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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

22CV398168

RAQUEL LEDESMA and ANESSA
GONZALEZ, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

Obstetrix Medical Group of California, APC,
a California corporation; and DOES 1 to 100,
inclusive

Defendant.

CASE NO:

**CLASS ACTION AND REPRESENTATIVE
ACTION COMPLAINT FOR
(1) FAILURE TO PROVIDE TIMELY,
DUTY-FREE MEAL PERIODS AND/OR
PAY MEAL PERIOD PREMIUMS FOR
LATE MEAL BREAKS (LABOR CODE §§
226.7, 512; IWC WAGE ORDER 4-2001;
(2) FAILURE TO PROVIDE TIMELY,
DUTY-FREE REST PERIODS AND/OR PAY
REST PERIOD PREMIUMS (LABOR CODE
§ 226.7; IWC WAGE ORDER 4-2001);
(3) FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS (LABOR
CODE § 226);
(4) WAITING TIME PENALTIES (LABOR
CODE § 201 – 203);
(5) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210);
(6) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802);
(7) UCL VIOLATIONS (BUS. & PROF.
CODE §§ 17200-17204); AND
(8) PAGA AND OTHER PENALTIES
(LABOR CODE §§ 2698 – 2699.5);
DEMAND FOR JURY TRIAL**

1 Plaintiffs Raquel Ledesma and Anessa Gonzalez (“Plaintiffs”), allege and complain on their
2 behaves individually and on behalf of all others similarly situated (hereinafter “Class Members”)
3 and also as “aggrieved employees” and other aggrieved employees, on behalf of the State of
4 California, pursuant to California Labor Code¹ section 2698, et seq. as follows:

5 OVERVIEW OF CLAIMS

6 1. Plaintiffs bring this action as a class action, and as a representative action pursuant to
7 California’s Private Attorney General Act of 2004 (“PAGA”) Labor Code § 2698, *et seq.*, and on
8 behalf of the California general public, against Defendant Obstetrix Medical Group of California,
9 APC and DOES 1 to 100 (“Defendant”) for its (1) failure to provide timely and duty-free meal
10 periods within the first five hours of work and/or to pay a meal period for each missed, untimely,
11 or interrupted meal period and to provide lawful second meal periods for shifts worked in excess of
12 ten hours and/or pay meal period premiums for missed, untimely, or interrupted second meal breaks;
13 (2) failure to provide timely, duty-free rest periods for every four hours of work or major fraction
14 thereof and/or failure to pay rest period premiums for missed or interrupted rest breaks; (3) failure
15 to provide accurate itemized wage statements within the one year prior to the filing of this
16 Complaint; (4) failure to pay all wages due to employees based on the foregoing; (5) failure to timely
17 pay former employees’ wages, particularly final wages, based on the foregoing; (6) failure to
18 reimburse employees for their reasonable business expenses incurred in performance of their
19 required job duties using their personal cell phones; and (7) Violations of California’s Business and
20 Professions Code section 17200, et seq. based on the foregoing and (8) Violation of California Labor
21 Code section 2698 et seq. As a result of the foregoing, Defendant has violated California statutory
22 laws and is subject to myriad damages and penalties as set forth more fully below.

23 2. The “Class Period” is designated as the period from four years prior to the filing of
24 this action through the trial date.

25 3. Plaintiffs have fully exhausted their administrative remedies for their PAGA cause
26 of action as she gave notice to both Defendant and the Labor Workforce Development Agency
27

28 ¹ All references to the Labor Code herein shall be to the California Labor Code

1 (“LWDA”) of this violation by certified mail on March 7, 2022. The LWDA has not provided
2 Plaintiffs with notice that it intends to investigate the violations enumerated against Defendant in
3 Plaintiffs’ notice despite the passage of over 65 days. Accordingly, Plaintiffs are entitled to
4 commence this action under Labor Code section 2699(a). Thus, the “PAGA Period” is designated
5 as the period from one year prior to the sending of the PAGA letter.

6 **VENUE**

7 4. Venue is proper in this County pursuant California Code of Civil Procedure section
8 395.5. Many, if not all, of the putative Class Members were employed and/or performed work by
9 and for Defendant in Santa Clara County during the Class Period. Defendant’s headquarters are
10 located in the City of San Jose that is situated within Santa Clara County. Many of the acts alleged
11 in this Complaint, including but not limited to, Defendant’s practice of failing to provide timely and
12 duty-free meal and rest periods and its attendant practice of failing to pay meal and rest period
13 premiums, its practice of failing to provide accurate itemized wage statements and its practice of
14 failing to reimburse its employees for business expenses all occurred in Santa Clara County. Venue
15 is therefore proper in Santa Clara County.

