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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JULIO VILLAZON and LORENA
DUARDO, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

SADDLEBACK ROOFING, INC., a
California Corporation,

Defendant.

CASE NO: CIV SB 2307262

**PLAINTIFFS' CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

- (1) FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS (LABOR CODE §§226, 226.3, 1174, 1174.5);
- (2) FAILURE TO PAY MINIMUM WAGES (LABOR CODE §§ 1194, 1197);
- (3) FAILURE TO PAY OVERTIME (LABOR CODE §§ 510, 1194, 1198; SECTION 3 OF THE APPLICABLE IWC WAGE ORDER);
- (4) FAILURE TO PAY TIMELY WAGES (LABOR CODE §§ 201-204, 210);
- (5) WAITING TIME PENALTIES (LABOR CODE §§ 201, 202, 203);
- (6) FAILURE TO PROVIDE REST PERIODS AND PAY MISSED REST PERIOD PREMIUMS (LABOR CODE § 226.7; SECTIONS 11 and 12 OF THE APPLICABLE IWC WAGE ORDER);
- (7) FAILURE TO PROVIDE MEAL PERIOD AND PAY MISSED MEAL PERIOD PREMIUMS (LABOR CODE §§ 226.7, 510, 512, 1194, 1197; SECTION 11 OF THE APPLICABLE IWC WAGE ORDER);
- (8) FAILURE TO MAINTAIN REQUIRED RECORDS (LABOR CODE §§ 1174, 1174.5; SECTION 7 OF THE APPLICABLE IWC WAGE ORDER)
- (9) FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE § 2802);
- (10) UCL VIOLATIONS (CAL. BUSINESS AND PROFESSIONS CODE § 17200); AND

(11) **PAGA AND OTHER PENALTIES (LABOR
CODE §§ 2698 – 2699.5).**

DEMAND FOR JURY TRIAL

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1
2 Plaintiffs Julio Villazon and Lorena Duardo ("Plaintiff"), on behalf of themselves, the State
3 of California, other aggrieved employees, and all others similarly situated (hereinafter "Class
4 Members"), complain and allege as follows:

5 OVERVIEW OF CLAIMS

6 1. Plaintiffs bring this action on behalf of themselves and all others similarly situated,
7 as a class action, as a representative action pursuant to the California Private Attorneys General
8 Act, Labor Code § 2699, *et seq.* ("PAGA"), and on behalf of the California general public, against
9 Defendant Saddleback Roofing, Inc. ("Defendant") for (1) failure to issue accurate and complete
10 itemized wage statements; (2) failure to pay all minimum wages to all employees for all hours
11 worked; (3) failure to pay overtime wages to all employees for all overtime hours worked; (4)
12 failure to pay timely wages during employment; (5) failure to pay all wages due on termination of
13 employment; (6) failure to provide timely and duty-free rest periods; (7) failure to provide
14 compliant meal periods; (8) failure to reimburse business expenses; (9) failure to maintain required
15 records; (10) deceptive/fraudulent business practices based on the foregoing; and (11) penalties
16 based on the foregoing pursuant to the Private Attorneys General Act ("PAGA"). As a result of the
17 foregoing, Defendant has violated California statutory laws as described below.

18 2. The "Class Period" is designated as June 1, 2018, through the trial date. The PAGA
19 Period is designated as June 1, 2021, through the present and on-going. Defendant's violations of
20 California's wage-hour laws and unfair competition laws, as described more fully below, have
21 been ongoing throughout the Class Period and PAGA Period.

22 VENUE

23 3. Venue is proper in this county under Section 395.5 of the California Code of Civil
24 Procedure. Many of the putative Class Members were employed and/or performed work during
25 the Class Period by the Defendant in San Bernardino County. Defendant operates a roofing
26 company that performs work in the county of San Bernardino. Many of the acts alleged herein
27 including Defendant's failure to pay minimum wages, failure to pay overtime wages, failure to
28 issue complete and accurate itemized wage statements, failure to pay wages on a timely basis,
failure to pay final wages, failure to provide compliant meal and rest periods, failure to reimburse
business expenses, failure to maintain required records, and fraudulent business practices, occurred
in San Bernardino County. Venue is therefore proper in San Bernardino County.

