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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

MARIA MILLAN TORRES, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

HENLEY RESTAURANTS, INC., a California
Corporation; and DOES 1-50, inclusive,

Defendants.

CASE NO: 22CV407152

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

**(1) FAILURE TO PAY MINIMUM
WAGES (LABOR CODE §§ 1194, 1197,
1197.1, 1198, 1199);
(2) FAILURE TO REIMBURSE WORK-
RELATED EXPENSES (LABOR CODE §
2802);
(3) FAILURE TO PROVIDE TIMELY
REST PERIODS AND/OR PAY REST
PERIOD PREMIUMS (LABOR CODE §
226.7 AND § 12 OF IWC WAGE ORDER
NO. 5);
(4) FAILURE TO PROVIDE TIMELY
MEAL PERIODS AND/OR PAY MEAL
PERIOD PREMIUMS (LABOR CODE §§
226.7, 512, AND § 11 OF IWC WAGE
ORDER NO. 5);
(5) FAILURE TO PROVIDE COMPLETE
WAGE STATEMENTS (LABOR CODE §
226(A) AND (E));
(6) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210);
(7) FAILURE TO PAY FINAL WAGES
(LABOR CODE §§ 201 – 203);
(8) UCL VIOLATIONS (BUS. & PROF.
CODE §§ 17200); AND
(9) PAGA AND OTHER PENALTIES
(LABOR CODE §§ 2698 – 2699.6);**

DEMAND FOR JURY TRIAL

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

1 Plaintiff Maria Millan Torres (“Plaintiff”), on behalf of herself, the State of California, other
2 aggrieved employees, and all others similarly situated (hereinafter “Class Members”), complains
3 and alleges as follows:

4 **OVERVIEW OF CLAIMS**

5 1. Plaintiff brings this action on behalf of herself and all others similarly situated, as a
6 class action, as a representative action pursuant to Labor Code § 2699, *et seq.*, and on behalf of the
7 California general public, against Defendants Henley Restaurants, Inc., and DOES 1 to 50
8 (“Defendants”) for (1) failure to pay all minimum wages due, including wages due for time spent
9 undertaking pre-shift COVID temperature checks and questioning; (2) failure to reimburse managers
10 and assistant managers for work-related cell phone and gas mileage expenses necessarily incurred
11 in the scope of their job duties; (3) failure to provide timely and duty free rest periods; (4) failure to
12 provide timely and duty free meal periods; (5) failure to issue complete and itemized wage
13 statements; (6) failure to pay timely wages based on the foregoing; (7) failure to pay final wages;
14 (8) deceptive/fraudulent business practices based on the foregoing; and (9) PAGA and other
15 penalties based on the foregoing. As a result of the foregoing, Defendants have violated California
16 statutory laws as described below.

17 2. The “Class Period” is designated as the period from August 21, 2020 through the trial
18 date. The PAGA Period is March 1, 2021 through the present and on-going. Defendants’ violations
19 of California’s wage- hour laws and unfair competition laws, as described more fully below, have
20 been ongoing throughout the Class Period and PAGA Period.

21 **VENUE**

22 3. Venue is proper in this county under section 395.5 of the California Code of Civil
23 Procedure. Many of the putative Class Members were employed and/or performed work during the
24 Class Period by Defendants in Santa Clara County. Defendants operate fast food restaurants in the
25 county of Santa Clara. Many of the acts alleged herein including Defendants’ failure to pay minimum
26 wages, its failure to reimburse work-related expenses, its failure to provide timely and duty-free
27 meal and rest periods, its failure to issue accurate and complete wage statements, its failure to pay
28 timely wages, and its deceptive/fraudulent business practices occurred in Santa Clara County. Venue

1 is therefore proper in Santa Clara County.

2 **JURISDICTION**

3 4. Defendants are within the jurisdiction of this Court. Defendants conduct business by
4 operating seven franchised McDonald's restaurants in California. Thus, Defendants have obtained
5 the benefits of the laws of the State of California. In addition, Plaintiff asserts no claims arising
6 under federal law. Rather, Plaintiff brings causes of action based solely on, and arising from,
7 California law. The claims of the class are also based solely on California law described herein.
8 Furthermore, the total amount at issue in this case, inclusive of attorneys' fees, is less than \$5 million.
9 Therefore, jurisdiction is appropriate in Santa Clara County Superior Court.

10 **PAGA NOTICE**

11 5. Plaintiff has duly exhausted her administrative remedies under PAGA and provided
12 notification of her PAGA claims to Defendants and to the Labor and Workforce Development
13 Agency ("LWDA") beginning on March 1, 2022.

14 **THE PARTIES**

15 6. Plaintiff is a California resident who worked for Defendants during the relevant time
16 period.

17 7. During the Class Period, Defendants' employees, at various times throughout the
18 Class Period, including Plaintiff during her employment, were not paid all minimum wages owed,
19 including wages owed for time spent in pre-shift COVID-19 temperature checks; were not
20 reimbursed for work-related expenses; were not provided timely and duty free meal and rest periods;
21 were not provided accurate and/or complete wage statements; and did not receive timely or all final
22 wages owed.

23 8. Plaintiff represents the state of California and the following group of aggrieved
24 employees defined as:

25 Plaintiff and all other individuals who are or were employed by Defendant Henley
26 Restaurants, Inc., as hourly-paid employees, and who worked at least one shift in
27 California from March 1, 2021 and ongoing (the "PAGA Period") (hereinafter these
28 workers are referred to as "Aggrieved Employees").

9. Plaintiff also seeks to represent a Class defined as:

Plaintiff and all other individuals who are or were employed by Defendant Henley Restaurants, Inc., as hourly-paid employees, and who worked at least one shift in California from August 21, 2020 and ongoing (hereinafter these workers are referred to as the “Class” or “Class Members”).