16 **JURISDICTION**

17 5. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
18 dollars of business by managing and operating numerous medical clinics throughout the State of
19 California, including Santa Clara County. Thus, Defendant has and continues to avail itself of the
20 benefits of the laws of the State of California. Further, there are no Federal questions or claims at
21 issue in this action, nor is there any diversity all parties are residents of California. Plaintiffs’
22 individual claims, all Class claims and representative claims of the Aggrieved Employees are based
23 exclusively on California law. Further the total amount of potential damages projected for this
24 matter, inclusive of attorneys’ fees, is anticipated to be less than \$5 million. Therefore, jurisdiction
25 is appropriate in Santa Clara County Superior Court.

THE PARTIES

A. Plaintiffs

6. Plaintiff Raquel Ledesma is a California resident who lives in Santa Clara County. Plaintiff was employed by Defendant as medical assistant and was paid an hourly rate during the relevant time period. As non-exempt employees, Plaintiffs were entitled to rest periods, meal breaks and overtime pay, Industrial Wage Order No. 4-2001, (“IWC No.4-2001”) Labor Code sections 512, 226, and 226.7. From at least four years from the filing of this Complaint through the present, and on-going, Defendant’s non-exempt employees, including Plaintiffs, were not provided with timely and duty-free meal and rest periods and/or provided meal and rest period premiums. Plaintiffs were not provided with accurate and/or complete wage statements, they did not receive all of their wages due upon termination of employment, and they did not timely receive all wages owed.

7. Plaintiff Anessa Gonzalez is a California resident who lives in Santa Clara County. Plaintiff was employed by Defendant as medical assistant and was paid an hourly rate during the relevant time period. As non-exempt employees, Plaintiffs were entitled to rest periods, meal breaks and overtime pay, Industrial Wage Order No. 4-2001. (“IWC No.4-2001”) Labor Code sections 512, 226, and 226.7. From at least four years from the filing of this Complaint through the present, and on-going, Defendant’s non-exempt employees, including Plaintiffs, were not provided with timely and duty-free meal and rest periods and/or provided meal and rest period premiums. Plaintiffs were not provided with accurate and/or complete wage statements, they did not receive all of their wages due upon termination of employment, and they did not timely receive all wages owed.

B. The Defendant

8. Defendant Obstetrix Medical Group of California, APC is a California corporation with a mailing address in Sunrise Florida and is headquartered in San Jose, California. Defendant operates several medical clinics that cater to women with “high risk” pregnancies. Among the various staff working at Defendant’s clinics, Plaintiffs were employed as medical assistants on an hourly or non-exempt basis.

9. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

10. Plaintiffs are informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiffs, the Class, and the Aggrieved Employees.

11. Defendant was and is the employer of Plaintiffs, the Aggrieved Employees and Class Members for all relevant time periods. At any one time during the Class Period, and the PAGA Covered Period, Defendant employed approximately 200 non-exempt individuals in California. Due to turnover during the Class Period, the total number of Class Members is estimated to be over 400.

FACTUAL ALLEGATIONS

12. Defendant operates and, at all times during the PAGA Period and the Class Period, has done and does business in California and throughout the United States. Defendant, in the course of operating its business in California during the Class Period and the PAGA Period, employed Plaintiffs, the Aggrieved Employees and the Class Members.

13. Labor Code § 512 requires employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of an employee's shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

14. Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the employee to take a 30 minute duty-free meal period on or before the fifth

1 hour of work, liability attaches from adopting an unlawful policy.

2 15. Here, Defendant violated and continues to violate Labor Code § 512 and IWC Wage
3 Order 4-2001 § 11 by, among other things, failing to provide and schedule timely and duty-free meal
4 breaks on or before the fifth hour of work and failed to pay meal break premiums for late meal
5 breaks. Instead, Defendant often required employees to take their meal breaks at the end of their
6 shifts without paying any late meal break premiums. As a result of Defendant's failure to authorize
7 or permit lawful and timely meal periods, Plaintiffs and the other Class Members and Aggrieved
8 Employees frequently did not receive compliant duty-free meal periods within the first five (5) hours
9 of their work. Furthermore, when Defendant paid missed or late meal break premiums, thereby
10 admitting to 226.7 and 512 violations, Defendant failed to make any PAGA penalty payments
11 associated with these violations.