JURISDICTION

4. Defendant is within the jurisdiction of this Court. Defendant conducts business by operating a roofing company in California. Thus, Defendant has obtained the benefits of the laws of the State of California. In addition, Plaintiffs assert no claims arising under federal law. Rather, Plaintiffs bring causes of action based solely on, and arising from, California law. The claims of the class are also based solely on California law described herein. Furthermore, the total amount at issue in this case, inclusive of attorneys' fees, is less than \$5 million. Therefore, jurisdiction is appropriate in San Bernardino County Superior Court.

THE PARTIES

5. Plaintiffs are California residents who worked for Defendant as non-exempt hourly-paid employees during the relevant time period.

6. From at June 1, 2018 through the present, and on-going, Defendant's employees, at various times throughout the Class Period, including Plaintiffs during their employment, were not paid all minimum wages owed for time spent working; were not paid all overtime wages owed for time spent working; were not provided timely and duty-free rest periods; were not provided compliant meal periods; were not reimbursed for all business expenses incurred; were not provided accurate and/or complete itemized wage statements; did not receive timely wages; and did not receive all final wages upon separation of employment.

7. Plaintiffs represent the State of California and the following group of aggrieved employees defined as:

Plaintiffs and all other individuals who are or were employed by Defendant Saddleback Roofing, Inc. as non-exempt hourly-paid employees who worked at least one shift in California from June 1, 2021, to the present and ongoing (hereinafter referred to as "Aggrieved Employees").

8. Plaintiffs also seek to represent a Class defined as:

Plaintiffs and all other individuals who are or were employed by Defendant Saddleback Roofing, Inc. as non-exempt hourly-paid employees who worked at least one shift in California during the Class Period (hereinafter referred to as the "Class" or "Class Members").

- a. The members of the Class who worked for Defendant during the one year preceding June 1, 2022 constitute the "Wage Statement Subclass".

9. Defendant Saddleback Roofing, Inc. is a California company doing business in San Bernardino County, California. Defendant operates a roofing construction business.

10. Defendant employed Plaintiffs, the Class, and the Aggrieved Employees as non-exempt, hourly-paid employees in California at various times during the Class Period and PAGA Period. According to Defendant, Defendant employed approximately 1,101 non-exempt, hourly-paid employees in California during the Class Period through February 19, 2023.

FACTUAL ALLEGATIONS

11. Defendant operates and, at all times during the Class Period and PAGA Period, have done business in California as a roofing company. Defendant, in the course of operating their business in California during the Class Period and PAGA Period, employed Plaintiffs, the Class, and the Aggrieved Employees as non-exempt, hourly-paid workers.

12. Defendant issued wage statements to Plaintiffs, the Aggrieved Employees, and all Wage Statement Subclass Members that did not comply with Labor Code section 226(a)(1), (2), (5), (6), and (9) because they lacked the start date for each pay period, did not state all applicable hourly rates in effect during the pay period, and failed to include all wages earned and hours worked due to Defendant's failure to pay all minimum and overtime wages owed as well as rest period premiums.

13. Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing: (1) Gross wages earned; (2) Total hours worked by the employee; ... (5) Net wages earned; ... (6) The inclusive dates of the period for which the employee is paid; ... 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... : Plaintiffs seek penalties under PAGA and under Labor Code section 226(e) for violations of 226(1).

14. Here, until June 16, 2022, Defendant's wage statements issued to Plaintiffs, the Aggrieved Employees and all Wage Statement Subclass Members did not include the inclusive dates of the period for which Plaintiffs, all Wage Statement Subclass Members, and the Aggrieved

1 Employees were paid in violation of Labor Code § 226(a)(6); instead, they only contain a
2 reference to pay for the “Week Ending” and then add a single date for the end of the pay period at
3 issue. Additionally, until June 16, 2022, Defendant’s wage statements issued to Plaintiffs, the
4 Aggrieved Employees and all Wage Statement Subclass Members did not include all applicable
5 hourly rates in effect during the pay period in violation of Labor Code section 226(a)(9); instead,
6 they only contain the number of hours worked and the total pay for such hours.

7 15. Further, the wage statements issued to Plaintiffs, all Wage Statement Subclass
8 Members, and the Aggrieved Employees did not and do not include all applicable hours worked,
9 gross wages earned, net wages earned, and the hourly rates in effect during the pay period, in
10 violation of Labor Code § 226(a) (1), (2), (5), and (9), because they did not include all hours
11 worked over 8 per day, and included only round numbers that did not include the total accurate
12 amount of hours worked or wages earned.

