

1 **EMPLOYMENT RIGHTS LAW GROUP, APC.**

2 Amir H. Seyedfarshi, (SBN 301656)
3 amir@employmentrightslawgroup.com
4 1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
Telephone: (424) 777-0964

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County of Stanislaus
Clerk of the Court
By: Donna Benz, Deputy

5 **LAW OFFICE OF TATIANA HERNANDEZ, P.C.**

6 Tatiana Hernandez (SBN 255322)
7 tatiana@thlawpc.com
8 1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
Telephone: (213) 909-4248
Facsimile: (310) 388-0639

9 Attorneys for Plaintiff, and the Class

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF STANISLAUS**

12 Manuel Fierros, individually and on behalf of
13 all others similarly situated,

14 Plaintiff,

15 v.

16 Colt Builders Corp., a Utah Corporation, and
17 DOES 1-10, inclusive.

18 Defendant.

CASE NO: CV-22-003178

Judge: Hon. Sonny S. Sandhu
Dept: 24

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

(1) FAILURE TO PAY MINIMUM WAGES
(LABOR CODE §§ 1194, 1194.2, 218.5);
(2) FAILURE TO PAY OVERTIME (LABOR
CODE § 510, 1194);
(3) FAILURE TO PROVIDE REST PERIODS
AND PAY MISSED REST BREAK PREMIUMS
(LABOR CODE §§ 226.7; SECTION 12 OF IWC
WAGE ORDER NO. 16);
(4) FAILURE TO PROVIDE MEAL PERIODS
AND PAY MISSED MEAL PERIOD
PREMIUMS (LABOR CODE §§ 226.7, 512,
SECTION 11 OF IWC WAGE ORDER NO. 16);
(5) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802);
(6) FAILURE TO PROVIDE COMPLETE
WAGE STATEMENTS (LABOR CODE § 226);
(7) WAITING TIME PENALTIES (LABOR
CODE § 201 – 203);
(8) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210); AND
(9) UCL VIOLATIONS (BUS. & PROF. CODE
§§ 17200-17204); AND
(10) PAGA AND OTHER PENALTIES (LABOR
CODE §§ 2698 – 2699.5);
DEMAND FOR JURY TRIAL

1 Plaintiff Manuel Fierros (“Plaintiff”), on behalf of himself, 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 himself and all others similarly situated, and
6 as a class action, as a representative action pursuant to Labor Code §2699, *et seq.*, and on behalf of
7 the California general public, against Defendant Colt Builders Corp. and DOES 1 to 10
8 (“Defendant”) for (1) its failure to pay minimum wages for all hours worked; (2) its failure to pay
9 overtime wages for all overtime hours worked; (3) its failure to provide compliant rest breaks and
10 pay rest break premiums to its current and former employees in California; (4) its failure to provide
11 meal periods and pay missed meal period premiums to its current and former employees in
12 California; (5) its failure to reimburse business expenses incurred to its current and former
13 employees in California; (6) its failure to provide complete wage statements to its current and former
14 employees in California within the one year prior to the filing of this Complaint; (7) its failure to
15 pay all wages due to former employees based on the foregoing; (8) its failure to pay timely wages
16 to employees based on the foregoing; and, (9) unfair business practices based on the foregoing; and
17 (10) PAGA and other penalties based on the foregoing. As a result of the foregoing, Defendant has
18 violated California statutory laws as described below.

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

21 3. The PAGA Period is one year from the sending of Plaintiff’s PAGA letter (i.e. June
22 13, 2022) to the LWDA through the present and on-going. Defendant’s violations of California’s
23 wage- hour laws and unfair competition laws, as described more fully below, have been ongoing
24 throughout the Class Period and PAGA Period.

25 VENUE

26 4. Venue is proper in this county under section 395.5 of the California Code of Civil
27 Procedure. Many of the putative Class Members were employed and/or performed work during the
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1 Class Period by Defendant in Stanislaus County. Defendant provides construction services to private
2 and governmental entities in the county of Stanislaus. Many of the acts alleged herein including
3 Defendant's failure to pay minimum wages, failure to pay overtime, its failure to provide Labor
4 Code complaint meal and rest breaks, its failure to pay missed meal and rest break premiums, and
5 its failure to reimburse for business expenses occurred in Stanislaus County. Moreover, the majority
6 of the construction projects by Defendant are located in Stanislaus County. Venue is therefore proper
7 in Stanislaus County.

8 **JURISDICTION**

9 5. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
10 dollars of business by providing construction and building upgrading services in California. Thus,
11 Defendant has obtained the benefits of the laws of the State of California. In addition, Plaintiff asserts
12 no claims arising under federal law. Rather, Plaintiff brings causes of action based solely on, and
13 arising from, California law. The claims of the class are also based solely on California law
14 described herein. Furthermore, the total amount at issue in this case, inclusive of attorneys' fees, is
15 less than \$5 million. Therefore, jurisdiction is appropriate in Stanislaus County Superior Court.

16 **THE PARTIES**

17 6. Plaintiff Manuel Fierros is a California resident who worked for Defendant from
18 approximately October 2021 to February 2022.

19 7. From at least four years from the filing of this complaint through the present, and
20 on-going, Defendant's construction workers, including Plaintiff during his employment, were not
21 paid by Defendant for all time worked. Specifically, Plaintiff and the Class Members and Aggrieved
22 Employees were required to arrive at least 15 minutes prior to each shift on a daily basis, and wait
23 on a line prior to check in. This period of time was pre-clock-in and the employees were not
24 compensated for this time. Once all employees signed in on their check in sheet, then they were
25 allowed to report to their job sites. Moreover, Plaintiff, the Aggrieved Employees, and the Class
26 Members were not paid overtime; did not receive premium payments for non-compliant rest periods;
27 were not provided timely duty-free meal breaks or paid missed meal break premiums; were not
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1 provided accurate and/or complete wage statements; were not reimbursed for all business expenses
2 including cell phones; did not receive timely wages; and did not receive all of their wages due upon
3 termination of employment.