12 16. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
13 authorize and permit the amount of rest time on the schedule called for under the law (as specified
14 in Section 12 of the applicable Wage Order), "it has violated the wage order and is liable." The
15 *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting
16 an unlawful policy:

17 An employer is required to authorize and permit the amount of rest break time called for
18 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
19 policy authorizing and permitting only one rest break for employees working a seven-hour
20 shift when two are required—***it has violated the wage order and is liable.*** (*Brinker Rest.*
Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

21 17. Here, Defendant did not authorize Plaintiffs, Class Members, and Aggrieved
22 Employees to take their ten-minute rest breaks during each 4 hours of work or major fraction thereof
23 during their shifts. Moreover, Defendant's scheduling practices were often rest break preclusive.

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

- 26 (1) gross wages earned;
27 (2) total hours worked by the employee;
28 (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...; 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...

19. Defendant's wage statements failed to include the start date of each pay period in violation of Labor Code § 226(a)(6). Moreover, due to, *inter alia*, Defendant's failure to pay Plaintiffs, Class Members and Aggrieved Employees for all meal and rest break premiums, the wage statements issued by Defendant to Plaintiffs, Class Members, and Aggrieved Employees do not indicate the correct amount of gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

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

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

1 violated Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily
2 determine the gross or net wages earned by the employee during the pay period).

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

8 23. Aggrieved Employees will prevail on their claim for PAGA penalties under Labor
9 Code § 226(a). *See Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain
10 judgment on a PAGA claim, "all [plaintiff] needs to establish is a violation of section 226(a), which
11 she has done, as discussed above."); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D.
12 Cal. 2011) (holding that "for the purposes of recovering PAGA penalties, one need only prove a
13 violation of Section 226(a), and need not establish a Section 226(e) injury."); *Aguirre v. Genesis*
14 *Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) ("Plaintiffs do not need
15 to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.").

16 24. Further and in addition to the penalties outlined above, Labor Code § 226.3 provides
17 that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty
18 in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation
19 and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which
20 the employer fails to provide the employee a wage deduction statement or fails to keep the required
21 in subdivision (a) of Section 226." As explained in detail above, Defendant failed to provide
22 Plaintiffs, Class Members, and Aggrieved Employees with accurate itemized wage statements.
23 Accordingly, Defendant is additionally liable for Labor Code § 226.3 penalties for their violations
24 of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-
25 2059 AWI-BAM, 2015 WL 1137151, at *7 ["the weight of authority counsels that violations of
26 Section 226.3 may be the basis of a PAGA claim."]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298
27 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) ("Lab. Code § 226.3 merely provides
28

1 that failure to perform actions mandated by § 226(a) may trigger civil penalties.”²

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

5 26. Due to Defendant’s faulty policies described above, including its failure to pay for
6 all meal and rest break premiums due, Defendant violated Labor Code § 203, for those employees
7 whose employment ended within the last three years and ongoing by willfully failing to pay them
8 all wages due upon the termination of their employment.

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

14 28. Due to Defendant’s failure to pay Plaintiffs, the Class, and the other Aggrieved
15 Employees all meal and rest break period premiums owed,³ Defendant violated Labor Code § 204
16 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular
17 and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL
18 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period

20 ² *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D.Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326,
21 *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7–9, 2011 WL 2434043; *Willis v.*
Xerox Bus. Servs., LLC (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

22 ³ Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting
23 time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal.
24 Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties
25 based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling*
26 *vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time
27 claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5’”);
28 *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016)
(finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204);
Brewer v. Gen. Nutrition Corp. (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant’s motion for
summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes
of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7, 2013) 2013 WL 4038617, at *3–4
[distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay wages...can be based on amounts
owed under section 226.7.”). The issue is currently before the California Supreme Court in the *Naranjo* case. *See*
Naranjo v. Spectrum Security Services, Inc., Cal. Supreme Court Case No. S258966.

1 premiums can support claims under Labor Code §§ 203 and 204).

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

10 30. Pursuant to section 2802(a) of the California Labor Code, “[a]n employer shall
11 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
12 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions
13 of the employer....” Labor Code 2802(c) defines necessary to include all “reasonable” expenses.
14 The purpose of this statute is “to prevent employers from passing their operating expenses on to their
15 employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting legislative
16 history from the 2000 amendment to the statute and holding that outside salespersons are entitled to
17 gas mileage reimbursement in addition to their commission pay). Labor Code section 2804 also
18 makes it crystal clear that claims under section 2802 are not waivable.