13 16. Plaintiffs, the Wage Statement Subclass and the Aggrieved Employees will prevail
14 on their claim for PAGA penalties under Labor Code § 226(a) without having to show injury or
15 willfulness. *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“a plaintiff
16 seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to
17 satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”); *Raines v.*
18 *Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the
19 “requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section
20 226(a).”)¹.

21 17. Defendant also failed to pay minimum wages to its employees for all hours worked
22
23

24 ¹ *See also Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiffs do
25 not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”); *York v.*
26 *Starbucks Corp.*, 2012 WL 10890355, at *2 (C.D. Cal. Nov. 1, 2012) (granting summary adjudication to the plaintiff on
27 his PAGA claim based upon violations of Lab. Code § 226(a) because “the presence or absence of injury is irrelevant to
28 the standing inquiry under PAGA.”) *Pelton v. Panda Restaurant Group, Inc.* (C.D. Cal., May 3, 2011,) 2011 WL
1743268 (“[T]he Court rejects defendant’s argument that plaintiff ‘lacks any PAGA injury.’ Pursuant to Cal. Labor
Code § 2699, ‘any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and
Workforce Development Agency ... may, as an alternative, be recovered through a civil action brought by an aggrieved
employee on behalf of himself or herself and other current or former employees.’ Sections 2699.5 and 2699.3(a)
provide that such a claim may be brought for a violation of § 226(a).”

1 because time entries were only authorized to be entered in an amount up to 8 hours per day, even if
2 and when employees like Plaintiffs, the Class, and the Aggrieved Employees had work that needed
3 to be completed outside of the 8-hour timeframe.

4 18. Labor Code Section 1197 states the California requirement that employees must be
5 paid at least the minimum wage fixed by the Commission or by any applicable state or local law,
6 and any payment of less than the minimum wage is unlawful. Similarly, Labor Code Section 1194
7 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action
8 the unpaid balance of the full amount of this minimum wage.” The applicable IWC Wage
9 Order(s) obligate employers to pay each employee minimum wages for all hours worked.

10 19. These minimum wage standards apply to each hour employees worked or subject to
11 control by the employer for which they were not paid. Therefore, an employer’s failure to pay for
12 any particular hour of time worked by an employee or subject to the employer’s control is
13 unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in
14 an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314,
15 324 (2005).

16 20. Employees must be paid for all “hours worked.” “Hours worked” is “the time
17 during which an employee is subject to the control of an employer and includes all the time the
18 employee is suffered or permitted to work, whether or not required to do so.” *See* Wage Order 9-
19 2001, Subd. 2(K); *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal. 4th 833. “[I]t is
20 only necessary that the worker be subject to the control of the employer in order to be entitled to
21 compensation.” *Morillion v. Royal Packing Co.* 22 Cal. 4th 575, 584 (2000). An employee is under
22 the employer’s control and entitled to compensation when the employer “‘directs, commands or
23 restrains’ an employee.” *Morillion*, 22 Cal. 4th at 583 (citation omitted).

24 21. Here, Plaintiffs, the Class, and all Aggrieved Employees often worked more than
25 eight (8) hours in a day and did not receive any compensation for such extra time worked.
26 Specifically, Plaintiffs and others were asked to clock out after 8 hours of work, even if they had
27 additional tasks that needed completion.

28 22. Notably, there is not *de minimis* defense for such time. *See, Troester v. Starbucks*

1 *Corp.*, 5 Cal.5th 829 (2018) (in light of new technologies allowing time-tracking with specificity,
2 the de minimis principle is not applicable in the context of an alleged policy requiring employees
3 to work minutes off the clock routinely); see also, *Frlekin*, 2020 Cal. LEXIS 547 (February 13,
4 2020) (“hours work is defined as the time during which an employee is subject to the control of an
5 employer, and includes all the time the employee is suffered or permitted to work, whether or not
6 required to do so, including time spent on-site undergoing security checks”).