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

6 All non-exempt individuals who are or were employed by Colt Builders Corp. in the State
7 of California and who worked one or more shifts of (5) hours or longer during the PAGA
8 Period (hereinafter referred to as "Aggrieved Employees").

9 9. Defendant is a Utah corporation with its principal place of business in Murray, Utah.
10 Defendant is a construction company that transacts millions of dollars of business by providing
11 construction services to buildings throughout the nation, including in California.

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

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

24 12. Defendant employed Plaintiff, the Aggrieved Employees, and the Class, as
25 construction workers in California at various times during the Class Period On information and
26 belief, Defendant employed approximately 500 construction workers in California during the Class
27 Period and PAGA Period.
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FACTUAL ALLEGATIONS

13. Defendant operates and, at all times during the Class Period, and PAGA Period, has done and does business in California providing building and construction services in California. Defendant, in the course of operating its business in California during the Class Period, employed Plaintiff, and the Class, the Aggrieved Employees as construction workers. Plaintiff, the Class, and the Aggrieved Employees, were paid by Defendant both hourly wages and prevailing wages.

14. During the Class Period, Plaintiff, like the other members of the Class typically worked in excess of eight hours per day and five days per week. Aggrieved Employees and Class Members' and job duties included, among other things, performing carpentering and construction work to Defendant's construction projects in California. Moreover, Plaintiff and the Class Members often worked in excess of eight hours without receiving the proper overtime rate in violation of Labor Code § 510. Plaintiff's and the Class Members' timecards do not reflect the accurate punch-in and punch-out time entries on a daily basis.

15. Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission for all hours worked and/or under the control of Defendant, and any payment of less than the minimum wage for such hours is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order No. 16 also obligates employers to pay each employee minimum wages for all hours worked and/or under the control of Defendant.

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

17. Labor Code § 1194.2 authorizes employees to recover liquidated damages in any action under Labor Code § 1194 to recover unpaid minimum wages. Where an employee,

1 such as Plaintiff, and the Class, the Aggrieved Employees, were not paid for all hours worked
2 and/or under the control of Defendant under Labor Code § 1194, the employee may recover
3 minimum wages for the time worked for which they received no compensation. *See Sillah v.*
4 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
5 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
6 showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*,
7 2016 U.S. Dist. LEXIS 172319, at *20-21 (N.D. Cal. Dec. 12, 2016). Like section 1194, the
8 IWC Wage Orders all require California employers pay employees no less than minimum
9 wage for all hours worked. *See e.g.*, IWC Wage Order No. 16, section 4(B). The phrase “hours
10 worked” is defined as “the time during which an employee is subject to the control of an
11 employer and includes all the time the employee is suffered or permitted to work, whether or
12 not required to do so.” *Id.*, section 2(G). In *Morillion v. Royal Packing*, 22 Cal. 4th 575 (2000),
13 where certain agricultural employees were subject to employer control during the time they
14 spent riding to and from fields when required to ride in employer provided buses, such time
15 was held to be compensable under the applicable IWC Wage Order. The California Supreme
16 Court there noted that: “The two phrases [in Section 2(G) of the Wage Order’s definition of
17 “hours worked”] – “time during which an employee is subject to the control of an employer”
18 and “time the employee is suffered or permitted to work, whether or not required to do so”—
19 can also be interpreted as independent factors, each of which defines whether certain time
20 spent is compensable as “hours worked”. Thus, an employee who is subject to an employer’s
21 control does not have to be working during that time to be compensated under Wage Order
22 14-80 [internal citation to *Bono* omitted].” *Morillion*, 22 Cal.4th at 582; *see also Bono*
23 *Enterprises, Inc. v. Bradshaw*, 32 Cal.App.4th 968, 977 (1995) (“When an employer directs,
24 commands or restrains an employee from leaving the workplace during his or her lunch hour
25 and thus prevents the employee from using the time effectively for his or her own purposes,
26 ***that employee remains subject to the employer’s control.*** According to IWC Order 1-89, the
27 employee must be paid.”).

1 18. Due to Defendant’s policy of failing to pay Plaintiff, and the Class, the Aggrieved
2 Employees, for all of their hours worked and/or under Defendant’s control, including their time spent
3 waiting in a line prior to check in, Plaintiff and the Class have not been paid all minimum and
4 overtime wages owed.

5 19. Thus, Plaintiff, the Aggrieved Employees, and the Class, have only received
6 compensation for the hours worked on the projects and not the hours they were waiting in line prior
7 to check in, which was often fifteen minutes per day or more. Thus, Plaintiff, the Aggrieved
8 Employees, and the Class, were not paid minimum wages for all tasks performed during their
9 workday and/or for all time controlled by Defendant. As a result, Plaintiff, the Aggrieved
10 Employees, and the Class, have been denied compensation for all hours worked or under
11 Defendant’s control, in violation of Cal. Labor Code §1194, and have been denied compensation at
12 the minimum wage in violation of Cal. Labor Code §§ 1197 and 1199. Labor Code §510 requires an
13 employer to compensate an employee who works more than eight (8) hours in one workday, forty
14 (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day
15 no less than one and one-half times the regular rate of pay for an employee. In accordance with
16 Labor Code § 1194, Plaintiff, the Aggrieved Employees, and the Class, could not then agree to work
17 for a lesser wage than the amount of overtime wages proscribed by Labor Code §§ 510 and 1194.

18 20. Further, because Plaintiff, the Aggrieved Employees, and the Class, did not receive
19 the overtime premium pay rates applicable to employees under California law for working in excess
20 of eight hours in a day, or more that forty hours in a workweek, in violation of IWC Wage Order 16-
21 2001, and Labor Code §§ 1194 and 510. On multiple occasions, Plaintiff, the Aggrieved Employees,
22 and the Class, worked shifts that were longer than 8 hours in length but did not receive overtime pay
23 for all overtime hours worked.