19 31. Furthermore, under Labor Code section 2802, employers must reimburse employees
20 for reasonable work-related use of their personal cell phones – regardless of whether or not aggrieved
21 employees incurred any additional out-of-pocket expense from that work-related use. *See, Cochran*
22 *v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014) (“We hold that when
23 employees must use their personal cell phones for work-related calls, Labor Code section 2802
24 requires the employer to reimburse them. Whether the employees have cell phone plans with
25 unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their
26 cell phone bills.”); see also *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D.Cal. Aug. 27, 2014)
27 (granting plaintiffs’ motion for partial summary judgment on the plaintiffs’ cell phone
28

1 reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D.Cal.
2 Dec. 9, 2014) (Hon. Edward Chen) (adopting the logic of *Cochran*)

3 32. The employer's obligation to reimburse all reasonably-incurred business-related
4 expenses, including personal cell phone and laptop-related expenses for work-related usage, arises
5 when the employer "knew or should have known" that its employees incurred a business-related
6 expense. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward
7 Chen); *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan
8 Illston) (adopting the "knew or should have known" standard). In such cases, including this one,
9 where employees have incurred reasonable work-related cell phone or laptop expenses that the
10 employer is or should have been aware of, an employer in California thus has an affirmative
11 obligation to reimburse expenses and cannot hide behind a policy advising employees to put in for
12 their expenses if they want to be reimbursed for them. *Id.*; see also Labor Code section 2804.

13 33. Here, Plaintiffs and the Class are and were required to use their cell phone during
14 their shifts. Defendant has no policy or practice of affirmatively reimbursing employees for their
15 out-of-pocket cell phone or laptop expenses incurred for work-related purposes. Additionally,
16 Defendant had no policy or practice of affirmatively reimbursing employees for their home offices
17 expenses.

18 34. Accordingly, Defendant violated Labor Code § 2802 and continues to do so by failing
19 to reimburse the Plaintiffs and Class Members for all work-related cell phone and laptop expenses
20 they incurred in connection with their job duties.

21 35. The administrative prerequisites of PAGA have been satisfied after 65 days have
22 elapsed from March 7, 2022 (i.e., 65 days since Plaintiff Raquel Ledesma's mailing of the PAGA
23 notice with no further communication from the LWDA to Plaintiff's counsel). Plaintiff has paid the
24 \$75.00 fee and has otherwise satisfied the administrative prerequisites of PAGA.

25 36. Plaintiffs by this action seek to recover, on behalf of themselves and all other current
26 and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as specified
27 in Labor Code § 2699(f). Plaintiffs seek to recover the PAGA civil penalties through a representative
28

1 action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal.
2 4th 969 (2009). Class certification of the PAGA claims is not required.

3 CLASS ACTION ALLEGATIONS

4 37. This action may be properly maintained as a class action pursuant to the provisions
5 of California Code of Civil Procedure § 382.

6 38. Plaintiffs bring this action, as a class action, on behalf of themselves and of the class
7 of individuals and all others similarly situated, who are defined as: “All non-exempt individuals who
8 or were employed by Defendant through the Class Period and ending with the date of notice to the
9 Class”; (hereinafter referred to as “Class Members” or the “Class”). In addition, Plaintiffs may seek
10 to certify as a subclass of all Class Members who are no longer employed by Defendant. Plaintiffs
11 further reserve the right to amend or modify the class description or establish additional subclasses
12 as appropriate.

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

16 a. Numerosity: The potential members of the Class as defined are so numerous
17 that joinder of all the members of the Class is impracticable. While the precise number of Class
18 Members has not been determined at this time, Plaintiffs are informed and believe that Defendant
19 has on average, at any one time during the Class Period employed over 100 Class Members as non-
20 exempt employees who were subject to Defendant’s unlawful policies. Due to turnover, the total
21 number of Class Members is estimated to be more than 300. The Class Members are dispersed
22 throughout California. Joinder of all members of the proposed classes is therefore not practicable.