7 23. Furthermore, through its policy and practice of not compensating Plaintiffs, the
8 Class, and the Aggrieved Employees for additional time worked beyond eight (8) hours, Defendant
9 clearly violated Labor Code § 1194. As a result of Defendant’s policy and practices described
10 above, Defendant regularly failed to pay Plaintiffs, the Class, and all Aggrieved Employees for all
11 hours worked in violation of Labor Code § 1194 and 1197. Accordingly, Plaintiffs are Aggrieved
12 Employees within the meaning of PAGA and Defendant has violated Labor Code §§ 1194 and
13 1197 with respect to Plaintiffs and the Aggrieved Employees.

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

27 25. Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover
28 liquidated damages for violations of Labor Code § 1194. Where employees, as Plaintiffs, the

1 Class, and all Aggrieved Employees experienced on a regular basis, are not paid for all hours
2 worked under Labor Code § 1194, the employees may recover minimum wages for the time for
3 which they received no compensation, as well as PAGA penalties for not having received pay for
4 such time.

5 26. Based on the same allegation that Plaintiffs, the Class, and Aggrieved Employees
6 were forced to clock out and continue working beyond 8 hours per day, Plaintiffs also assert
7 claims for unpaid overtime wages under Labor Code section 510.

8 27. Labor Code § 510 provides that any work in excess of eight hours on any day shall
9 be compensated at the rate of no less than 1.5 times the regular rate of pay. See also Section 3(A)
10 of applicable IWC Wage Order. Here, Plaintiffs, the Class, and the Aggrieved Employees
11 sometimes worked more than 8 hours in a day and over 40 hours per week. However, instead of
12 paying overtime, Defendant rounded down the overtime to a flat 8 hours on occasions, and thereby
13 in effect asked Plaintiffs, the Class, and the Aggrieved Employees to work off the clock.

14 28. Concerning Labor Code section 510 and Section 3(A) of the applicable IWC Wage
15 Order, Defendant did not pay Plaintiffs, the Class, and the Aggrieved Employees any overtime
16 wages corresponding to 1.5 times the hourly rates of Plaintiffs, the Class, and the Aggrieved
17 Employees. Defendant violated Labor Code §§ 510 and 1198 by failing to pay Plaintiffs, the Class,
18 and Aggrieved Employees overtime wages on occasions when they worked more than eight hours
19 in a day or forty hours in a week.

20 29. As to Plaintiffs, the Class, and all Aggrieved Employees, Defendant also failed to
21 pay all wages due for all hours worked in violation of Labor Code sections 204 and 210.

22 30. Labor Code § 204, also a derivative claim of the unpaid time, expressly requires
23 that “[a]ll wages...earned by any person in any employment are due and payable twice during each
24 calendar month, on days designated in advance by the employer as the regular paydays.” Due to
25 Defendant’s failure to pay Plaintiffs, the Class, and all Aggrieved Employees on timely and bi-
26 monthly basis for all applicable minimum and overtime wages, as well as meal and rest period
27 premiums, Defendant failed to timely pay Plaintiffs, the Class, and all Aggrieved Employees all
28 wages owed within seven (7) days of the close of the payroll period in accordance with Labor

1 Code § 204(d) on a regular and consistent basis.

2 31. Labor Code § 210(a) provides that “[i]n addition to, an entirely independent and
3 apart from, any other penalty provided in this article, every person who fails to pay the wages of
4 each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
5 any initial violation, one hundred dollars (\$100) for each failure to pay each employee[;] (2) For
6 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
7 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

8 32. As a result of the faulty compensation policies and practices described in detail
9 above and Defendant’s failure to pay Plaintiffs, the Class, and all Aggrieved Employees for all
10 time, within seven (7) days of the close of the payroll period, the State of California is entitled to
11 recover penalties under Labor Code § 210 through PAGA. See *Amaral v. Cintas Corp. No. 2*, 163
12 Cal.App.4th 1157, 1209 (2008) (affirming an award of Labor Code section 210 penalties under
13 PAGA due to the employer’s failure to timely pay wages at the proper rate in accordance with a
14 local wage ordinance).

15 33. Finally, due to its failure to pay for all minimum and overtime wages owed, as well
16 as meal and rest period premiums², Defendant failed to pay all wages due to departing employees
17 in violation of Labor Code sections 201-203. Labor Code § 203, expressly requires that “If an
18 employer willfully fails to pay...any wages of an employee who is discharged or who quits, the
19 wages of the employee shall continue as a penalty...” for up to 30 days.