10. Defendant Henley Restaurants, Inc. is a California corporation doing business in Santa Clara County. Defendants operate franchised McDonald's restaurants.

11. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is 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. Plaintiff 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.

12. Plaintiff is informed and believes, and based thereon alleges, that each Defendants 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 Defendants are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff, the Class, and the Aggrieved Employees.

13. Defendants 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, Defendants employed approximately 520 hourly-paid employees in California during the Class Period.

FACTUAL ALLEGATIONS

14. Defendants operate and, at all times during the Class Period and PAGA Period, have done business in California operating seven franchised McDonald's restaurants, including at least one store in Santa Clara County. Defendants, 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.

1 15. Labor Code § 1197 states the California requirement that employees must be paid at
2 least the minimum wage fixed by the Commission or by any applicable state or local law, and any
3 payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any
4 employee receiving less than the legal minimum wage...to recover in a civil action the unpaid
5 balance of the full amount of this minimum wage.” IWC Wage Order No. 17-2001 obligates
6 employers to pay each employee minimum wages for all hours worked.

7 16. These minimum wage standards apply to each hour employees worked for which
8 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
9 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid
10 or not, results in an average hourly wage above minimum wage. *Armenta*, 135 Cal.App.4th at 324.

11 17. Here, Defendants required Plaintiff, the Class, and all Aggrieved Employees to
12 regularly perform work-off-the-clock for which they did not receive any compensation. For instance,
13 as part of their employment Defendants required Plaintiff, the Class, and all Aggrieved Employees
14 to undergo COVID-19 temperature checks and screenings when entering Defendant’s premises at
15 the start of their shift. Although Defendants maintained a common policy and practice of requiring
16 Plaintiff, the Class, and the Aggrieved Employees to stand/wait in line for COVID-19 temperature
17 checks and screenings, Defendants failed to compensate Plaintiff, the Class, and the other Aggrieved
18 Employees for such time, as well as for the time walking to their clocks thereafter.

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

27 19. As the California Supreme Court made clear in *Morillion*, when determining whether
28 an employee’s activity is under the employer’s control entitling him or her to compensation, the

1 touchstone is not whether the employer requires the activity and thus whether employees can avoid
2 it, but the level of control employers exert over employees during the activity: “The level of the
3 employer’s control, *rather than the mere fact that the employer requires the employees’ activity is*
4 *determinative.*” *Morillion*, 22 Cal.4th at 587 (emphasis added).

5 20. In *Frlekin v. Apple Inc.*, (2020) 8 Cal. 5th 1038, 1051 (citing *Morillion*, 22 Cal.4th
6 at 587) the California Supreme Court reaffirmed its holding in *Morillion* that “[t]he level of the
7 employer’s control over its employees, rather than the mere fact that the employer requires the
8 employees’ activity, is determinative” concerning whether an activity is compensable under the
9 “hours worked” control clause. In *Frlekin*, the California Supreme Court found that time employees
10 spent undergoing bag searches on-site at the end of their shifts was compensable. The Court reasoned
11 its decision by analyzing factors in determining whether an employer has exerted compensable
12 control over employees:

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

21 *Frlekin* at 1056.

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

25 22. Here, as in *Frlekin*, the Class and Aggrieved Employees could not avoid Defendant’s
26 COVID-19 temperature checks and screenings (which took place on Defendants’ premises and
27 before they could clock in) and could not then use their time effectively for their own purposes
28 during such checks. As such, Defendants exercised compensable control over Class Members and
aggrieved employees undergoing and who underwent COVID-19 temperature checks screenings and
owes wages to the Class and Aggrieved Employees for this time. Notably, there is no de minimis

1 defense for such time. *See, Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018) (the California Supreme
2 Court held that the de minimis principle was not applicable in the context of an alleged policy
3 requiring employees to work minutes off the clock routinely; *see also, Frlekin*, 2020 Cal. LEXIS
4 547 (February 13, 2020) (hours work is defined as the time during which an employee is subject to
5 the control of an employer, and includes all the time the employee is suffered or permitted to work,
6 whether or not required to do so)..

7 23. Notably, through its policy and practice of requiring Plaintiff, the Class, and the
8 Aggrieved Employees to undergo pre-shift COVID-19 temperature checks and screenings,
9 Defendants clearly violated Labor Code § 1194. As a result of Defendants' policy and practices,
10 including those described above, Defendants regularly failed to pay Plaintiff, the Class, and all
11 Aggrieved Employees for all hours worked in violation of Labor Code § 1194 and 1197.

12 24. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
13 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
14 wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed,
15 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
16 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
17 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
18 underpaid regardless of whether the initial violation is intentionally committed. As set forth above,
19 Defendants failed to compensate Plaintiff, the Class, and all aggrieved employees for all hours
20 worked. Accordingly, through PAGA and to the extent permitted by law Plaintiff, the Class, and all
21 aggrieved employees are entitled to recover liquidated damages for violations of Labor Code §
22 1197.1. Based upon these same factual allegations, Plaintiff, the Class, and the other aggrieved
23 employees are entitled to penalties under Labor Code § 1199.

24 25. Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover
25 liquidated damages for violations of Labor Code § 1194. Where an employee, as Plaintiff, the Class,
26 and the other aggrieved employees experienced on a regular basis, are not paid for all hours worked
27 under Labor Code § 1194, the employees may recover minimum wages for the time for which they
28 received no compensation.

1 26. California Labor Code section 2802 requires an employer in California to "indemnify
2 his or her employee for all necessary expenditures or losses incurred by that employee in direct
3 consequence of the discharge of his or her duties." See Cal. Labor Code section 2802(a); *see*
4 *also* 2802(c) where "necessary" is defined to include all "reasonable" costs. This requires an
5 employer "to separately pay" an employee for "automobile expenses that the employee actually and
6 necessarily incurred." *Gattuso v. HarteHanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007). Notably,
7 Section 2802 is subject to an anti-waiver provision. See Cal. Labor Code § 2804.