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

26 i. Whether Defendant violated Labor Code sections 226.7 and 512 and Section
27 11 of IWC Wage Order No. 4 by failing to provide timely, duty-free meal periods to Plaintiffs and
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1 Class Members in California during the Class Period;

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

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

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

11 v. Whether Defendant failed to provide Plaintiffs and Class Members accurate
12 itemized wage statements in violation of Labor Code Section 226(a);

13 vi. Whether Defendant violated Section 203 of the Labor Code by failing to pay
14 Plaintiffs and Class Members all wages due to them (including their unpaid meal and rest break
15 premiums) upon their separation of employment from Defendant;

16 vii. Whether Defendant violated Sections 204 and 210 of the Labor Code by
17 failing to pay Class Members all wages due on a timely basis;

18 viii. Whether Defendant violated Section 2802 of the Labor Code by failing to
19 reimburse Plaintiffs and Class Members for reasonably incurred business expenses;

20 ix. Whether Defendant engaged in an unfair practice and violated section 17200
21 of the California Business and Professions Code by failing to provide Plaintiffs and Class Members
22 with timely, duty-free meal breaks during the Class Period;

23 x. Whether Defendant engaged in an unfair practice and violated section 17200
24 of the California Business and Professions Code by failing to provide Plaintiffs and Class Members
25 with meal period premiums for each day they were not provided a compliant meal break;

26 xi. Whether Defendant engaged in an unfair practice and violated section 17200
27 of the California Business and Professions Code by failing to provide Plaintiffs and Class Members
28

1 with timely, duty-free rest breaks during the Class Period;

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

5 xiii. Whether Plaintiffs and the Class are entitled to restitution under Business and
6 Professions Code § 17200;

7 xiv. The proper formula(s) for calculating damages, interest, and restitution owed
8 to Plaintiff and the Class Members;

9 xv. The nature and extent of class-wide damages.

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

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

21 e. Superiority of Class Action: A class action is superior to other available
22 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
23 Members is not practicable, and questions of law and fact common to the Class predominate over
24 any questions affecting only individual members of the Class. Each Class Member has been
25 damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or
26 practices. Certification of this case as a class action will allow those similarly situated persons to
27 litigate their claims in the manner that is most efficient and economical for the parties and the judicial
28

1 system. Certifying this case as a class action is superior because it allows for efficient and full
2 disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining its unlawful break and
3 compensation policies and will thereby effectuate California's strong public policy of protecting
4 employees from deprivation or offsetting of compensation earned in their employment. If this action
5 is not certified as a Class Action, it will be impossible as a practical matter, for many or most Class
6 Members to bring individual actions to recover monies unlawfully withheld from their lawful
7 compensation due from Defendant, due to the relatively small amounts of such individual recoveries
8 relative to the costs and burdens of litigation.

9
10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PROVIDE TIMELY AND DUTY-FREE MEAL BREAKS AND PAY
MISSED MEAL BREAK PREMIUMS**

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

13 **Against Defendant**

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

15 41. California Labor Code § 226.7(a) provides, "No employer shall require any employee
16 to work during any meal or rest period mandated by an applicable order of the Industrial Welfare
17 Commission."

18 42. Section 512(a) of the California Labor Code provides, in relevant part, that: An
19 employer may not employ an employee for a work period of more than five hours per day without
20 providing the employee with a meal period of not less than 30-minutes, except that if the total work
21 period per day of the employee is no more than six hours, the meal period may be waived by mutual
22 consent of both the employer and employee. An employer may not employ an employee for a work
23 period of more than 10 hours per day without providing the employee with a second meal period of
24 not less than 30-minutes, except that if the total hours worked is no more than 12 hours, the second
25 meal period may be waived by mutual consent of the employer and the employee only if the first
26 meal period was not waived

27 43. Here, Defendant violated and continues to violate Labor Code § 512 and IWC Wage
28

1 Order 4-2001 § 11 by, among other things, failing to provide and schedule duty-free meal breaks on
2 or before the fifth hour of work for Plaintiffs and Class Members and failed to advise Plaintiffs and
3 Class Members of their meal break rights with respect to the timing of meal breaks, failed to provide
4 Plaintiffs and Class Members with thirty-minute, uninterrupted meal periods within the first five (5)
5 hours of their shifts, and failed to pay meal break premiums for late meal breaks. Instead, Defendant
6 often required Plaintiffs and Class Members to take their breaks at the end of their shifts without
7 paying any late meal break premiums. As a result of Defendant's failure to authorize or permit lawful
8 and timely meal periods, Plaintiffs and Class Members frequently did not receive compliant duty-
9 free meal periods within the first five (5) hours of their work.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PROVIDE TIMELY AND DUTY-FREE REST BREAKS AND PAY MISSED REST BREAK PREMIUMS**