20 34. The applicable IWC Wage Order requires California employers to provide a 10-
21 minute duty-free and uninterrupted rest break to employees for each 4 hours of work, or major
22 fraction thereof. Labor Code section 226.7 imposes a premium payment of one hour of pay for
23 each workday where a compliant rest break is not provided to an employee on a timely basis.

24 35. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
25 authorize and permit the amount of meal period and/or rest period time or the proper timing for
26

27 ² Extra pay for missed breaks constitutes wages that must be reported on statutorily required wage statements during
28 employment and paid within statutory deadlines when an employee leaves the job. See, *Naranjo v. Spectrum Security Services, Inc.* (SC S258966 5/23/22).

breaks called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—it has violated the wage order and is liable.
(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal4th 1004, 1033.) [emphasis added]

36. Here, Plaintiffs, the Class, and the Aggrieved Employees were not provided with timely rest breaks and did not take their rest breaks on a timely basis during their shifts. Plaintiffs, the Class, and the Aggrieved Employees did not receive their first and/or second rest breaks (for shifts that were longer than 8 hours, or a major fraction thereof). Therefore, Defendant is and was in violation of applicable California law by failing to provide them with rest breaks and for failing to pay missed rest period premiums.

37. Pursuant to Cal. Lab. Code § 226.7, 512 and IWC Wage Order No. 4-2001, § 11, no employer shall employ any non-exempt employee for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes. Employers in California are required to pay one (1) hour of compensation for each missed or non-compliant meal period to their non-exempt employees. Additionally, if a non-exempt-employee is not relieved of all duty during a meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal period is permitted only when (1) the nature of the work prevents an employee from being relieved of all duty and (2) the parties have a written agreement agreeing to on duty meal periods.

38. Neither Plaintiffs nor any other Class Members or Aggrieved Employees agreed to work on duty meal periods, needed to work on duty meal periods, or were paid by Defendant to work on duty meal periods. Moreover, Defendant regularly did not allow non-exempt employees, including Plaintiffs, to take a full thirty-minute meal period, and meal periods were regularly short (less than thirty minutes), late (taken after 5 hours), and interrupted (work was performed during the meal period). More specifically, Defendant failed to implement adequate policies or procedures

1 to provide meal periods to its non-exempt employees. Among other things, Defendant overworked
2 Class Members and Aggrieved Employees and did not adequately notify aggrieved employees of
3 their rights to take meal periods.

4 39. Defendant consistently denied Plaintiffs, Class Members, and Aggrieved
5 Employees compliant meal periods by requiring them to complete so much work within their shifts
6 that they would be forced to skip their meal periods, to take them after working longer than five
7 (5) hours, to perform work during their meal periods, or return to work after taking less than a
8 thirty (30) minute meal period.

9 40. Defendant further violated Cal. Lab. Code § 226.7 and IWC Wage Order No. 4-
10 2001 by willfully failing to compensate Plaintiffs, Class Members, and Aggrieved Employees who
11 were not provided with a meal period in compliance with California law with one (1) additional
12 hour of compensation at their regular rates of pay for each workday that a compliant meal period
13 was not provided. Defendant further violated Cal. Lab. Code § 226.7, 510,1194,1197, and IWC
14 Wage Order No. 4-2001 by failing to compensate Plaintiffs, Class Members, and Aggrieved
15 Employees for all hours worked during their meal periods.

16 41. California Labor Code § 2802(a) requires employers to indemnify non-exempt
17 employees for all necessary expenditures or losses incurred by the employee in direct consequence
18 of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

19 42. Defendant fails to indemnify Plaintiffs, Class Members, and Aggrieved Employees
20 for all business expenses and/or losses incurred in direct consequence of the discharge of their
21 duties while working under its direction in violation of Cal. Lab. Code § 2802 including but not
22 limited to the costs of cellular phone usage.

23 43. The administrative prerequisites of PAGA have been satisfied and Plaintiffs have
24 also paid the \$75.00 fee and have otherwise satisfied the administrative prerequisites of PAGA.

