.

22 31. California Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order
23 require employers to provide meal periods and to pay an employee one (1) additional hour of pay at
24 the employee's regular rate for each workday that a meal period is not provided. Pursuant to Labor
25 Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require,
26 cause or permit an employee to work for a period of more than five (5) hours per day without
27 providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except
28 that if the total work period per day of the employee is not more than six (6) hours, the meal period

1 may be waived by mutual consent of both the employer and the employee. Under California law,
2 first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*,
3 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable
4 IWC Wage Order also require employers to provide a second meal break of not less than thirty (30)
5 minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional
6 hour of pay at the employee's regular rate, except that if the total hours worked is no more than
7 twelve (12) hours, the second meal period may be waived by mutual consent of the employer and
8 the employee only if the first meal period was not waived.

9 32. Plaintiff, the Class, and other Aggrieved Employees were consistently prevented
10 from able to taking compliant meal periods. Plaintiff, the Class, and the Aggrieved Employees were
11 required to remain on premises and/or on the job sites during their entire workdays, and thus were
12 never relieved of all duty to take a meal period. Specifically, Plaintiff, the Class, and Aggrieved
13 Employees were only allowed to leave Defendant's premises and/or on the job sites for meal periods
14 only with supervisor approval. Second, Plaintiff, the Class, and other Aggrieved Employees were
15 forced to forego duty-free meal periods in order to perform assigned duties, including remaining on
16 Defendant's premises for their meal periods. Lastly, Defendant engaged in a systematic, company-
17 wide policy of not paying for meal periods that were on-premises and/or for meal period premiums
18 owed since a compliant meal period was never provided. Because of this practice and/or policy,
19 Plaintiff, the Class, and other Aggrieved Employees did not ever receive premium pay for missed
20 duty-free meal periods during their employment for Defendant.

21 33. As to Plaintiff, the Wage Statement Subclass, and all Aggrieved Employees,
22 Defendant failed to provide accurate itemized wage statements in accordance with Labor Code §
23 226(a). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to
24 furnish an itemized wage statement in writing showing:

- 25 (1) gross wages earned;
- 26 (2) total hours worked by the employee;
- 27 (3) the number of piece-rate units earned and any applicable piece rate if the employee is
28 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...

Similarly, Labor Code § 226, subdivision (e), provides:

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

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

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

(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.

34. Here, Defendant failed to provide Plaintiff, the Wage Statement Subclass, and the Aggrieved Employees with complete and accurate wage statements, thus violating Labor Code § 226(a). Specifically, the wage statements issued by Defendant to Plaintiff, the Wage Statement Subclass and all the Aggrieved Employees did not and do not include the inclusive dates of the period for which the employee is paid, because they lacked the pay period start date, in violation of Labor Code § 226(a)(6).

35. Additionally, Defendant knowingly and intentionally failed to pay Plaintiff, the Wage Statement Subclass, and all Aggrieved Employees all minimum and overtime wages as well as meal period premiums for non-compliant meal periods. Accordingly, all wage statements contained inaccurate information as to hours worked and wages earned (since time spent on pre-shift COVID temperature checks, overtime wage owed, and meal period premiums were never included).

1 Moreover, Plaintiff, the Wage Statement Subclass, and all Aggrieved Employees also suffered legal
2 “injury” for purposes of Labor Code Section 226(e) insofar as they were unable to readily and easily
3 determine the information required to be set forth by Section 226(a). Specifically, Plaintiff and the
4 Aggrieved Employees were unable to determine their actual and accurate total hours worked, their
5 gross wages earned, their net wages earned, and the inclusive dates of each pay period, since
6 Defendant failed to pay the required minimum wage for all compensable time and meal period
7 premiums were not paid, and failed to include pay period start dates.

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

16 37. 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 38. Due to Defendant’s failure to pay Plaintiff, the Class, and all Aggrieved Employees
22 on a timely basis for all applicable minimum and overtime wages, Defendant failed to timely pay
23 Plaintiff, the Class, and all Aggrieved Employees all wages owed within seven (7) days of the close
24 of the payroll period in accordance with Labor Code § 204(d) on a regular and consistent basis.