12 **[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order 4-2001]**

13 **Against Defendant**

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

16 45. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
17 authorize and permit the amount of rest time on the schedule called for under the law (as specified
18 in Section 12 of the applicable Wage Order), "it has violated the wage order and is liable." The
19 *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting
20 an unlawful policy:

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

23 (*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

24 46. Here, Defendant did not authorize Plaintiffs and Class Members to take their ten-
25 minute rest breaks during each 4 hours of work or major fraction thereof during their shifts. Plaintiffs
26 and Class Members did not receive timely rest breaks during their shifts. Accordingly, Defendant
27 is liable to Plaintiffs and Class Members for rest break premiums for all such shifts on which they
28

1 were not able to take compliant rest

2 **THIRD CAUSE OF ACTION**
3 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
4 **[Cal. Labor Code § 226(a)]**

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

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

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

23 49. As set forth above, Defendant's wage statements fail to include the correct name of
24 Defendant on their paystubs. Additionally, because of Defendant's failure to pay Plaintiffs and Class
25 Members for all meal and rest break premiums, the wage statements issued by Defendant to Plaintiffs
26 and Class Members are inaccurate and do not indicate the correct amount of gross wages earned,
27 net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding
28 number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

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

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

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

18 **FOURTH CAUSE OF ACTION**

19 **WAITING TIME PENALTIES FOR** 20 **FAILURE TO PAY WAGES DUE ON TERMINATION** 21 **[Cal. Labor Code §§ 201-203]**

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

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

27 55. Due to Defendant's unlawful policies described above, including its failure to pay
28 meal and rest break premiums, Defendant violated Labor Code § 203, for those employees Class

Members whose employment ended within the last three years and ongoing by willfully failing to pay them all wages due upon the termination of their employment.

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

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

57. 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.

58. Due to Defendant’s failure to pay Plaintiffs and Class Members all meal and rest break period premiums owed,⁴ 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).

59. 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

⁴ Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5’”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7, 2013) 2013 WL 4038617, at *3–4 [distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay wages...can be based on amounts owed under section 226.7.”). The issue is currently before the California Supreme Court in the *Naranjo* case. *See Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No. S258966.

1 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
2 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
3 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
4 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
5 compensation policies and practices described in detail above, Plaintiffs and Class Members are
6 entitled to recover penalties under Labor Code § 210.

7
8 **SIXTH CAUSE OF ACTION**
9 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
10 **[Cal. Labor Code § 2802]**
11 **On Behalf of Plaintiffs and the Class Against Defendant**

12 60. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
13 preceding paragraph.

14 61. Pursuant to section 2802(a) of the California Labor Code, “[a]n employer shall
15 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
16 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions
17 of the employer....” Labor Code 2802(c) defines necessary to include all “reasonable” expenses.
18 The purpose of this statute is “to prevent employers from passing their operating expenses on to their
19 employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting legislative
20 history from the 2000 amendment to the statute and holding that outside salespersons are entitled to
21 gas mileage reimbursement in addition to their commission pay). Labor Code section 2804 also
22 makes it crystal clear that claims under section 2802 are not waivable.

23 62. Furthermore, under Labor Code section 2802, employers must reimburse employees
24 for reasonable work-related use of their personal cell phones – regardless of whether or not aggrieved
25 employees incurred any additional out-of-pocket expense from that work-related use. *See, Cochran*
26 *v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014) (“We hold that when
27 employees must use their personal cell phones for work-related calls, Labor Code section 2802
28 requires the employer to reimburse them. Whether the employees have cell phone plans with
unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their
cell phone bills.”); see also *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D.Cal. Aug. 27, 2014)

1 (granting plaintiffs' motion for partial summary judgment on the plaintiffs' cell phone
2 reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D.Cal.
3 Dec. 9, 2014) (Hon. Edward Chen) (adopting the logic of *Cochran*)

4 63. The employer's obligation to reimburse all reasonably-incurred business-related
5 expenses, including personal cell phone and laptop-related expenses for work-related usage, arises
6 when the employer "knew or should have known" that its employees incurred a business-related
7 expense. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward
8 Chen); *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan
9 Illston) (adopting the "knew or should have known" standard). In such cases, including this one,
10 where employees have incurred reasonable work-related cell phone or laptop expenses that the
11 employer is or should have been aware of, an employer in California thus has an affirmative
12 obligation to reimburse expenses and cannot hide behind a policy advising employees to put in for
13 their expenses if they want to be reimbursed for them. *Id.*; see also Labor Code section 2804.