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

1 Court, 46 Cal.4th 969 (2009). Class certification of the PAGA claims is not required. *Id.*

2 CLASS ACTION ALLEGATIONS

3 45. Plaintiffs bring this action, on behalf of themselves and all others similarly situated,
4 as a class action pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent a Class
5 composed of and defined as: and all other individuals who are or were employed by Defendant
6 Saddleback Roofing, Inc., as non-exempt hourly-paid employees, who worked at least one shift in
7 California during the Class Period (hereinafter "Class Members"). All such Class Members were
8 subject to Defendant's unlawful policies including, Defendant's failure to pay minimum wages,
9 Defendant's failure to pay overtime wages, Defendant's failure to issue compliant wage
10 statements, Defendant's failure to pay final wages, Defendant's failure to pay timely wages,
11 Defendant's failure to provide timely and duty-free rest periods, Defendant's failure to provide
12 compliant meal periods, Defendant's failure to maintain required records and Defendant's failure
13 to reimburse business expenses.

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

18 a. Numerosity: The potential members of the Class as defined are so numerous
19 that joinder of all the members of the Class is impracticable. While the precise number of Class
20 Members has not been determined at this time, According to Defendant, Defendant has employed
21 approximately 1,101 Class Members as non-exempt, hourly-paid workers in California who were
22 subject to Defendant's unlawful compensation, wage statement, final pay, reimbursement and
23 break policies. The Class Members are dispersed throughout California. Joinder of all members
24 of the proposed classes is therefore not practicable.

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

28 i. Whether Defendant violated Sections 1194 and 1197 of the Labor Code by

1 failing to pay minimum wages for all hours worked;

2 ii. Whether Defendant violated Sections 510 and 1198 of the Labor Code by
3 failing to pay overtime wages to all employees for all overtime hours worked;

4 iii. Whether Defendant failed to provide Plaintiffs and the members of the Class
5 compliant wage statements in violation of Labor Code Section 226(a) and 226(e);

6 iv. Whether Defendant violated Sections 201-204 and 210 of the Labor Code
7 by failing to pay member of the Class all wages due on a timely basis;

8 v. Whether Defendant violated Sections 201-203 of the Labor Code by failing
9 to pay member of the Class all final wages upon separation of their employment by Defendant;

10 vi. Whether Defendant violated Section 226.7 of the Labor Code and Sections
11 11 and/or 12 of the applicable IWC Wage Order by failing to provide timely and duty-free rest
12 periods;

13 vii. Whether Defendant violated Sections 226.7 and 512 of the Labor Code and
14 Sections 11 and/or 12 of the applicable IWC Wage Order by failing to provide compliant meal
15 periods;

16 viii. Whether Defendant violated Section 2802 of the Labor Code by failing to
17 reimburse business expenses;

18 ix. Whether Defendant engaged in an unfair practice and violated Section
19 17200 of the California Business and Professions Code by failing to pay Plaintiffs and the
20 members of the Class all minimum and overtime wages owed, and by failing to provide compliant
21 meal and rest periods during the Class Period;

22 x. Whether Plaintiffs and the Class are entitled to restitution under Business
23 and Professions Code §17200;

24 xi. The proper formula(s) for calculating damages, interest, and restitution
25 owed to Plaintiffs and the Class Members; and

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

27 c. Typicality: Plaintiffs' claims are typical of the claims of the Class. Both
28 Plaintiffs and Class Members sustained injuries and damages, and were deprived of property

1 rightly belonging to them, arising out of, and caused by Defendant's common course of conduct in
2 violation of law as alleged herein, in similar ways and for the same types of unpaid wages.

3 d. Adequacy of Representation: Plaintiffs are members of the Class and will
4 fairly and adequately represent and protect the interests of the Class and Class Members.
5 Plaintiffs' interests do not conflict with those of Class and Class Members. Counsel who
6 represents Plaintiffs are competent and experienced in litigating large wage and hour class actions
7 and will devote sufficient time and resources to the case and otherwise adequately represent the
8 Class and Class Members.

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

25 **FIRST CAUSE OF ACTION**
26 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
27 **[Cal. Labor Code §§ 226, 226.3, 1174, 1174.5]**
28 **On behalf of Plaintiffs and the Wage Statement Subclass Against Defendant**

47. Plaintiffs re-allege and incorporate by reference each and every allegation set forth

1 in the preceding paragraphs.

2 48. The actionable period for this cause of action is June 1, 2021 through the present,
3 and on-going until the violations are corrected, or the subclass is certified. This claim is brought
4 on behalf of the Wage Statement Subclass.