8 27. "The elements of a claim under Section 2802 are: (i) the employee made expenditures
9 or incurred losses; (ii) the expenditures or losses were incurred in direct consequence of the
10 employee's discharge of his or her duties, or obedience to the directions of the employer; and (iii)
11 the expenditures or losses were reasonable and necessary." *Marr v. Bank of America*, 2011 U.S.
12 Dist. LEXIS 24868 (N.D. March 8, 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th
13 554, 568 (2007)). "In addition, the employer 'must either know or have reason to know that the
14 employee has incurred [the] expense.'" *Id.* (*citing Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901
15 (N.D.Cal. 2009)). Where an employer has knowledge that employees are incurring a reimbursable
16 expense, the employer must "exercise due diligence to ensure each employee is reimbursed." *Marr*,
17 at *1. ¹ The right of an employee to expense reimbursements from his or her employer is not
18 waivable. See Cal. Labor Code section 2804; *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951
19 (2008).

20 28. Here, Plaintiff worked as a floor manager and/or an assistant manager for Defendants
21 from May 2018 to November 2021. As part of Plaintiff's job, Store Manager Rosa Escobedo told
22 her and other managers and assistant managers to download and use a smartphone application (the
23 "app") to communicate with one another. The app updated management about the store's sales,
24

25 ¹ In evaluating claims for mileage reimbursements under Section 2802, numerous federal district courts in California
26 have adopted a "knew or should have known" standard for employer liability—that is, when an "employer either knows
27 or has reason to know that the employee has incurred a reimbursable expense ... it must exercise due diligence to ensure
28 that each employee is reimbursed." *Stuart v. RadioShack Corp.*, 641 F.Supp.2d 901, 903 (N.D.Cal.2009) (Hon. Edward
Chen); *see also, Wilson v. Kiewit Pacific Co.*, 2010 W.L. 5059522 (N.D.Cal.) (Hon. Susan Illston)
(adopting Radioshack "knew or should have known" standard and noting that database records of inter-store transfers
constitutes common proof of actual notice of mileage expenses, triggering duty to reimburse under Section 2802).

1 requirements on food handling, performance level with relation to other stores, service ratings, and
2 employee contact information. Defendant's assistant managers and managers receive instructions
3 regularly by means of the app and/or group chats. Plaintiff estimates she was on the application
4 anywhere between ten minutes to one hour per day. This is equally true for all of the Class Members
5 and Aggrieved Employees in management positions. In addition, Plaintiff and other managers and
6 assistant managers and leads were required to deliver supplies from one location another and do
7 bank runs² in their personal vehicles, which was known to Defendants, but for which they received
8 no mileage reimbursement in violation of Section 2802. Defendants had no vehicles available to be
9 used to transfer items between locations, but regularly asked assistant managers to make those inter-
10 restaurant deliveries when one restaurant was out of a certain item. Plaintiff and other managers and
11 assistant managers and leads visited the bank five to six times a month, transferred product inventory
12 to different stores eight times a month, went to Staples for administrative purchases three times a
13 month, and drove to the main corporate office to take documents two times a month. The proximity
14 of the locations they expected to visit ranged from 1-12 miles from the store.

15 29. As a result, Plaintiff, Class Members, and the Aggrieved Employees who were
16 managers and assistant managers incurred personal cell phone related expenses and gas mileage
17 reimbursement expenses but were not reimbursed a reasonable portion of their personal cell phone
18 bills and were not reimbursed for their out of pocket gas mileage expenses, in violation of Sections
19 2802 (a) and (c) of the California Labor Code and applicable state law. *See, e.g., Cochran v.*
20 *Schwan's Home Services, Inc.*, Case No. B247160 (Cal.App.Ct. (2nd Dist) Aug. 12, 2014) ("We hold
21 that when employees must use their personal cell phones for work-related calls, Labor Code section
22 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with
23 unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their
24 cell phone bills"); *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D.Cal. Aug. 27, 2014) (granting
25 plaintiffs' motion for partial summary judgment on the plaintiffs' cell phone reimbursement claim);
26 *see also Gattuso v. Harte-Hanks Shoppers, Inc.*, (2007) 42 Cal. 4th at 568 (work related gas mileage

27
28 ² Courts have certified class actions claims for unreimbursed gas mileage expenses based on bank runs in personal cars
under Labor Code Section 2802. *See Melgar v. CSK Auto, Inc.*, 681 F. App'x 605 (9th Cir. 2017).

1 must be reimbursed).

2 30. Plaintiff, the Class, and the Aggrieved Employees incurred monthly cell phone
3 expenses of \$50 to \$100 per month, a reasonable portion of which should have been reimbursed, but
4 was not. Other Class Members and Aggrieved Employees employed as managers by Defendants
5 throughout California incurred gas mileage expenses but were not reimbursed at the IRS mileage
6 rate, or at all, during their employment, throughout California and throughout the Class and PAGA
7 Period.

8 31. In short, Plaintiff, the Class, and the Aggrieved Employees who were managers and
9 assistant managers have been harmed by Defendants' unlawful business expense policies and/or
10 practices in that they have not been reimbursed for certain cell phone and work-related mileage
11 expenses incurred while employed by Defendants in California in substantial amounts to be proved
12 at trial.

13 32. Section 12 of the applicable IWC Wage Order requires California employers to
14 provide a 10- minute duty-free and uninterrupted rest break to employees for each 4 hours of work,
15 or major fraction thereof. Labor Code section 226.7 imposes a premium payment of one hour of pay
16 for each workday where a compliant rest break is not provided to an employee on a timely basis.

17 33. Labor Code section 512 and Section 11 of the applicable IWC Wage Order also
18 require employers to provide a 30-minute duty free meal period to employees on or before the fifth
19 and tenth hours of their shifts. Section 7(A) of the applicable IWC Wage Order mandates that
20 employers must keep and maintain meal break records recording such meal periods.