14 64. Here, Plaintiffs and Class Members are and were required to use their cell phone
15 during their shifts and to access Defendant's time keeping system on a daily basis. Defendant has
16 no policy or practice for reimbursing its employees for their expenses incurred in using their personal
17 cell phones or laptops for work-related purposes and, in fact, Defendant did not reimburse its
18 employees for such expenses. Additionally, Defendant had no policy or practice for reimbursing its
19 employees for their home offices expenses and, in fact, Defendant did not reimburse its employees
20 for such expenses.

21 65. Accordingly, Defendant violated Labor Code § 2802 and continues to do so by failing
22 to reimburse Plaintiffs and Class Members for all work-related cell phone and laptop expenses they
23 incurred in connection with their job duties.

24 **SEVENTH CAUSE OF ACTION**
25 **UNFAIR COMPETITION LAW VIOLATIONS**
26 **(BUS. & PROF. CODE § 17200, ET SEQ.)**
27 **On Behalf of Plaintiffs and the Class Against Defendant**

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

1 67. Section 17200 of the California Business & Professions Code prohibits any unlawful,
2 unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person
3 who has suffered injury in fact and has lost money or property” to prosecute a civil action for
4 violation of the UCL. Such a person may bring such an action on behalf of themselves, and others
5 similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

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

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

15 70. As a direct and proximate result of Defendant’s unlawful business practices, Plaintiffs
16 and Class Members have suffered economic injuries. Defendant has profited from its unlawful,
17 unfair, and/or fraudulent acts and practices.

18 71. Plaintiffs and Class Members are entitled to monetary relief pursuant to Business &
19 Professions Code §§ 17203 and 17208 for unpaid meal and rest period premiums and unreimbursed
20 business expenses due and interest thereon, from at least four years prior to the filing of this
21 complaint through to the date of such restitution, at rates specified by law. Defendant should be
22 required to disgorge all the profits and gains it has reaped and restore such profits and gains to
23 Plaintiffs and Class Members, from whom they were unlawfully taken.

24 72. Through its actions alleged herein, Defendant has engaged in unfair competition
25 within the meaning of section 17200 of the California Business & Professions Code, because
26 Defendant’s conduct, as herein alleged has damaged Plaintiffs and Class Members by wrongfully
27 denying them all meal and rest period premiums due, and therefore was substantially injurious to
28

1 Plaintiffs and Class Members.

2 73. Defendant engaged in unfair competition in violation of sections 17200 et seq. of the
3 California Business & Professions Code by violating Sections 226.7 and 512 of the California Labor
4 Code, and Sections 11 and 12 of the IWC Wage Order 4-2001.

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

8 75. Plaintiffs and Class Members are entitled to enforce all applicable penalty provisions
9 of the Labor Code pursuant to Business & Professions Code § 17202.

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

16 **SEVENTH CAUSE OF ACTION**

17 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
18 **PAGA PENALTIES FOR VIOLATIONS OF**
19 **LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, AND 512**
20 **(Labor Code §§ 2698-2699.5)**
On Behalf of Plaintiffs and the Aggrieved Employees Against Defendant

21 77. Plaintiffs, on behalf of themselves and all aggrieved employees, reallege and
22 incorporates by reference all previous paragraphs.

23 78. Based on the above allegations incorporated by reference, Defendant violated Labor
24 Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, and 512, as well as IWC Wage Order 4-2001.

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

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

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

3 These penalties will be allocated 75% to the Labor Workforce Development Agency and
4 25% to the affected employees.

5 80. As set forth above, Defendant failed to provide Plaintiffs and all aggrieved employees
6 with accurate itemized wage statements in compliance with Labor Code § 226(a). Labor Code §
7 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to
8 a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an
9 initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
10 citation, for which the employer fails to provide the employee a wage deduction statement or fails
11 to keep the required in subdivision (a) of Section 226.” Also, with respect to all pay periods in which
12 a missed or late meal break premium was paid, Defendant failed to make any associated PAGA
13 penalties that were triggered by same. In these instances, when Defendant paid late or missed meal
14 break premiums to Plaintiffs pursuant to Labor Code section 226.7, these late or missed meal break
15 premiums demonstrated violations of Labor Code section 226.7, as well as Section 512 of the Labor
16 Code, that give rise to independent PAGA penalty claims. *See Kim v. Reins International California,*
17 *Inc.*, 9 Cal.5th 73 (Mar. 12, 2020) (“For example, employers can pay an additional hour of wages as
18 a remedy for failing to provide meal and rest breaks. (section 226.7(c)) But we have held that
19 payment of this statutory remedy “does not excuse a section 226.7 violation.” (*Kirby v. Immoos Fire*
20 *Protection, Inc.* (2012), 53 Cal.4th 1244, 1256”).