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

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

21 50. Until June 16, 2022, Defendant knowingly and intentionally failed to provide wage
22 statements to Plaintiffs and all Wage Statement Subclass Members that include the inclusive dates
23 of the period for which the employee is paid as well as all applicable hourly rates in effect during
24 the pay period in violation of Labor Code section 226(a)(6) and (9).

25 51. Further, Defendant knowingly and intentionally failed to pay Plaintiffs and all
26 Wage Statement Subclass Members all minimum and overtimes wages associated with hours
27 worked as well as meal and rest period premiums. Accordingly, all wage statements contained
28 inaccurate information as to hours worked and wages earned. Moreover, Plaintiffs and all Wage
Statement Subclass Members also suffered legal "injury" for purposes of Labor Code Section
226(e) insofar as they were unable to readily and easily determine the information required to be
set forth by Section 226(a). Specifically, Plaintiffs and the Wage Statement Subclass Members
were unable to determine the actual and accurate total hours worked by the employees, the gross
wages earned, the net wages earned, since time spent working outside of the 8 hours that they were

1 clocked in.

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

8 53. As a result of Defendant's failure to issue compliant wage statements to Plaintiffs
9 and the Wage Statement Subclass Members (i.e., those members of the class who were employed
10 by Defendant during the actionable period for this cause of action) in violation of Section 226(a) of
11 the California Labor Code, Plaintiffs and the Wage Statement Subclass Members are each entitled
12 to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not
13 exceeding an aggregate penalty of \$4,000 per each Plaintiff and per every member of the Wage
14 Statement Subclass from Defendant pursuant to Section 226(e) of the Labor Code, costs and
15 reasonable attorneys' fees.

16 **SECOND CAUSE OF ACTION**
17 **FAILURE TO PAY MINIMUM WAGES**
18 **[Cal. Labor Code §§ 1194 and 1197]**

19 **On behalf of Plaintiffs and the Class Against Defendant**

20 54. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
21 in the preceding paragraphs.

22 55. The actionable period for this cause of action is June 1, 2018 through the present,
23 and on-going until the violations are corrected, or the Class is certified.

24 56. Labor Code § 1197 states the California requirement that employees must be paid at
25 least the minimum wage fixed by the Commission, and any payment of less than the minimum
26 wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the
27 legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this
28 minimum wage." The applicable IWC Wage Order also obligates employers to pay each employee
minimum wages *for all hours worked*. These minimum wage standards apply to each hour

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

5 57. Employees must be paid for all "hours worked." "Hours worked" is "the time
6 during which an employee is subject to the control of an employer and includes all the time the
7 employee is suffered or permitted to work, whether or not required to do so." *See* Wage Order 9-
8 2001, Subd. 2(K); *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal. 4th 833. "[I]t is
9 only necessary that the worker be subject to the control of the employer in order to be entitled to
10 compensation." *Morillion v. Royal Packing Co.* 22 Cal. 4th 575, 584 (2000). An employee is under
11 the employer's control and entitled to compensation when the employer "directs, commands or
12 restrains ' an employee." *Morillion*, 22 Cal. 4th at 583 (citation omitted).

13 58. Here, Plaintiffs and the Class often worked more than eight (8) hours in a day and
14 did not receive any compensation for such extra time worked. Specifically, Plaintiffs and others
15 were asked to clock out after 8 hours of work, even if he and they had additional tasks that needed
16 completion.

17 59. Notably, there is no *de minimis* defense for such time. *See, Troester v. Starbucks*
18 *Corp.*, 5 Cal.5th 829 (2018) (in light of new technologies allowing time-tracking with specificity,
19 the *de minimis* principle is not applicable in the context of an alleged policy requiring employees
20 to work minutes off the clock routinely); *see also, Frlekin*, 2020 Cal. LEXIS 547 (February 13,
21 2020) ("hours work is defined as the time during which an employee is subject to the control of an
22 employer, and includes all the time the employee is suffered or permitted to work, whether or not
23 required to do so, including time spent on-site undergoing security checks").

24 60. Furthermore, through its policy and practice of not compensating Plaintiffs and the
25 Class for additional time worked beyond eight (8) hours, Defendant clearly violated Labor Code §
26 1194. As a result of Defendant's policy and practices described above, Defendant regularly failed
27 to pay Plaintiffs and the Class for all hours worked in violation of Labor Code § 1194 and 1197.
28 Accordingly, Defendant has violated Labor Code §§ 1194 and 1197 with respect to Plaintiffs and

1 the Class.