25 39. Pursuant to Labor Code Section 210, as amended,

26 (a) In addition to, and entirely independent and apart from, any other penalty provided
27 in this article, every person who fails to pay the wages of each employee as provided
28 in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be
subject to a 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 percent of the amount unlawfully withheld.

(b) The penalty shall either be recovered by the employee as a statutory penalty pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the issuance of a citation or pursuant to Section 98.3. The procedures for issuing, contesting, and enforcing judgments for citations issued by the Labor Commissioner under this section shall be the same as those set forth in subdivisions (b) through (k), inclusive, of Section 1197.1.

(c) An employee is only entitled to either recover the statutory penalty provided for in this section or to enforce a civil penalty as set forth in subdivision (a) of Section 2699, but not both, for the same violation.

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

41. Under Labor Code §§ 201-202, an employer must provide an employee wages at the time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, 68 Cal.App.4th 487, 492 (1998).

42. In addition, Labor Code § 256 provides that the Labor Commissioner "shall impose a civil penalty in an amount not exceeding 30 days' pay as waiting time under the terms of Section 203. The California Supreme Court and California Court of Appeal have both specifically recognized the ability of an aggrieved employee to recover civil penalties under Labor Code § 256 for a defendant's willful violation of Labor Code §§ 201 and 202 under PAGA. In *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 381 (2014), the California Supreme Court acknowledged that PAGA penalties for the untimely payment of wages included the 30 days of pay as waiting time pursuant to Labor Code § 256. *See also Esparza v. KS Industries, L.P.*, 13 Cal.App.5th 1228, 1242 (2017) (explaining that the Labor Code § 256 penalties only exist if the employer's failure to timely pay wages upon separation was willful is a "civil penalty" "recovered or imposed by the Labor Commissioner.").

43. As described in detail above, Defendant failed to pay Plaintiff, the Class, and other Aggrieved Employees whose employment with Defendant has now ended, all wages minimum

1 wages and overtime wages owed within the time constraints proscribed in Labor Code §§ 201-202
2 at the time of their termination/separation. Thus, as result of Defendant's faulty policies described
3 above, Plaintiff, the Class, and all Aggrieved Employees left their employment with Defendant
4 without being compensated for each and every hour worked at the appropriate rate in violation of
5 Labor Code §§ 201, 202, 203.

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

8 45. Plaintiff by this action seeks to recover, on behalf of himself and all other current and
9 former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as specified in
10 Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a representative
11 action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46
12 Cal.4th 969 (2009). Class certification of the PAGA claims is not required. *Id.*

13 CLASS ACTION ALLEGATIONS

14 46. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a
15 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class composed
16 of and defined as: and all other individuals who are or were employed by Defendant Jon Casey
17 Construction, Inc., as non-exempt hourly-paid employees, who worked at least one shift in
18 California during the Class Period (hereinafter "Class Members"). All such Class Members were
19 subject to Defendant's unlawful policies including, Defendant's failure to pay minimum wages,
20 failure to pay overtime wages, failure to pay prevailing wages, failure to provide compliant meal
21 periods and pay missed meal period premiums, failure to final pay wages. failure to issue compliant
22 wage statements, and failure to pay timely wages.

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

26 a. Numerosity: The potential members of the Class as defined are so numerous
27 that joinder of all the members of the Class is impracticable. While the precise number of Class
28 Members has not been determined at this time, Plaintiff is informed and believes that Defendant has

1 employed approximately 100 Class Members as hourly-paid workers in California who were subject
2 to Defendant's unlawful compensation, meal period, wage statement, and final pay policies. The
3 Class Members are dispersed throughout California. Joinder of all members of the proposed classes
4 is therefore not practicable.