21 34. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
22 authorize and permit the amount of meal period and/or rest period time or the proper timing for
23 breaks called for under the law (as specified in the applicable Wage Order), "it has violated the wage
24 order and is liable." The *Brinker* Court explained in the context of rest breaks that employer liability
25 attaches from adopting an unlawful policy:

26 An employer is required to authorize and permit the amount of rest break time called for
27 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
28 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.***

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

2 35. Here, Plaintiff, the Class, and the Aggrieved Employees were not provided with
3 timely meal and rest breaks and were not typically able to take their meal and rest breaks on a timely
4 basis during their shifts.³ Plaintiff, the Class, and the Aggrieved Employees were thus not able to
5 receive their first, second, and/or third rest breaks (for shifts that were longer than 8 hours and 12
6 hours respectively, or major fractions thereof).

7 36. Furthermore, Defendants' McDonalds' restaurants were all understaffed, and
8 Plaintiff and the Aggrieved Employees were under pressure to finish their work-related tasks on
9 time. Plaintiff, the Class, and the Aggrieved Employees frequently could not take their first or second
10 meal and/or rest breaks once working. Therefore, Defendants are and were in violation of applicable
11 California law by failing to provide them with rest breaks.

12 37. As to Plaintiff, the Wage Statement Subclass, and all aggrieved employees,
13 Defendants also failed to provide accurate itemized wage statements in accordance with Labor Code
14 § 226(a).

15 38. Defendants knowingly and intentionally failed to pay Plaintiff, all Wage Statement
16 Subclass Members, and all aggrieved employees all minimum wages, including those associated
17 with COVID-19 temperature checks and screenings, as well as meal and rest period premiums.
18 Moreover, Plaintiff, all Wage Statement Subclass Members, and all aggrieved employees also
19 suffered legal "injury" for purposes of Labor Code section 226(e) insofar as they were unable to
20 readily and easily determine the information required to be set forth by Section 226(a). Specifically,
21 Plaintiff, all Wage Statement Subclass Members, and the aggrieved employees were unable to
22 determine the actual and accurate total hours worked by the employees, the gross wages earned, the
23 net wages earned.

24 39. Plaintiff, the Wage Statement Subclass and the aggrieved employees will prevail on
25 their claim for PAGA penalties under Labor Code § 226(a) without having to show injury or
26 willfulness. *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) ("hold[ing] a

27 _____
28 ³ Plaintiff and other assistant managers did not earn enough to be exempt and were therefore entitled to meal and rest breaks. However, they could not always take them on-time or at all.

1 plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not
2 have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”);
3 *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the
4 “requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section
5 226(a).”).

6 40. Under Labor Code §§ 201-202, an employer must provide an employee wages at the
7 time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203
8 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or
9 who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code
10 § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

11 41. As described in detail above, Defendants failed to pay Plaintiff, the Class, and other
12 aggrieved employees whose employment with Defendants have now ended, all wages owed,
13 including but not limited to minimum wages for COVID-19 checks and screenings as well as meal
14 and rest period premiums within the time constraints proscribed in Labor Code §§ 201-202 at the
15 time of their termination/separation. Thus, as result of Defendant’s faulty policies described above,
16 Plaintiff, the Class, and all aggrieved employees ended their employment with Defendants without
17 being compensated for each and every hour worked at the appropriate rate in violation of Labor
18 Code §§ 201, 202, 203.

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

24 43. Due to Defendant’s failure to pay all minimum wages due to Plaintiff, the Class, and
25 all aggrieved employees, as well as meal and rest period premiums, Defendants failed to timely pay
26 Plaintiff, the Class, and all aggrieved employees all wages owed within seven (7) days of the close
27 of the payroll period in accordance with Labor Code § 204(d) on a regular and consistent basis.

28 44. Pursuant to Labor Code Section 210, as amended,

1 (a) In addition to, and entirely independent and apart from, any other penalty provided
2 in this article, every person who fails to pay the wages of each employee as provided
3 in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be
4 subject to a penalty as follows:

5 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
6 employee.

7 (2) For each subsequent violation, or any willful or intentional violation, two
8 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of
9 the amount unlawfully withheld.

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

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

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

21 46. The administrative prerequisites of PAGA have been satisfied and Plaintiff has also
22 paid the \$75.00 fee and has otherwise satisfied the administrative prerequisites of PAGA.

23 47. Plaintiff by this action seeks to recover, on behalf of herself and all other current and
24 former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as specified in
25 Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a representative
26 action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal.
27 4th 969 (2009). Class certification of the PAGA claims is not required. *Id.*

28 **CLASS ACTION ALLEGATIONS**

48. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class composed
of and defined as: Plaintiff and all other individuals who are or were employed by Defendant Henley
Restaurants, Inc., as hourly-paid employees, and who worked at least one shift in California from
August 21, 2020 and ongoing (hereinafter "Class Members"). All such Class Members were subject
to Defendants' unlawful policies including, Defendants' failure to pay minimum wages for all
compensable time, Defendants' failure to reimburse business expenses. Defendant's failure to

1 provide compliant meal and rest periods, Defendants' failure to issue compliant wage statements,
2 Defendants' failure to keep accurate payroll records, Defendants' failure to pay final wages, and
3 Defendants' failure to pay timely wages.

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

7 a. Numerosity: The potential members of the Class as defined are so numerous
8 that joinder of all the members of the Class is impracticable. While the precise number of Class
9 Members has not been determined at this time, Plaintiff is informed and believes that Defendants
10 have employed approximately 520 Class Members as hourly-paid workers in California who were
11 subject to Defendants' unlawful compensation, wage statement, final pay, and reimbursement
12 policies. The Class Members are dispersed throughout California. Joinder of all members of the
13 proposed classes is therefore not practicable.