24 21. Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to
25 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
26 applicable regulation, standard, or order of the Industrial Welfare Commission. . . .”

27 22. Section 12 of IWC Wage Order No. 16 states in pertinent part: “Every employer shall
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1 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
2 middle of each work period. The authorized rest period time shall be based on the total hours worked
3 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

4 23. The California Supreme Court explained in the context of rest breaks that employer
5 liability attaches from adopting an unlawful policy: “An employer is required to authorize and permit
6 the amount of rest break time called for under the wage order for its industry. If it does not—if, for
7 example, it adopts a uniform policy authorizing and permitting only one rest break for employees
8 working a seven-hour shift when two are required—***it has violated the wage order and is***
9 ***liable.***” *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1033 (2012) (emphasis added).

10 24. Following *Brinker*, the Courts of Appeal have confirmed that liability for on-duty
11 breaks arises when an employer adopts a uniform policy that fails to provide off-duty breaks. For
12 example, in *Faulkinbury v. Boyd & Associates, Inc.*, the California Court of Appeals
13 applied *Brinker*: “In *Faulkinbury I*, we concluded that even if [defendant]’s on-duty meal break
14 policy was unlawful, [defendant] would be liable only when it actually failed to provide a required
15 off-duty meal break. *Brinker* leads us now to conclude [defendant] would be liable upon a
16 determination that [defendant]’s uniform on-duty meal break policy was unlawful.” *Faulkinbury*,
17 216 Cal. App. 4th 220, 235 (2013). The Court further explained: “the employer’s liability arises by
18 adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was
19 able to take the required break goes to damages...” *Id.* (citations omitted); *see also Benton v.*
20 *Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 728 (2013).

21 25. Here, not only did Defendant fail to have a compliant rest period policy. Further,
22 because of the time-pressure nature of Plaintiff, the Aggrieved Employees, and the Class’s work
23 schedule, Plaintiff, the Aggrieved Employees, and the Class, were never relieved of all duties while
24 working for Defendant. Moreover, often Defendant required Plaintiff, the Aggrieved Employees,
25 and the Class to combine their rest breaks and take them at the same time as the meal break instead
26 of having two separate ten-minute rest breaks.

27 26. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the
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1 Aggrieved Employees, and the Class, were not compensated with one (1) hour's worth of pay at
2 their regular rate of compensation when they were not provided with a compliant rest period in
3 accordance with Labor Code § 226.7(b).

4 27. Under California Labor Code Section 512 and IWC Wage Order No. 16, no employer
5 shall employ any person for a work period of more than five (5) hours without providing a meal
6 period of not less than thirty (30) minutes. During this meal period of not less than thirty (30)
7 minutes, the employee is to be completely free of the employer's control and must not perform any
8 work for the employer. If the employee does perform work for the employer during the thirty (30)
9 minute meal period, the employee has not been provided a meal period in accordance with the law.
10 Also, the employee is to be compensated for any work performed during the thirty (30) minute meal
11 period.

12 28. Under California Labor Code Section 226.7, if the employer does not provide an
13 employee a meal period in accordance with these requirements, the employer shall pay the employee
14 one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
15 period is not provided. Plaintiff, the Aggrieved Employees, and the Class, were required to take
16 their breaks either on-duty or after (5) hours from the start time of their shifts. Further Defendant often
17 interrupted Plaintiff, the Aggrieved Employees, and the Class meal periods by asking them to
18 perform tasks while on they were on their meal break. However, Defendant never paid any missed
19 meal break premiums to Plaintiff, the Aggrieved Employees, and the Class.

20 29. Furthermore, Defendant violated Labor Code § 512 by failing to advise Plaintiff, the
21 Aggrieved Employees, and the Class, of their right to receive thirty (30) minute uninterrupted meal
22 periods within the first five hours of his shift.

23 30. Defendant also failed to pay Plaintiff, the Aggrieved Employees, and the Class, meal
24 period premiums for each workday that they did not receive all compliant meal periods.

25 31. Pursuant to Labor Code 226.7(c), if an employer failed to provide an employee with
26 a meal or rest period, "the employer shall pay the employee one additional hour of pay at the
27 employee's regular rate of compensation for each workday that the meal or rest or recovery period
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1 is not provided.”

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

10 33. Specifically, under Labor Code § 2802, employers must reimburse employees for
11 required work-related use of personal cell phones, regardless of whether they incur any additional
12 out-of-pocket expense from that work-related use. *See Cochran v. Schwan’s Home Service*, 228 Cal.
13 App. 4th 1137 (2014) (reversing denial of class certification in cell phone reimbursement class
14 action). *Cochran* held that “[i]f an employee is required to make work-related calls on a personal
15 cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter
16 whether the phone bill is paid for by a third person, or at all. . . . It is irrelevant whether the employee
17 changed plans to accommodate work-related cell phone usage. . . . *To show liability under section*
18 *2802, an employee need only show that he or she was required to use a personal cell phone to make*
19 *work-related calls, and he or she was not reimbursed.” Id.* at 1144-45 (emphasis added); *see also*
20 *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion
21 for partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue*
22 *Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen)
23 (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

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

3 35. Under Labor Code § 2802, where, as here, an employer expects Plaintiff, the
4 Aggrieved Employees, and the Class, to use their cell phones, then Defendant must reimburse
5 employees. Defendant never reimbursed Plaintiff, the Aggrieved Employees, and the Class, for their
6 work-related cell-phone expenses.

7 36. Accordingly, Defendant violated Labor Code § 2802 and continue to do so by failing
8 to reimburse Plaintiff, the Aggrieved Employees, and the Class for all work-related charges they
9 incurred in connection with their job duties. By failing to reimburse Plaintiff, the Aggrieved
10 Employees, and the Class for their personal expenses incurred for work-related purposes, Defendant
11 violated Labor Code § 2802.