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

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

11 ii. Whether Defendant violated Sections 510 and 1198 and IWC Wage Order
12 No. 9 by failing to pay overtime wages at the proper rate;

13 iii. Whether Defendant violated Section 1771 by failing to pay prevailing wages;

14 iv. Whether Defendant violated Sections 226.7 and 512 and IWC Wage Order
15 16-2001 section 11 by failing to provide compliant meal periods during the Class Period;

16 v. Whether Defendant violated Section 226.7 and IWC Wage Order 16-2001
17 section 11 by failing to pay meal period premiums for missed meal periods during the Class Period;

18 vi. Whether Defendant violated Sections 201-203 by failing to final pay wages;

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

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

23 ix. Whether Defendant engaged in an unfair practice and violated Section 17200
24 of the California Business and Professions Code by failing to pay Plaintiff and the members of the
25 Class all minimum and overtime wages owed and by failing to provide compliant meal periods
26 during the Class Period;

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

1 xi. The proper formula(s) for calculating damages, interest, and restitution owed
2 to Plaintiff and the Class Members; and

3 xii. The nature and extent of class-wide damages.

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

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

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

FIRST CAUSE OF ACTION
FAILURE TO PAY ALL MINIMUM WAGES
[Cal. Labor Code §§ 1194, 1194.2 and 1197]

On behalf of Plaintiff and the Class Against All Defendant

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

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

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

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

52. Here, Defendant required Plaintiff and the Class to regularly perform work-off-the-clock before their shifts for which they did not receive any compensation. Specifically, as part of the Class’s employment, Defendant required and continues to require Plaintiff and all Class Members to undergo COVID-19 temperature checks and screenings before the start of their shift, and before they “clock in.” Specifically, from around March 2020 and continuing to the present, Plaintiff and the Class have been required to undergo a temperature check on Defendant’s premises, while off the

1 clock, before being allowed to clock in for their shifts. Although Defendant maintained a common
2 policy and practice of requiring Plaintiff and the Class to stand/wait in line pre-shift for COVID-19
3 temperature checks and screenings during the Class Period, Defendant failed to compensate Plaintiff
4 and the Class for such time.

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

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

16 55. Plaintiff and the other Class Members suffered and continue to suffer losses related
17 to the use and enjoyment of compensation due and owing to them as a direct result of Defendant's
18 unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and
19 within the jurisdictional limitations of this Court.

20 56. Plaintiff seeks all available remedies for Defendant's violations including, but not
21 limited to, any and all wages due, monies, interest, liquidated damages, penalties attorney's fees,
22 and costs to the extent permitted by law.

23 **SECOND CAUSE OF ACTION**
24 **FAILURE TO PAY OVERTIME WAGES**
25 **[Cal. Labor Code §§ 510, 1198; IWC Wage Order No. 9]**
26 **On behalf of Plaintiff and the Class Against All Defendant**

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

58. Labor Code § 510 requires an employer to compensate an employee who works more

1 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
2 worked on the seventh consecutive day no less than one and one-half times the “regular rate of Pay”
3 for an employee.

4 59. Further, Labor Code § 510 obligates employers to compensate employees at no less
5 than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or
6 more than eight (8) hours on the seventh consecutive day of work.

7 60. In accordance with Labor Code §§ 1194, Plaintiff and the other Class Members could
8 not agree to work for a lesser wage than the amount proscribed by Labor Code § 1194.

9 61. On a regular basis until December 2020, Plaintiff and the Class, worked more than 8
10 hours in a day and more than 40 hours in a week; however, Defendant failed to pay overtime wages
11 at the appropriate rate due to the fact that Defendant often paid regular hours at different rates and
12 only paid overtime wages at 1.5 times the \$14 per hour rate as opposed to 1.5x the prevailing wage
13 rate. Additionally, Defendant also failed to pay overtime wages for time spent by Plaintiff and the
14 Class undergoing pre-shift COVID-19 temperature screenings. Therefore, Defendant violated Labor
15 Code § 510 and Section 3(A) of the applicable IWC Wage Order by failing to pay all overtime hours
16 at the applicable overtime rate, and by failing to pay overtime for overtime hours spent on COVID-
17 19 temperature checks and screenings.

18 **THIRD CAUSE OF ACTION**
19 **FAILURE TO PAY PREVALILING WAGES**
20 **[Cal. Labor Code § 1771 and 218.5]**

21 **On behalf of Plaintiff and the Class Against All Defendant**

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

24 63. Labor Code section 1771 requires, except for public work projects of \$1,000 or less,
25 not less than the general prevailing rate of per diem wages for work of a similar character in the
26 locality in which the public work is performed, and not less than the general prevailing rate of per
27 diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all
28 workers employed on public works.