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

17 i. Whether Defendants violated sections 1194 and 1197 of the Labor Code by
18 failing to pay minimum wages for all hours worked, including for pre-shift time associated with
19 COVID-19 temperature checks and screenings;

20 ii. Whether Defendant violated section 2802 of the Labor Code by failing to
21 reimburse Plaintiff and Class Members for business expenses;

22 iii. Whether Defendant violated section 226.7 of the Labor Code by failing to
23 provide compliant rest periods and rest period premiums for missed rest periods;

24 iv. Whether Defendant violated sections 226.7 and 512 of the Labor Code by
25 failing to provide compliant meal periods and meal period premiums for missed meal periods;

26 v. Whether Defendants failed to provide Plaintiff and the members of the Class
27 compliant wage statements in violation of Labor Code Section 226(a);

28 vi. Whether Defendants violated Sections 201-203 of the Labor Code by failing

1 to pay all final wages to members of the Class whose employment with Defendants ended;

2 vii. Whether Defendants violated Sections 204 and 210 of the Labor Code by
3 failing to pay member of the Class all wages due on a timely basis;

4 viii. Whether Defendants engaged in an unfair practice and violated section 17200
5 of the California Business and Professions Code by failing to pay Plaintiff and the members of the
6 Class all minimum wages owed during the Class Period;

7 ix. Whether Plaintiff and the Class are entitled to restitution under Business and
8 Professions Code § 17200;

9 x. The proper formula(s) for calculating damages, interest, and restitution owed
10 to Plaintiff and the Class Members;

11 xi. The nature and extent of class-wide damages.

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

16 d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly
17 and adequately represent and protect the interests of the Class and Class Members. Plaintiff's
18 interests do not conflict with those of Class and Class Members. Counsel who represent Plaintiff are
19 competent and experienced in litigating large wage and hour class actions and will devote sufficient
20 time and resources to the case and otherwise adequately 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 Defendants' 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 system. Certifying this case as a class action is superior because it allows for efficient and full

1 disgorgement of the ill-gotten gains Defendants have enjoyed by failing to pay all minimum wages
2 due and will thereby effectuate California's strong public policy of protecting employees from
3 deprivation or offsetting of compensation earned in their employment. If this action is not certified
4 as a Class Action, it will be impossible as a practical matter, for many or most Class Members to
5 bring individual actions to recover monies unlawfully withheld from their lawful compensation due
6 from Defendants', due to the relatively small amounts of such individual recoveries relative to the
7 costs and burdens of litigation.

8
9 **FIRST CAUSE OF ACTION**
FAILURE TO PAY MINIMUM WAGES
[Cal. Labor Code §§ 1194, 1197]

10 **On behalf of Plaintiff and the Class Against Defendant**

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

13 51. The actionable period for this cause of action is August 21, 2020 through the present,
14 and on-going until the violations are corrected or the Class is certified.

15 52. Labor Code § 1197 states the California requirement that employees must be paid at
16 least the minimum wage fixed by the Commission, and any payment of less than the minimum wage
17 is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal
18 minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum
19 wage." IWC Wage Order 17-2001 also obligates employers to pay each employee minimum wages
20 *for all hours worked*. These minimum wage standards apply to each hour employees worked for
21 which they were not paid. Therefore, an employer's failure to pay for any particular hour of time
22 worked by an employee is unlawful, even if averaging an employee's total pay over all hours
23 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose,*
24 *Inc.* (2005) 135 Cal.App.4th 314, 324.

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

1 54. Here, Defendants required Plaintiff and the Class to regularly perform work-off-the-
2 clock for which they did not receive any compensation. For instance, as part of their uniform
3 employment policies Defendants required Plaintiff and all Class Members to undergo COVID-19
4 temperature checks and screenings before entering Defendant's premises at the start of their shift.
5 Although Defendants maintained a common policy and practice of requiring Plaintiff and the Class
6 to stand/wait in line for COVID-19 temperature checks and screenings, Defendants failed to
7 compensate Plaintiff and the other Class for such time.

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

11 56. Labor Code § 1194.2 allows an employee to recover liquidated damages in an amount
12 equal to the wages unlawfully unpaid and interest thereon for any action under Labor Code § 1194.
13 Where an employee, such as Plaintiff and the other Class members, is not paid for all hours worked
14 under Labor Code § 1194, the employee may recover minimum wages for the time associated with
15 the overtime for which they received no compensation. See *Sillah v. Command Int'l Sec. Servs.*
16 (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees suing for failure to pay overtime
17 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
18 minimum wage]; accord *Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) 2016 U.S.
19 Dist. LEXIS 172319, at *20-21.

20 57. Plaintiff and the other Class Members suffered and continue to suffer losses related
21 to the use and enjoyment of compensation due and owing to them as a direct result of Defendants'
22 unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and
23 within the jurisdictional limitations of this Court.

24 58. Plaintiff seeks all available remedies for Defendants' violations including, but not
25 limited to, any and all wages due, monies, interest, liquidated damages, penalties attorney's fees,
26 and costs to the extent permitted by law.

27 ///

28 ///

SECOND CAUSE OF ACTION
FAILURE TO REIMBURSE WORK RELATED EXPENSES
[Cal. Labor Code § 2802]
On Behalf of Plaintiff and the Class Against Defendant

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

60. Pursuant to Labor Code § 2802(a) “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer....” The purpose of this statute is “to prevent employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting legislative history from the 2000 amendment to the statute). Labor Code Section 2802(c) also clarifies that “the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

61. Specifically, under Labor Code § 2802, employers must reimburse employees for required work-related use of personal cell phones, regardless of whether they incur any additional out-of-pocket expense from that work-related use. *See Cochran v. Schwan’s Home Service*, 228 Cal. App. 4th 1137 (2014) (reversing denial of class certification in cell phone reimbursement class action). *Cochran* held that “[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all. . . . It is irrelevant whether the employee changed plans to accommodate work-related cell phone usage. . . . To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed.” *Id.* at 1144-45 (emphasis added); *see also Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion for partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

62. The employer’s obligation to reimburse business-related expenses arises when the

1 employer “knew or should have known” that its employees have incurred a business-related expense.
2 *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson*
3 *v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan Illston) (adopting
4 the “knew or should have known” standard from *RadioShack*). Notably, these claims are not
5 waivable per Section 2804 of the Labor Code.