12 37. Furthermore, Defendant did not and does not issue adequate wage statements to
13 Plaintiff, the Aggrieved Employees, and the Class, under Labor Code Sections 226(a).

14 38. Due to, *inter alia*, Defendant’s failure to pay Plaintiff, the Aggrieved Employees, and
15 the Class, all minimum wages due for all time under Defendant’s control, overtime payments for all
16 overtime hours worked, and meal and rest break premiums, the wage statements issued by
17 Defendants to Plaintiff, the Aggrieved Employees, and the Class, do not indicate the correct amount
18 of gross wages earned, total hours worked, net wages earned, or the applicable hourly rates in effect
19 during the pay period and the corresponding number of hours worked at each hourly rate in violation
20 of Labor Code § 226(a)(1), (2), (5) and (9).

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

27 40. Defendant’s failure to furnish accurate itemized wage statements has caused Plaintiff,
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1 the Aggrieved Employees, and the Class, to incur economic damages in that they were not aware
2 that they were owed and not paid additional compensation. *See Cicairos v. Summit Logistics*, 133
3 Cal.App.4th 949, 954 (“If it is left to the employee to add up the daily hours shown on the time cards
4 or other records so that the employee must perform arithmetic computations to determine the total
5 hours worked during the pay period, the requirements of section 226 would not be met”); *McKenzie*
6 *v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated
7 California Labor Code by not including, inter alia, total hours worked giving rise to claims under
8 both Section 226 and for PAGA penalties); *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949,
9 960-961 (2005) (reversing summary judgment for defendants where wage statements did not “give
10 an accurate report of the hours plaintiff worked, at least not on its face”); Labor Code § 226(e)(2)(B)
11 (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5),
12 among other provisions, and where employees cannot easily determine the gross or net wages earned
13 by the employee during the pay period).

14 41. The Aggrieved Employees do not need to show intent or injury to prevail on their
15 claim for PAGA penalties under Labor Code § 226(a). *See Lopez v. Friant & Assoc.*, 15 Cal.App.5th
16 773 (Cal. App. 2017); *Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To
17 obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of section 226(a),
18 which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232
19 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA penalties, one need only prove
20 a violation of Section 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis*
21 *Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiffs do not need
22 to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

23 42. Labor Code § 201(a) provides in pertinent part: “If an employer discharges an
24 employee, the wages earned and unpaid at the time of discharge are due and payable
25 immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written
26 contract for a definite period quits his or her employment, his or her wages shall become due and
27 payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice
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1 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
2 of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement
3 or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an
4 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
5 from the due date thereof at the same rate until paid or until an action therefor is commenced; but
6 the wages shall not continue for more than 30 days.”

7 43. Following Plaintiff’s separation of employment from Defendant, they, like other
8 members of the Class who are former employees of Defendant, did not receive all wages due,
9 including all minimum wages, overtime, and his unpaid meal and rest breaks during the Class Period,
10 in violation of Labor Code Sections 201-203, triggering waiting time penalties under those
11 provisions.

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

17 45. Due to Defendant’s failure to pay Plaintiff, and the Class, all minimum wages, meal
18 and rest period premiums, and all overtime wages, Defendant failed to timely pay Plaintiff, the Class,
19 Employees within seven (7) days of the close of the payroll period in accordance with Labor Code
20 § 204 on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS
21 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding that a failure to pay rest period
22 premiums can support claims under Labor Code §§ 203 and 204).

23 46. Pursuant to Labor Code Section 210, as amended,

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

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

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

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

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

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

11 48. The administrative prerequisites of PAGA were satisfied after 65 days have elapsed
12 from June 13, 2022 (i.e. 65 days since Plaintiff's mailing of the PAGA notice with no further
13 communication from the LWDA to Plaintiff's counsel). Plaintiff has also paid the \$75.00 fee and
14 has otherwise satisfied the administrative prerequisites of PAGA.

15 49. Plaintiff by this action seeks to recover, on behalf of themselves and all other current
16 and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as specified
17 in Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a representative
18 action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal.
19 4th 969 (2009). Class certification of the PAGA claims is not required. *Id.*

20 CLASS ACTION ALLEGATIONS

21 50. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a
22 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class composed
23 of and defined as: All non-exempt individuals who are or were employed by Colt Builders Corp. in
24 the State of California and who worked one or more shifts of (5) hours or longer during the Class
25 Period (hereinafter "Class Members"). All such Class Members were subject to Defendant's
26 unlawful policies including, Defendant's failure to pay for all hours worked, Defendant's failure to
27 pay overtime, Defendant's failure to provide code-compliant meal or rest breaks, and Defendant's
28

1 failure to reimburse for out-of-pocket business expenses.

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

5 a. Numerosity: The potential members of the Class as defined are so numerous
6 that joinder of all the members of the Class is impracticable. While the precise number of Class
7 Members has not been determined at this time, Plaintiff is informed and believes that Defendant has
8 employed approximately 500 Class Members as construction workers in California who were
9 subject to Defendant's unlawful compensation, meal and rest break, and reimbursement policies.
10 The Class Members are dispersed throughout California. Joinder of all members of the proposed
11 classes is therefore not practicable.