64. Here, Plaintiff and the Class worked on public works projects of more than \$1,000

1 and were not paid the prevailing rate of per diem wages for work of a similar character in the locality
2 in which the public work is performed.

3 65. Therefore, Defendant violated Labor Code section 1771 by failing to pay the required
4 prevailing wages to Plaintiff and the Class.

5 **FOURTH CAUSE OF ACTION**
6 **FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**
7 **AND/OR PAY MISSED MEAL PERIOD PREMIUMS**
8 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order 16-2001, § 11]**
9 **On behalf of Plaintiff and the Class Against All Defendant**

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

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

15 68. California Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order
16 require employers to provide meal periods and to pay an employee one (1) additional hour of pay at
17 the employee's regular rate for each workday that a meal period is not provided. Pursuant to Labor
18 Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require,
19 cause or permit an employee to work for a period of more than five (5) hours per day without
20 providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except
21 that if the total work period per day of the employee is not more than six (6) hours, the meal period
22 may be waived by mutual consent of both the employer and the employee. Under California law,
23 first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*,
24 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable
25 IWC Wage Order also require employers to provide a second meal break of not less than thirty (30)
26 minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional
27 hour of pay at the employee's regular rate, except that if the total hours worked is no more than
28 twelve (12) hours, the second meal period may be waived by mutual consent of the employer and
the employee only if the first meal period was not waived.

69. Plaintiff and the Class were consistently prevented from able to taking compliant meal periods. Plaintiff and the Class were required to remain on premises and/or job sites during their entire workdays, and thus were never relieved of all duty to take a meal period. Specifically, Plaintiff and the Class were only allowed to leave Defendant's premises for meal periods with supervisor approval. Second, Plaintiff and the Class were forced to forego duty-free meal periods in order to perform assigned duties, including remaining on Defendant's premises and/or job sites for their meal periods. Lastly, Defendant engaged in a systematic, company-wide policy of not paying for meal periods that were on-premises and/or for meal period premiums owed since a compliant meal period was never provided. Because of this practice and/or policy, Plaintiff and the Class did not ever receive premium pay for missed meal periods during their employment for Defendant.

FIFTH CAUSE OF ACTION
FAILURE TO PAY FINAL WAGES
[Cal. Labor Code §§ 201-203]

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

70. Under Labor Code sections 201-202, an employer must provide an employee wages at the time of discharge or within up to seventy-two (72) hours of their resignation.

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

72. In addition, Labor Code § 256 provides that the Labor Commissioner “shall impose a civil penalty in an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.

73. The California Supreme Court and California Court of Appeal have both specifically recognized the ability of an aggrieved employee to recover civil penalties under Labor Code § 256 for a defendant's willful violation of Labor Code §§ 201 and 202 under PAGA. In *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 381 (2014), the California Supreme Court acknowledged that PAGA penalties for the untimely payment of wages included the 30 days of pay as waiting time pursuant to Labor Code § 256. See also *Esparza v. KS Industries, L.P.*, 13 Cal.App.5th 1228, 1242 (2017) (explaining that the Labor Code § 256 penalties only exist if the

1 employer's failure to timely pay wages upon separation was willful is a "civil penalty" "recovered
2 or imposed by the Labor Commissioner.").

3 74. As described in detail above, Defendant failed to pay Plaintiff and Class Members
4 whose employment with Defendant has now ended, all minimum and overtime wages owed within
5 the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation.
6 Thus, as result of Defendant's faulty policies described above, Plaintiff and all Class Members left
7 their employment with Defendant without being compensated for each and every hour worked at the
8 appropriate rate in violation of Labor Code §§ 201, 202, 203.