6 63. Under Labor Code § 2802, if an employer requires employees to use their cell phone
7 or personal vehicles for work, as is the case, then Defendants must reimburse employees for a
8 reasonable portion of their monthly expenses. Here, the Class Members (managers and assistant
9 managers) were required to download business related apps to their cell phones while working at all
10 relevant times. Further, they also incurred gas mileage expenses associated with moving certain
11 supplies between Defendant’s restaurants in personal vehicles and doing bank runs in their own cars.
12 Employees throughout California incurred gas mileage expenses but were not reimbursed at the IRS
13 mileage rate, or at all, during their employment, throughout California and throughout the Class
14 Period.

15 64. Specifically, Defendant’s assistant managers and managers regularly received
16 instructions by means of an app and/or group chats on their personal cell phones. Plaintiff estimates
17 she was on the application anywhere between ten minutes to one hour per day. This is equally true
18 for all of the Class Members in management positions. In addition, Plaintiff and other managers
19 and assistant managers and leads were required to deliver supplies from one location another and do
20 bank runs in their personal vehicles, which was known to Defendant, but for which they received no
21 mileage reimbursement. Defendant had no vehicles available to be used to transfer items between
22 locations, but regularly asked assistant managers to make those inter-restaurant deliveries when one
23 restaurant was out of a certain item. Plaintiff and other managers and assistant managers and leads
24 visited the bank five to six times a month, transferred product inventory to different stores eight
25 times a month, went to Staples for administrative purchases three times a month, and drove to the
26 main corporate office to take documents two times a month. The proximity of the locations they
27 expected to visit ranged from 1-12 miles from the store.

28 65. Accordingly, Defendants violated Labor Code § 2802 and continues to do so by

1 failing to reimburse the Class Members for all work-related cell phone or vehicle expenses they
2 incurred in connection with the performance of their job duties.

3 **THIRD CAUSE OF ACTION**
4 **FAILURE TO PROVIDE OFF-DUTY REST PERIODS**
5 **AND PAY MISSED REST PERIOD PREMIUMS**
6 **[Cal. Labor Code § 226.7; Sec. 12 OF IWC Wage Order No. 5-2001]**
7 **On behalf of Plaintiff and the Class against Defendant**

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

10 67. The actionable period for this cause of action is August 21, 2020 through the present,
11 and on-going until the violations are corrected, or the class is certified.

12 68. Under IWC Wage Order 5-2001 an employer must authorize and permit all
13 employees to take ten (10) minute duty free rest periods for every major fraction of four hours
14 worked. Labor Code § 226.7 provides “an employer shall not require an employee to work during
15 a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation,
16 standard, or order of the Industrial Welfare Commission.” By operation of law, Defendants had a
17 duty to provide Plaintiff and Class with rest periods completely free of all duties, and enable Plaintiff
18 and the Class to leave the worksite during those rest periods if they so desired. *See Augustus v. ABM*
19 *Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods employers
20 must relieve employees of all duties and relinquish control over how employees spend their time.”).
21 In *Augustus*, the court expressly rejected the employer’s assertion that it could provide an on-duty
22 rest period to employees who worked as security guards and further explained “that employers
23 [must] relinquish any control over how employees spend their break time, and relieve their
24 employees of all duties.” *Id.* at 273. But in violation of §226.7, and Wage Order 5-2001, Defendants
25 did not provide Plaintiff, the Class Members, and the Aggrieved Employees with rest periods
26 completely free of all duties, nor did Defendants enable Plaintiff, the Aggrieved Employees, or the
27 Class Members to ignore communications on their employer-issued devices or check them in during
28 breaks.

69. By way of their policies requiring employees to stay on-duty during their shifts, and

1 stay on-call during their rest periods, Defendants failed to provide Plaintiff and the Class with duty-
2 free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked.
3 Specifically, Defendants failed to have a lawful rest period policy in place that informed Plaintiff
4 and the Class of their right to take duty-free rest periods for shifts that were a major fraction of a
5 four (4) hour work period and to make duty-free rest breaks available to these employees. Further,
6 Defendants did not permit Plaintiff or the Class to check in or ignore their devices during rest periods
7 as required by Labor Code § 226.7 and Wage Order 5-2001 and in violation of *Augustus*, 2 Cal. 5th
8 at 269. Accordingly, as a result of its on-duty rest period policies, Defendants regularly and
9 consistently failed to authorize and permit Plaintiff and the Class to take compliant off duty rest
10 periods.

11 70. In addition to failing to authorize and permit compliant rest periods, and instead
12 requiring on-duty rest breaks, Plaintiff and the Class were not compensated with one (1) hours'
13 worth of pay at their regular rate of compensation when they were not provided with a compliant
14 rest period in accordance with Labor Code § 226.7(b) and IWC Wage Order 5-2001 Section 12(B).

15 71. As a result of the unlawful acts of Defendants, Plaintiff and the Class were not
16 provided off duty rest periods, and are entitled to recovery under Cal. Labor Code §226.7 in the
17 amount of one additional hour of pay at the employee's regular rate of compensation for each work
18 period during each day in which Defendants failed to provide duty-free rest periods as required by
19 California law.