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

15 i. Whether Defendant violated sections 1194 and 1194.2 of the Labor Code by
16 failing to pay Plaintiff and the members of the Class all minimum wages owed including for
17 commuting time in company vehicles engaged in by members of the Class on a daily basis during
18 the Class Period;

19 ii. Whether Defendant violated section 510 of the Labor Code by failing to pay
20 Plaintiff and the Class all overtime wages owed for all overtime hours worked during the Class
21 Period;

22 iii. Whether Defendant violated Section 12 of IWC Wage Order No. 16 by failing
23 to provide compliant rest periods to Plaintiff and the members of the Class in California during the
24 Class Period;

25 iv. Whether Defendant violated Labor Code section 226.7 and section 12 of IWC
26 Wage Order No. 16 by failing to pay one hour of premium pay to each member of the Class for each
27 day that a compliant rest break was not provided during the Class Period;

1 v. Whether Defendant violated Labor Code section 226.7 by failing to provide
2 timely, off-duty meal periods to Plaintiff and the Class Members in California during the Class Period;

3 vi. Whether Defendant violated Labor Code sections 512 and 226.7, and section
4 11 of IWC Wage Order No. 16 by failing to pay one hour of premium pay to each member of the Class
5 for each day that a paid meal break was not provided during the Class Period;

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

8 viii. Whether Defendant violated Section 203 of the Labor Code by failing to pay
9 members of the Waiting Time Penalty Subclass for all wages due to them (including all minimum
10 wages due, overtime, and meal and rest break premiums) upon their separation of employment from
11 Defendant;

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

14 x. Whether Defendant engaged in an unfair practice and violated section 17200
15 of the California Business and Professions Code by failing to pay Plaintiff and the members of the
16 Class all minimum wages and overtime wages owed and by failing to reimburse them for their
17 business-related expenses during the Class Period;

18 xi. Whether Defendant engaged in an unfair practice and violated section 17200
19 of the California Business and Professions Code by failing to provide compliant rest breaks to
20 members of the Class in violation of Section 12 of IWC Wage Order No. 16;

21 xii. Whether Defendant engaged in an unfair practice and violated section 17200
22 of the California Business and Professions Code by failing to provide Plaintiff and members of the
23 Class with rest period premiums for each day they were not provided a compliant rest break;

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

27 xiv. Whether Defendant engaged in an unfair practice and violated section 17200
28

1 of the California Business and Professions Code by failing to provide Plaintiff and members of the
2 Class with meal period premiums for each day they were not provided a compliant meal break;

3 xv. Whether Plaintiff and the Class are entitled to restitution under Business and
4 Professions Code § 17200;

5 xvi. The proper formula(s) for calculating damages, interest, and restitution owed
6 to Plaintiff and the Class Members;

7 xvii. The nature and extent of class-wide damages.

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

12 d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly
13 and adequately represent and protect the interests of the Class and Class Members. Plaintiff's
14 interests do not conflict with those of Class and Class Members. Counsel who represent Plaintiff
15 are competent and experienced in litigating large wage and hour class actions, including numerous
16 cases virtually identical to this one (i.e., trucker or construction crew wage and hour class action
17 cases), and other employment class actions, and will devote sufficient time and resources to the case
18 and otherwise adequately represent the Class and Class Members.

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

1 compensation, meal and rest break, and non-reimbursement policies, and will thereby effectuate
2 California's strong public policy of protecting employees from deprivation or offsetting of
3 compensation earned in their employment. If this action is not certified as a Class Action, it will be
4 impossible as a practical matter, for many or most Class Members to bring individual actions to
5 recover monies unlawfully withheld from their lawful compensation due from Defendant's, due to
6 the relatively small amounts of such individual recoveries relative to the costs and burdens of
7 litigation.

8 **FIRST CAUSE OF ACTION**
9 **FAILURE TO PAY MINIMUM WAGES**
10 **[Cal. Labor Code §§ 1194; 1194.2]**
11 **On behalf of Plaintiff and the Class**

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

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

17 54. Section 1194 of the Labor Code provides, in relevant part:

18 Notwithstanding any agreement to work for a lesser wage, any employee
19 receiving less than minimum wage...applicable to the employee is entitle to
20 recover in a civil action the unpaid balance of the full amount of this minimum
21 wage ..., including interest thereon, reasonable attorney's fees, and costs of suit.

22 55. Section 1194.2 of the Labor Code provides, in relevant part:

23 In any action under...Section 1194 to recover wages because of the payment of
24 a wage less than the minimum wage fixed by an order of the commission, an
25 employee shall be entitled to recover liquidated damages in an amount equal to
26 the wages unlawfully unpaid and interest thereon.

27 56. During the Class Period, Plaintiff and Class Members were not paid minimum wages
28 for time spent commuting in company vehicles and under Defendant's control to Defendant's
construction projects on a daily basis in violation of Labor Code § 1194. Accordingly, during the
Class Period, Plaintiff and the members of the Class did not receive minimum wages for all work
time.

1 57. In failing to pay for all time worked and/or under Defendant's control, Plaintiff and
2 the Class are entitled to recover, either their unpaid hourly wages due, or minimum wage plus interest
3 and/or liquidated damages in an additional amount equal to the total amount of wages unlawfully
4 withheld during the Class Period for rest period time.

5 58. Pursuant to section 1194.2 of the Labor Code, Plaintiff and the Class are also entitled
6 to recover interest, costs, and attorneys' fees associated with this cause of action.

7 **SECOND CAUSE OF ACTION**
8 **FAILURE TO PAY OVERTIME WAGES**
9 **[Cal. Labor Code § 510]**
 On behalf of Plaintiff and the Class

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

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

15 61. Labor Code § 510 provides that any work in excess of eight hours on any day, as well
16 as all hours worked on the seventh consecutive day of a workweek, shall be compensated at the rate
17 of no less than 1.5 times the regular rate of pay. See also Section 3(A) of IWC Wage Order No. 16.

18 62. Here, Defendant hired Plaintiff and the Class to work as construction workers in
19 California and to work on various of Defendant's private and public construction sites. Plaintiff and
20 the Class often worked in excess of 8 hours and over 40 hours per week. On average, Plaintiff and
21 the Class worked on average more than 8 hours on a daily basis. Defendant only paid Plaintiff and
22 the Class the regular hourly rate per each project. Plaintiff and the Class did not receive
23 compensation for their commuting time in company vehicles, which was frequently also overtime
24 over 8 hours in a day. Plaintiff and the Class did not receive any overtime compensation for the
25 hours that they worked beyond eight hours per day.