9 **SIXTH CAUSE OF ACTION**
10 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
11 **[Cal. Labor Code § 226(a) and (e)]**

12 **On behalf of Plaintiff and the Wage Statement and Penalty Subclass Against All Defendant**

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

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

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

19 Every employer shall...furnish each of his or her employees...an accurate
20 itemized statement in writing showing (1) gross wages earned, (2) total hours
21 worked by the employee, except for any employee whose compensation is
22 solely based on a salary and who is exempt from payment of overtime under
23 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
24 Commission, (3) the number of piece-rate units earned and any applicable piece
25 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
26 that all deductions made on written orders of the employee may be aggregated
27 and shown as one item, (5) net wages earned, (6) the inclusive dates of the
28 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

78. Here, Defendant failed to provide Plaintiff and the Wage Statement Subclass with
complete wage statements, thus violating Labor Code § 226(a). Specifically, the wage statements

1 issued by Defendant to Plaintiff and all the Wage Statement Subclass did not and do not include the
2 inclusive dates of the period for which the employee is paid, because they lack the pay period start
3 date, in violation of Labor Code § 226(a)(6).

4 79. Additionally, Defendant knowingly and intentionally failed to pay Plaintiff and all
5 Wage Statement Subclass Members all minimum and overtime wages as well as meal period
6 premiums for non-compliant meal periods. Accordingly, all wage statements contained inaccurate
7 information as to hours worked and wages earned (since time spent on pre-shift COVID temperature
8 checks, overtime wages at the proper rate, and meal period premiums were never included).
9 Moreover, Plaintiff and all Wage Statement Subclass Members also suffered legal “injury” for
10 purposes of Labor Code Section 226(e) insofar as they were unable to readily and easily determine
11 the information required to be set forth by Section 226(a). Specifically, Plaintiff and the Wage
12 Statement Subclass Members were unable to determine their actual and accurate total hours worked,
13 their gross wages earned, their net wages earned, since Defendant failed to pay the required
14 minimum wage for all compensable time, overtime wages at the proper rate, and meal period
15 premiums were not paid.

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

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

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

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

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

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

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

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

///

///

///

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

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

87. 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.

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

89. 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.

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

91. Plaintiff and similarly situated Class Members are entitled to monetary relief pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid minimum and overtime wages, unpaid meal period premiums, and the right to receive accurate itemized wage statements, from at least four years prior to the filing of this Complaint through to the date of such restitution, at rates specified by law. Defendant should be required to disgorge all the profits and gains they have reaped and restore such profits and gains to Plaintiff and Class Members, from whom they were unlawfully

1 taken.

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

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

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

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

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

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

24 **On Behalf of Plaintiff, the LWDA and the Aggrieved Employees Against All Defendant**

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

27 98. Plaintiff and the "Aggrieved Employees" under PAGA, i.e., those employees who,
28 during the PAGA Period, suffered the Labor Code violations alleged herein; specifically, violations

1 of §§ 201, 202, 203 204, 210, 226(a), 226.7, 256, 510, 512, 1194, 1197, 1197.1, 1198, 1199, and
2 1771 of the Labor Code as well as 11 of IWC Wage Order 16-2001 bring claims under PAGA.
3 Plaintiff was employed by Defendant during the one year preceding the submission of a PAGA letter
4 to the LDWA on or around February 1, 2022. As such, he seeks to recover, on behalf of himself and
5 all other current and former aggrieved employees of Defendant, the civil penalties provided by
6 PAGA.

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

10 \$100 for each violation per employee per pay period;

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

13 100. The Aggrieved Employees are all individuals who worked for Defendant as hourly-
14 paid employees in California during the PAGA Period. These employees were subject to the
15 aforementioned Labor Code violations, during the period of time from one year prior to the
16 submission of Plaintiff's letter to the LDWA on February 1, 2022 through to the present and on-
17 going, i.e., from February 1, 2021 to the present.

18 101. In addition, as set forth above, Defendant failed to provide Plaintiff and all Aggrieved
19 Employees with wage statements in compliance with Labor Code § 226(a).

20 102. Further, Plaintiff, and the Aggrieved Employees, need not demonstrate or prove that
21 Defendant's conduct in refusing to provide itemized wage statements was knowing, intentional, or
22 willful. *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017); *see also Willner v.*
23 *Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim,
24 "all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed
25 above."); *McKenzie v. Fed. Express Corp.*, 765 F.Supp.2d 1222, 1231-1232 (C.D. Cal. 2011)
26 (holding that "for the purposes of recovering PAGA penalties, one need only prove a violation of
27 Section 226(a), and need not establish a Section 226(e) injury."); *Aguirre v. Genesis Logistics*, 2013
28 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) ("Plaintiffs do not need to establish a Cal.