20 **FOURTH CAUSE OF ACTION**
21 **FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS**
22 **AND/OR PAY PREMIUMS**
23 **[Cal. Labor Code §§ 226.7, 512; Section 11 of IWC Wage Order No. 5)]**
24 **On Behalf of Plaintiff and the Class Against Defendant**

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

27 73. California Labor Code Section 512(a): An employer may not employ an employee
28 for a work period of more than five hours per day without providing the employee with a meal period
of not less than 30 minutes, except that if the total work period per day of the employee is no more

1 than six hours, the meal period may be waived by mutual consent of both the employer and
2 employee. An employer may not employ an employee for a work period of more than 10 hours per
3 day without providing the employee with a second meal period of not less than 30 minutes, except
4 that if the total hours worked is no more than 12 hours, the second meal period may be waived by
5 mutual consent of the employer and the employee only if the first meal period was not waived.

6 74. California Labor Code Section 226.7 requires an employer to pay an additional hour
7 of compensation for each meal period the employer fails to provide in accordance with the applicable
8 statute or Industrial Welfare Commission Wage Order.

9 75. During Plaintiff's employment, Defendants failed to provide Plaintiff and other
10 members of the Class with meal periods in accordance with the applicable Industrial Welfare
11 Commission Wage Order and California Labor Code Sections 226.7 and 512. Specifically,
12 Defendants violated Labor Code § 512 and IWC Wage Order 5-2001 § 11 by requiring Plaintiff and
13 the Class Members to take their meal periods and on-call, and thus were not relieved of all duties
14 during their meal periods.

15 76. Pursuant to California Labor Code Section 226.7, Plaintiff and other members of the
16 Class are entitled to damages in an amount equal to one (1) hour of wages per missed meal period,
17 in a sum to be proven at trial.

18
19 **FIFTH CAUSE OF ACTION**
20 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**

21 **[Cal. Labor Code § 226(a) and (e)]**

22 **On behalf of Plaintiff and the Wage Statement and Penalty Subclass against Defendant**

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

25 78. The actionable period for this cause of action is one year prior to the filing of this
26 Complaint through the present, and on-going until the violations are corrected or the subclass is
27 certified. The members of the Class who worked for Defendants during the actionable period for
28 this cause of action constitute the Wage Statement and Penalty Subclass.

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

1 Every employer shall...furnish each of his or her employees...an
2 accurate itemized statement in writing showing (1) gross wages earned,
3 (2) total hours worked by the employee, except for any employee
4 whose compensation is solely based on a salary and who is exempt
5 from payment of overtime under subdivision (a) of Section 515 or any
6 applicable order of the Industrial Welfare Commission, (3) the number
7 of piece-rate units earned and any applicable piece rate if the employee
8 is paid on a piece-rate basis, (4) all deductions, provided that all -
9 deductions made on written orders of the employee may be aggregated
10 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...

11 80. Defendants knowingly and intentionally failed to pay Plaintiff and all Wage
12 Statement Subclass Members all minimum wages, including wages associated with COVID-19
13 temperature checks and screenings, as well as all meal and rest period premiums owed. Moreover,
14 Plaintiff and all Wage Statement Subclass Members also suffered legal “injury” for purposes of
15 Labor Code section 226(e) insofar as they were unable to readily and easily determine the
16 information required to be set forth by Section 226(a). Specifically, Plaintiff and the Wage Statement
17 Subclass Members were unable to determine the actual and accurate total hours worked by the
18 employees, the gross wages earned, the net wages earned.

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

25 82. As a result of Defendants’ failure to issue compliant wage statements to Plaintiff and
26 the Wage Statement Subclass Members (i.e., those members of the class who were employed by
27 Defendants during the actionable period for this cause of action) in violation of section 226(a) of the
28 California Labor Code, Plaintiff and the Wage Statement Subclass Members are each entitled to

1 recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding
2 an aggregate penalty of \$4,000 per Plaintiff and per every member of the wage statement subclass
3 from Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

4 **SIXTH CAUSE OF ACTION**
5 **FAILURE TO PAY TIMELY WAGES**
6 **[Cal. Labor Code §§ 204, 210]**

7 **On behalf of Plaintiff and the Late Wages Subclass against Defendant**

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

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

15 85. Due to Defendants' failure to pay Plaintiff and the Class Members all wages owed,
16 including those associated with COVID-19 checks and screenings, as well as meal and rest period
17 premiums owed, Defendants violated Labor Code § 204 by failing to pay all wages due within seven
18 (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden*
19 *State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016)
20 (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code
21 §§ 203 and 204).

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

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

On behalf of Plaintiff and the Late Wages Subclass against Defendant

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

88. The actionable period for this cause of action is August 21, 2020 through the present, and on-going until the violations are corrected or the Class is certified.

89. 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*, (1998) 68 Cal.App.4th 487, 492.

90. As described in detail above, Defendants failed to pay Plaintiff and Class Members whose employment with Defendants has now ended, all wages owed, including but not limited to minimum wages for COVID-19 checks and screenings as well as meal and rest period premiums owed within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants’ faulty policies described above, Plaintiff and all Class Members left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, 203, thus triggering 30 days of wage claims for each former employee.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
[Bus. & Prof. Code § 17200, et seq.]

On Behalf of Plaintiff and the Class against Defendant

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

92. 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

1 violation of the UCL. Such a person may bring such an action on behalf of herself and others
2 similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

3 93. Under section 17208 of the California Business and Professions Code, the statute of
4 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this
5 cause of action is August 21, 2020 through the present, and on-going until the violations are
6 corrected or the Class is certified.

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

12 95. As a direct and proximate result of Defendants' unlawful business practices, Plaintiff
13 and the Class Members have suffered economic injuries. Defendants have profited from its unlawful,
14 unfair, and/or fraudulent acts and practices.

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

21 97. Through its actions alleged herein, Defendants have engaged in unfair competition
22 within the meaning of section 17200 of the California Business & Professions Code, because
23 Defendants' conduct, as herein alleged has damaged Plaintiff and the Class Members by wrongfully
24 denying them minimum wages, and therefore was substantially injurious to Plaintiff and the Class
25 Members.