26 63. Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order No. 16,
27 Defendant did not pay Plaintiff and the Class overtime wages corresponding to one and a half time
28 of Plaintiff and the Class' hourly rates of pay for all overtime hours worked. Plaintiff and the Class

1 often worked eight hours per day and often worked over 40 hours per week. Defendant violated
2 Labor Code § 510 by failing to pay Plaintiff and the Class their overtime wages at the applicable
3 overtime rates, including daily overtime and weekly overtime, and instead merely paid Plaintiff and
4 the Class straight time wages for all hours worked.

5 **THIRD CAUSE OF ACTION**
6 **FAILURE TO PROVIDE COMPLIANT REST PERIODS**
7 **AND PAY MISSED REST BREAK PREMIUMS**
8 **[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order No. 16]**
9 **On behalf of Plaintiff and the Class**

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

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

15 66. 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 67. Section 12 of IWC Wage Order No. 16 provides: “(A) Every employer shall authorize
19 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of
20 each work period. The authorized rest period time shall be based on the total hours worked daily at
21 the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest
22 period need not be authorized for employees whose total daily work time is less than three and one-
half (3 1/2) hours. *Authorized rest period time shall be counted as hours worked for which there
shall be no deduction from wages.*” (emphasis added).

23 68. By failing to provide its construction workers compliant rest periods of 10 minutes
24 for each 4 hours of work, or major fraction thereof. Defendant has violated California Labor Code
25 § 226.7, and is liable to Plaintiff and the Class.

26 69. As a result of the unlawful acts of Defendant, Plaintiff and the Class were not
27 provided compliant rest breaks, and are entitled to recovery under Cal. Labor Code §226.7 in the
28 amount of one additional hour of pay at the employee’s regular rate of compensation for each work

1 period during each day in which Defendant failed to provide compliant rest periods as required by
2 California law.

3 **FOURTH CAUSE OF ACTION**
4 **FAILURE TO PROVIDE OFF-DUTY MEAL BREAKS AND FAILURE**
5 **TO PAY MISSED MEAL BREAK PREMIUMS**
6 **[Cal. Labor Code §§ 226.7, 512]**
7 **On behalf of Plaintiff and the Class**

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

10 71. The actionable period for this cause of action is three years prior to the filing of this
11 action through the present.

12 72. California Labor Code § 226.7(a) provides, “No employer shall require any employee
13 to work during any meal or rest period mandated by an applicable order of the Industrial Welfare
14 Commission.

15 73. Section 11(A) and (B) of IWC Wage Order No. 16 provide that:

16 “No employer shall employ any person for a work period of more than five (5)
17 hours without a meal period of not less than 30 minutes, except that when a
18 work period of not more than six (6) hours will complete the day’s work the
19 meal period may be waived by mutual consent of the employer and the
20 employee...An employer may not employ an employee for a work period of
21 more than ten (10) hours per day without providing the employee with a second
22 meal period of not less than 30 minutes, except that if the total hours worked is
23 no more than 12 hours, the second meal period may be waived by mutual
24 consent of the employer and the employee only if the first meal period was not
25 waived.

26 74. Section 11(C) of IWC Wage Order No. 16 provides that

27 Unless the employee is relieved of all duty during a 30 minute meal period, the
28 meal period shall be considered an —on duty‖ meal period and counted as time
worked. An —on duty‖ meal period shall be permitted only when the nature of
the work prevents an employee from being relieved of all duty and when by
written agreement between the parties an on-the-job paid meal period is agreed
to. The written agreement shall state that the employee may, in writing, revoke
the agreement at any time.

75. Finally, Section 11(D) of IWC Wage Order No. 9 provides that

If an employer fails to provide an employee a meal period in accordance with
the applicable provisions of this order, the employer shall pay the employee one
(1) hour of pay at the employee’s regular rate of compensation for each workday

1 that the meal period is not provided.

2 76. Here, by failing to provide them with duty-free timely 30-minute meal breaks, on
3 their shifts greater than 5 hours in length, Defendant has violated California Labor Code § 226.7 and
4 IWC Wage Order No. 16, and is liable to Plaintiff and the Class.

5 77. As a result of the unlawful acts of Defendant, Plaintiff and the Class were not
6 provided timely duty-free meal breaks, and are entitled to recovery under Cal. Labor Code §226.7
7 in the amount of one additional hour of pay at the employee’s regular rate of compensation for each
8 work period greater than 5 hours in California during each day in which Defendant failed to provide
9 timely duty-free meal periods as required by California law.

10 **FIFTH CAUSE OF ACTION**
11 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
12 **[Cal. Labor Code § 2802]**
 On Behalf of Plaintiff and the Class

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

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

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

26 81. Specifically, under Labor Code § 2802, employers must reimburse employees for
27 required work-related use of personal cell phones, regardless of whether they incur any additional
28

1 out-of-pocket expense from that work-related use. *See Cochran v. Schwan's Home Service*, 228 Cal.
2 App. 4th 1137 (2014) (reversing denial of class certification in cell phone reimbursement class
3 action). *Cochran* held that “[i]f an employee is required to make work-related calls on a personal
4 cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter
5 whether the phone bill is paid for by a third person, or at all. . . . It is irrelevant whether the employee
6 changed plans to accommodate work-related cell phone usage. . . . *To show liability under section*
7 *2802, an employee need only show that he or she was required to use a personal cell phone to make*
8 *work-related calls, and he or she was not reimbursed.” Id.* at 1144-45 (emphasis added); *see also*
9 *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion
10 for partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue*
11 *Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen)
12 (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

13 82. The employer’s obligation to reimburse business-related expenses arises when the
14 employer “knew or should have known” that its employees have incurred a business-related expense.
15 *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson*
16 *v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan Illston) (adopting
17 the “knew or should have known” standard from *RadioShack*). Notably, these claims are not
18 waivable per Section 2804 of the Labor Code.