1 Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

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

5 104. Pursuant to Labor Code § 2699.3 (a), on February 1, 2021, Plaintiff gave written
6 notice by certified mail to Defendant, and to the Labor and Workforce Development Agency
7 (“LWDA”) of his claims, including the facts and theories supporting all claims outlined in this
8 Complaint. The Plaintiff also paid the required \$75 fee. Accordingly, Plaintiff has or soon will have
9 fulfilled all administrative prerequisites to the pursuit of his PAGA claim on behalf of himself and
10 all other current and former aggrieved employees of Defendant.

11 JURY DEMAND

12 105. Plaintiff hereby demands trial by jury of his and the Class Members’ claims against
13 Defendant, except for the PAGA and UCL claims which will be tried to the Court.

14 PRAYER FOR RELIEF

15 Wherefore, Plaintiff, on behalf of himself and the members of the Class, and the LWDA and
16 the Aggrieved Employees, prays for judgment against Defendant as follows:

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

18 2. On the First Cause of Action:

19 a. A declaratory judgment that Defendant have violated California Labor Code
20 Sections 1194 and 1197 in failing to pay Plaintiff, the Class and the Aggrieved Employees all
21 minimum wages due;

22 b. An award to Plaintiff and the other members of the Class in the amount of
23 their unpaid minimum wages owed, plus interest and/or liquidated damages under 1194.2 during the
24 Class Period, as well as attorneys’ fees under Labor Code Section 1194;

25 3. On the Second Cause of Action:

26 a. A declaratory judgment that Defendant have violated California Labor Code
27 Section 510 in failing to pay Plaintiff, the Class and the Aggrieved Employees all overtime wages
28 due;

1 b. An award to Plaintiff and the other members of the Class in the amount of
2 their unpaid overtimes wages owed, plus interest and/or liquidated damages under 1194.2 during the
3 Class Period, as well as attorneys' fees under Labor Code Section 1194;

4 4. On the Third Cause of Action:

5 a. A declaratory judgment that Defendant have violated California Labor Code
6 Section 1771 in failing to pay Plaintiff, the Class and the Aggrieved Employees all prevailing wages
7 due;

8 b. An award to Plaintiff and the other members of the Class in the amount of
9 their unpaid prevailing wages owed, plus interest and/or liquidated damages under 1194.2 during
10 the Class Period, as well as attorneys' fees under Labor Code Section 1194;

11 5. On the Fourth Cause of Action:

12 a. A declaratory judgment that Defendant have violated California Labor Code
13 §§ 226.7, 512 and IWC Wage Order 16-2001 section 11 by failing to provide compliant meal periods
14 to Plaintiff, the Class, and the Aggrieved Employees;

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

17 6. On the Fifth Cause of Action:

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

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

23 7. On the Sixth Cause of Action:

24 a. A declaratory judgment that Defendant violated California Labor Code § 226
25 by failing to issue compliant wage statements to Plaintiff, the Aggrieved Employees and the Wage
26 Statement Subclass members;

27 b. An award to Plaintiff and Wage Statement Subclass Members of \$50 for each
28 initial pay period in which a violation of Section 226 occurred and \$100 for each subsequent pay

1 period in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of the
2 Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code § 226(e).

3 8. On the Seventh Cause of Action:

4 a. A declaratory judgment that Defendant violated California Labor Code §§
5 204 and 210;

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

8 9. On the Eighth Cause of Action:

9 a. That the Court find and declare that Defendant have violated the UCL and
10 committed unfair and unlawful business practices by failing to pay minimum wages, overtime wages
11 at the proper rate, and meal period premiums;

12 b. Restitution, including, but not limited to, the relief permitted by sections
13 226.7 and 1194 of the California Labor Code (i.e., unpaid minimum and overtime wages and meal
14 period premiums owed to Plaintiff and the members of the Class during the Class Period).

15 10. On the Ninth Cause of Action:

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

21 b. An award of penalties under Labor Code § 256;

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

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

28 ///

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

2
3 Dated: April 8, 2022

Respectfully submitted,

4 ACKERMANN & TILAJEF, P.C.

5
6 By:



Craig Ackermann, Esq.

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