21 81. Further, Plaintiffs, as Aggrieved Employees, need not demonstrate or prove that
22 Defendant’s conduct in refusing to provide accurate and itemized wage statements was knowing,
23 intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above; *see also Willner v. Manpower*
24 *Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all
25 [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed
26 above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that
27 “for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a),
28

1 and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist.
2 LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do not need to establish a Cal. Lab. Code
3 § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

4 82. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code
5 § 2699, et seq. because of Defendant’s violation of Labor Code §§ Labor Code §§ 201, 202, 203,
6 204, 210, 226, 226.3, 226.7, and 512, as well as IWC Wage Order 4-2001.

7 **JURY DEMAND**

8 83. Plaintiffs hereby demand trial by jury of his and the Class’s claims against Defendant,
9 and of all claims except for the PAGA and UCL, claims which are subject to a bench trial.

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiffs, on behalf of themselves, Class Members and Aggrieved Employees
12 pray for judgment against Defendant as follows:

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

14 2. On the First Cause of Action:

15 a. A declaratory judgment that Defendant violated California Labor Code §§
16 226.7, 512 and Section 11 of IWC Wage Order 4-2001;

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

20 3. On the Second Cause of Action:

21 a. A declaratory judgment that Defendant violated California Labor Code §
22 226.7, and Section 12 of IWC Wage Order 4-2001;

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

26 4. On the Third Cause of Action:

27 a. A declaratory judgment that Defendant violated California Labor Code §226
28

1 by issuing inaccurate and/or incomplete wage statements that failed to include the start date for each
2 pay period, the correct amount of gross wages earned, net wages earned, or the applicable hourly
3 rates in effect during the pay period and the corresponding number of hours worked at each hourly
4 rate to Plaintiffs and Class Members;

5 b. An award to Plaintiffs and Class Members of \$50 for each initial pay period,
6 one year prior to the filing of this Complaint through the date of trial, in which a violation of Section
7 226 occurred and \$100 for each subsequent pay period, one year prior to the filing of this Complaint
8 through the date of trial, in which a violation of Section 226 occurred, not to exceed \$4,000 for each
9 member of the Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor
10 Code § 226(e).

11 5. On the Fourth Cause of Action:

12 a. A declaratory judgment that Defendant violated California Labor Code §§
13 201 through 203;

14 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiffs and
15 Class Members for waiting time penalties in the amount of 30 days' wages per waiting time Class
16 Member.

17 6. On the Fifth Cause of Action:

18 a. A declaratory judgment that Defendant violated California Labor Code §§
19 204 and 210;

20 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiffs and Class
21 Members for penalties pursuant to Labor Code § 210.

22 7. On the Sixth Cause of Action:

23 a. A declaratory judgement that Defendant violated Labor Code § 2802;

24 b. Pursuant to 2802 (a)-(c), reimbursement to Plaintiffs and Class Members to for
25 all the unreimbursed business-related expenses including cell phones and laptop
26 expenses, plus interest and attorney's fees.

27 8. On the Seventh Cause of Action:

1 a. That the Court find and declare that Defendant have violated the UCL and
2 committed unfair and unlawful business practices by failing to pay meal and rest break premiums;

3 b. Restitution, including, but not limited to, the relief permitted by section 226.7
4 of the California Labor Code (i.e., pay as specified for meal and rest period premiums to Plaintiffs
5 and Class Members.

6 9. On the Eighth Cause of Action:

7 a. A civil penalty against Defendant in the amount of \$100 for the initial
8 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California
9 Labor Code for Plaintiffs and the Aggrieved Employees during all of the pay periods in the PAGA
10 Period in which an underlying Labor Code violation occurred, and on-going until the violations are
11 corrected;

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

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

18 8. All other relief as this Court deems proper.

19
20 Dated: May 13, 2022

Respectfully,

21 Employment Rights Law Group, APC
22 Elizabeth Law Group, APC

23 By: _____

24 Amir Seyedfarshi, Esq.
25 Elizabeth Zepeda
26 Counsel for Plaintiffs, the Class, and the
27 Aggrieved Employees
28