19 83. Under Labor Code § 2802, where, as here, an employer expects Plaintiff and the Class
20 to use their own cell phones, then Defendant must reimburse employees for their business-related
21 expenses. Defendant did not reimburse Plaintiff and the Class for their cell phone expenses.

22 84. Accordingly, Defendant violated Labor Code § 2802 and continue to do so by failing
23 to reimburse Plaintiff and all other Class Members for all work-related charges they incurred in
24 connection with their job duties. By failing to reimburse Plaintiff and the Class for their personal
25 expenses incurred for work-related purposes, Defendant violated Labor Code § 2802.

26 **SIXTH CAUSE OF ACTION**
27 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
28 **[Cal. Labor Code § 226(a) and (e)]**
On behalf of Plaintiff and the Wage Statement and Penalty Subclass

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

3 86. The actionable period for this cause of action is one year prior to the filing of this
4 Complaint through the present, and on-going until the violations are corrected or the subclass is
5 certified.

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

7 Every employer shall...furnish each of his or her employees...an accurate
8 itemized statement in writing showing (1) gross wages earned, (2) total hours
9 worked by the employee, except for any employee whose compensation is
10 solely based on a salary and who is exempt from payment of overtime under
11 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
12 Commission, (3) the number of piece-rate units earned and any applicable piece
13 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
14 that all -deductions made on written orders of the employee may be aggregated
15 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...

16 88. As set forth above, during the Class Period Defendant failed to issue wage statements
17 to its construction workers in California, including Plaintiff, that complied with Labor Code Section
18 226(a). Defendant's "wage statements" were inadequate. Defendant's "wage statements" also did
19 not include total hours worked and all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate in violation of Labor Code Sections
21 226(a).

22 89. Defendant's violation of Labor Code § 226 was knowing and intentional. *See Garnett*
23 *v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant
24 knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was
25 not providing total hours worked to plaintiff or other employees paid on commission" even though
26 it believed that employees paid solely on commission or commission and salary "are exempt and
27 therefore we do not record hours on a wage statement").
28

1 90. As a result of Defendant's issuance of inaccurate itemized wage statements to
2 Plaintiff and members of the wage statement and penalty subclass (i.e., those members of the class
3 who were employed by Defendant during the actionable period for this cause of action) in violation
4 of section 226(a) of the California Labor Code, Plaintiff and the wage statement subclass members
5 are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an
6 amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every member of the
7 wage statement subclass from Defendant pursuant to section 226(e) of the Labor Code, costs and
8 reasonable attorneys' fees.

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

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

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

18 93. Sections 201 and 202 of the California Labor Code require Defendant to pay all
19 compensation due and owing to former maintenance workers and electrical contractors in the Class
20 during the actionable period for this cause of action, at or around the time that their employment is
21 terminated.

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

26 95. Defendant willfully failed to pay Plaintiff and other members of the waiting time
27 penalty Class (i.e., those members of the Class whose employment with Defendant ended the
28 actionable period for this cause of action) who are no longer employed by Defendant all minimum

1 wages owed prior to or upon termination or separation from employment with Defendant as required
2 by California Labor Code §§ 201 and 202, as well as overtime wages and meal and rest break
3 premiums.

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

9 **EIGHTH CAUSE OF ACTION**
10 **FAILURE TO PAY WAGES ON A TIMELY BASIS**

11 **[Cal. Labor Code §§ 204, 210]**
12 **On behalf of Plaintiff and the Late Wages Subclass**

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

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

20 99. Due to Defendant’s failure to pay Plaintiff and the other Late Wages Subclass
21 Members for minimum wages, overtime wages, and meal and rest period premiums owed,¹

22 ¹ Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting time
23 penalties under Labor Code § 203. See e.g. *In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug.
24 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 Defendant violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the
2 close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*,
3 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after
4 *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and
5 204).

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

14 **NINTH CAUSE OF ACTION**
15 **UNFAIR COMPETITION LAW VIOLATIONS**
16 **(BUS. & PROF. CODE § 17200, ET SEQ.)**
17 **On Behalf of Plaintiff and the Class**

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

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

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

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

6 105. As a direct and proximate result of Defendant's unlawful business practices, Plaintiff
7 and the Class Members have suffered economic injuries. Defendant has profited from its unlawful,
8 unfair, and/or fraudulent acts and practices.

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

16 107. Through its actions alleged herein, Defendant has engaged in unfair competition
17 within the meaning of section 17200 of the California Business & Professions Code, because
18 Defendant's conduct, as herein alleged has damaged Plaintiff and the Class Members by wrongfully
19 denying them minimum wages, wrongfully denying them overtime, wrongfully denying them
20 reimbursement for business expenses, and wrongfully denying them missed meal and rest period
21 premiums, and therefore was substantially injurious to Plaintiff and the Class Members.

22 108. Defendant engaged in unfair competition in violation of sections 17200 et seq. of the
23 California Business & Professions Code by violating Section 1194 of the California Labor Code,
24 and Sections 11 and 12 of the IWC Wage Order No. 16.

25 109. Defendant's course of conduct, act and practice in violation of the California laws
26 mentioned above constitute independent violations of sections 17200 et seq. of the California
27 Business and Professions Code.

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

111. 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, and Labor Code §§ 1194 and 2802.

TENTH CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEY GENERAL ACT
PAGA PENALTIES FOR LABOR CODE VIOLATIONS
(Labor Code §§ 2698-2699.5)
On Behalf of Plaintiff and the PAGA Subclass

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

113. 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 §§ 1194, 1194.2, 226, 226.7, 510, 512, 201-203, 204, 210 and 2802 of the Labor Code bring claims under PAGA. Plaintiff was employed by Defendant during the one year preceding the submission of a PAGA letter to the LDWA on or around June 13, 2022. As such, he seeks to recover, on behalf of himself and all other current and former aggrieved employees of Defendant, the civil penalties provided by PAGA.

114. 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.