26 98. Defendants engaged in unfair competition in violation of sections 17200 et seq. of
27 the California Business & Professions Code by violating Section 1194 of the California Labor Code.

28 99. Defendants' course of conduct, act and practice in violation of the California laws

mentioned above constitute independent violations of sections 17200 et seq. of the California Business and Professions Code.

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

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

NINTH CAUSE OF ACTION

LABOR CODE PRIVATE ATTORNEY GENERAL ACT PENALTIES

[Labor Code §§ 2698-2699.5]

On Behalf of Plaintiff, the LWDA and the PAGA Covered Employees against Defendant

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

103. Plaintiff and the "Aggrieved Employees" under PAGA, i.e., those employees who, during the PAGA Period, suffered the Labor Code violations alleged herein; specifically, violations of §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512, 1194, 1197, 1197.1, 1198, 1199, and 2802 of the Labor Code bring claims under PAGA. Plaintiff was employed by Defendants during the one year preceding the submission of a PAGA letter to the LDWA on or around March 1, 2022. As such, she seeks to recover, on behalf of herself and all other current and former aggrieved employees of Defendants, the civil penalties provided by PAGA.

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

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

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

These penalties will be allocated 75% to the Labor Workforce Development Agency and

1 25% to the affected employees.

2 105. The aggrieved employees are Plaintiff and all other California residents who are or
3 were employed by Defendants HENLEY RESTAURANTS, INC., and who worked at least one pay
4 period in California during the PAGA Period. These employees were subject to the aforementioned
5 Labor Code violations, during the period of time from one year prior to the submission of Plaintiff's
6 letter to the LDWA on March 1, 2022 through the present and on-going, i.e., from March 1, 2021 to
7 the present.

8 106. Further, Plaintiff, and the Aggrieved Employees, need not demonstrate or prove that
9 Defendants' conduct in refusing to provide itemized wage statements was knowing, intentional, or
10 willful. *Lopez v. Friant & Assocs., LLC*, cited above; *see also Willner v. Manpower Inc.* 35 F. Supp.
11 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all [plaintiff] needs to
12 establish is a violation of section 226(a), which she has done, as discussed above."); *McKenzie v.*
13 *Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that "for the purposes of
14 recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not
15 establish a Section 226(e) injury."); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815,
16 at *28 (C.D. Cal. July 3, 2013) ("Plaintiff do not need to establish a Cal. Lab. Code § 226(e) injury
17 to recover penalties under § 2699(f) of PAGA.").

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

21 108. Pursuant to Labor Code § 2699.3 (a), on March 1, 2022, Plaintiff gave written notice
22 by certified mail to Defendants, and to the Labor and Workforce Development Agency ("LWDA")
23 of her claims, including the facts and theories supporting all claims outlined in this Complaint.
24 Accordingly, Plaintiff has or soon will have fulfilled all administrative prerequisites to the pursuit
25 of her PAGA claim on behalf of herself and all other current and former aggrieved employees of
26 Defendants.

27 JURY DEMAND

28 109. Plaintiff hereby demands trial by jury of her and the Class's claims against

Defendants, except for the PAGA and UCL claims which will be tried by the Court.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of herself and the members of the Class, and the LWDA and the Aggrieved Employees, prays for judgment against Defendants as follows:

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

2. On the First Cause of Action:

a. A declaratory judgment that Defendants have violated California Labor Code sections 1194 and 1197 in failing to pay Plaintiff and the Class all minimum wages due;

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

3. On the Second Cause of Action:

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

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

4. On the Third Cause of Action:

a. A declaratory judgment that Defendant violated California Labor Code § 226.7, and Section 12 of IWC Wage Order 5-2001;

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

5. On the Fourth Cause of Action:

a. A declaratory judgment that Defendants have violated California Labor Code §§ 226.7, 512, and Section 11 of IWC Wage Order No. 5-2001;

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

1 6. On the Fifth Cause of Action:

2 a. A declaratory judgment that Defendants violated California Labor Code §226
3 by failing to issue compliant wage statements to Plaintiff, the Aggrieved Employees and the wage
4 statement subclass members;

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

9 7. On the Sixth Cause of Action:

10 a. A declaratory judgment that Defendants violated California Labor Code §§
11 204 and 210;

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

14 8. On the Seventh Cause of Action:

15 a. A declaratory judgment that Defendants have violated California Labor Code
16 sections 201-203 in failing to pay Plaintiff and the Class all final wages due;

17 b. An award to Plaintiff and the other members of the Class whose employment
18 with Defendants ended in the amount 30 days wages under Labor Code sections 201-203;

19 9. On the Eighth Cause of Action:

20 a. That the Court find and declare that Defendants have violated the UCL and
21 committed unfair and unlawful business practices by failing to pay all minimum wages owed, all
22 meal and rest break premiums owed, and by failing to reimburse Plaintiff and the Class for all their
23 personal cell phone and gas mileage expenses;

24 b. Restitution, including, but not limited to, the relief permitted by sections
25 1194, 226.7, and 2802 of the California Labor Code (i.e., wages, including pay as specified for
26 COVID-19 temperature checks and screening time, meal and rest period premiums, and
27 reimbursement of all business-related expenses by Plaintiff and the members of the Class during the
28 Class Period.

1 10. On the Ninth Cause of Action:

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

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

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

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

14
15 Dated: October 28, 2022

Respectfully submitted,

16 **ACKERMANN & TILAJEF, P.C.**
17 **LAW OFFICE OF TATIANA HERNANDEZ, P.C.**

18 By: 

19 Craig Ackermann, Esq.

20 Tatiana Hernandez, Esq.

21 *Counsel for Plaintiff, the Putative Class, the LWDA,*
22 *and the Aggrieved Employees*