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

1 and 25% to the affected employees. The aggrieved employees are all non-exempt individuals who
2 are or were employed by Colt Builders Corp. in the State of California and who worked one or more
3 shifts of (5) hours or longer during the PAGA Period. These employees were subject to the
4 aforementioned Labor Code violations, during the period of time from one year prior to the
5 submission of Plaintiff's letter to the LDWA on June 13, 2022 through the present and on-going.

6 116. In addition, as set forth above, Defendant failed to provide Plaintiff and all aggrieved
7 employees with accurate itemized wage statements in compliance with Labor Code § 226(a). Labor
8 Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be
9 subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation
10 in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a
11 subsequent citation, for which the employer fails to provide the employee a wage deduction
12 statement or fails to keep the required in subdivision (a) of Section 226."

13 117. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that
14 Defendant's conduct in refusing to provide accurate and itemized wage statements was knowing,
15 intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above; *see also Willner v. Manpower*
16 *Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all
17 [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed
18 above."); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that "for
19 the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and
20 need not establish a Section 226(e) injury."); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS
21 189815, at *28 (C.D. Cal. July 3, 2013) ("Plaintiff do not need to establish a Cal. Lab. Code § 226(e)
22 injury to recover penalties under § 2699(f) of PAGA.").

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

26 119. Pursuant to Labor Code § 2699.3 (a), on June 13, 2022, Plaintiff gave written notice
27 by certified mail to Defendant, and to the Labor and Workforce Development Agency ("LWDA") of
28

1 his claims, including the facts and theories supporting all claims outlined in this Complaint.
2 Accordingly, Plaintiff will have fulfilled all administrative prerequisites to the pursuit of his PAGA
3 claim on behalf of himself and all other current and former aggrieved employees of Defendant after
4 65 days have elapsed from June 13, 2022.

5 **JURY DEMAND**

6 120. Plaintiff hereby demands trial by jury of his and the Class's claims against Defendant,
7 except for the and UCL claims which shall be tried to the Court.

8 **PRAYER FOR RELIEF**

9 Wherefore, Plaintiff, on behalf of himself and the members of the Class, the LWDA, and he
10 Aggrieved Employees, pray for judgment against Defendant as follows:

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

12 2. On the First Cause of Action:

13 a. A declaratory judgment that Defendant violated sections 1194 and 1194.2 of
14 the California Labor Code by failing to pay Plaintiff, the Aggrieved Employees, and the other
15 members of the Class all minimum wages owed during the class period;

16 b. An award to Plaintiff and other members of the Class in the amount of their
17 unpaid wages owed to them, plus interest and/or liquidated damages during the class period;

18 c. An award to Plaintiff and the Class Members of their attorneys' fees and costs
19 of suit to the extent permitted by law, including, but not limited to, section 1194 of the California
20 Labor Code and section 1021.5 of the California Code of Civil Procedure;

21 3. On the Two Cause of Action:

22 a. A Declaratory judgment that Defendant has violated California Labor Code §
23 510 in failing to pay Plaintiff, the Aggrieved Employees, and the Class, and the all overtime wages
24 due;

25 b. An award to Plaintiff and the other members of the Class in the amount of
26 their unpaid overtime compensation for worked performed, plus interest and/or liquidated damages
27 during the Class Period;
28

1 4. On the Third Cause of Action:

2 a. A declaratory judgment that Defendant has violated California Labor Code §
3 226.7, and Section 12 of IWC Wage Order No. 16-2001 as to Plaintiff, and the Class;

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

7 5. On the Fourth Cause of Action:

8 a. A declaratory judgment that Defendant has violated California Labor Code
9 §§ 226.7, 510, and Section 11 of IWC Wage Order No. 16-2001 as to Plaintiff, the Class and the
10 Aggrieved Employees;

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

14 6. On the Fifth Cause of Action:

15 a. A declaratory judgement that Defendant violated Labor Code § 2802
16 as to Plaintiff, and the Class;

17 b. Pursuant to 2802 (a)-(c), reimbursement for all at the unreimbursed business
18 incurred by Plaintiff and the Class, plus interest and attorney's fees.

19 8. On the Sixth Cause of Action:

20 a. A declaratory judgment that Defendant violated California Labor Code §226
21 by issuing inaccurate and/or incomplete wage statements that failed to include total hours worked
22 and all applicable hourly rates in effect during the pay period and the corresponding number of hours
23 worked at each hourly rate to Plaintiff, the Aggrieved Employees, and the wage statement and
24 penalty subclass members;

25 b. An award to Plaintiff and Wage Statement Subclass Members of \$50 for each
26 initial pay period in which a violation of Section 226 occurred and \$100 for each subsequent pay
27 period in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of the
28

Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code § 226(e).

9. On the Seventh Cause of Action:

a. A declaratory judgment that Defendant violated California Labor Code §§201 through 203 as to former employees in the Class who are the waiting time penalty subclass members;

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

10. On the Eighth Cause of Action:

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

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

11. On the Ninth Cause of Action:

a. That the Court find and declare that Defendants have violated the UCL and committed unfair and unlawful business practices by failing to pay Plaintiff and Class Members all minimum wages owed, by failing to pay overtime, by failing to pay missed meal and rest break premiums, and by failing to reimburse Plaintiff and the Class for all their business-related expenses;

b. Restitution, including, but not limited to, the relief permitted by sections 1194 and 2802 of the California Labor Code (i.e., unpaid minimum wages owed, unpaid overtime wages owed and reimbursement of all business-related expenses by Plaintiff and the members of the Class during the Class Period);

12. On the Tenth Cause of Action:

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

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

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

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

8 DATED: August 17, 2022

Respectfully,



EMPLOYMENT RIGHTS LAW GROUP

LAW OFFICE OF TATIANA HERNANDEZ, P.C.

By: Amir Seyedfarshi, Esq.
Tatiana Hernandez, Esq.
Counsel for Plaintiff, and the Class