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

14 62. Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover
15 liquidated damages for violations of Labor Code § 1194. Where an employee, as Plaintiffs and the
16 Class experienced on a regular basis, are not paid for all hours worked under Labor Code § 1194,
17 the employees may recover minimum wages for the time for which they received no
18 compensation.

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

23 64. Plaintiffs seek all available remedies for Defendant's violations including, but not
24 limited to, any and all wages due, monies, interest, liquidated damages, penalties attorney's fees,
25 and costs to the extent permitted by law.

26 **THIRD CAUSE OF ACTION**
27 **FAILURE TO PAY OVERTIME WAGES**
28 **[Cal. Labor Code § 510, 1194, 1198; SECTION 3 OF THE APPLICABLE IWC WAGE**
ORDER]
On behalf of Plaintiffs and the Class Against Defendant

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

66. The actionable period for this cause of action is June 1, 2018 through the present, and on-going until the violations are corrected.

67. Labor Code § 510 provides that any work in excess of eight hours on any day shall be compensated at the rate of no less than one and one-half times the regular rate of pay. See also Section 3(A) of applicable IWC Wage Order.

68. Here, Plaintiffs and the Class sometimes worked more than 8 hours in a day and over 40 hours per week. However, instead of paying overtime, Defendant rounded down the overtime hours worked to a flat 8 hours on occasions, and thereby in effect required Plaintiffs and the Class to work off the clock for which they received no remuneration. Concerning Labor Code section 510 and Section 3(A) of the applicable IWC Wage Order, Defendant did not pay Plaintiffs and the Class any overtime wages corresponding to 1.5 times the hourly rates of Plaintiffs and the Class. Defendant violated Labor Code §§ 510 and 1198 by failing to pay Plaintiffs and the Class overtime wages on occasions when they worked more than eight hours in a day or forty hours in a week.

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

70. Plaintiffs seek all available remedies for Defendant's violations including, but not limited to, any and all wages due, monies, interest, liquidated damages, penalties attorney's fees, and costs to the extent permitted by law.

FOURTH CAUSE OF ACTION
FAILURE TO PAY TIMELY WAGES
[Cal. Labor Code §§ 201-204, 210]
On behalf of Plaintiffs and the Class Against Defendant

71. Plaintiffs re-allege and incorporate by reference each and every allegation set forth

1 in the preceding paragraphs.

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

7 73. Due to Defendant’s failure to pay Plaintiffs and the Class Members for minimum
8 and overtime wages owed, as well as meal and rest period premiums, Defendant violated Labor
9 Code § 204 by failing to pay all wages due to the Late Wages Subclass members within seven (7)
10 days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden*
11 *State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2,
12 2016) (finding that a failure to pay rest period premiums can support claims under Labor Code §§
13 203 and 204).

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

23 **FIFTH CAUSE OF ACTION**
24 **WAITING TIME PENALTIES FOR FAILING TO PAY WAGES DUE ON**
25 **TERMINATION**
26 **[Cal. Labor Code §§ 201-203]**
27 **On behalf of Plaintiffs and the Class Against Defendant**

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

1 76. Under Labor Code §§ 201-202, an employer must provide an employee wages at
2 the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203
3 provides “if an employer willfully fails to pay ... any wages of an employee who is discharged or
4 who quits, the wages of the employee shall continue as a penalty...” for up to 30 days. Lab. Code
5 § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

6 77. As described in detail above, Defendant failed to pay Class Members whose
7 employment with Defendant has now ended, all wages owed, including but not limited to all
8 minimum and overtime wages owed, as well as meal and rest period premiums owed, within the
9 time constraints proscribed in Labor Code §§ 201-202. Thus, as a result of Defendant’s faulty
10 policies described above, Class Members who had separated from Defendant, did not receive their
11 final wages for each and every hour worked at the appropriate rate in violation of Labor Code §§
12 201, 202, 203, and 210 thus triggering 30 days of wage claims for each former employee.

13 **SIXTH CAUSE OF ACTION**
14 **FAILURE TO PROVIDE REST PERIODS AND PAY MISSED REST PERIOD**
15 **PREMIUMS**
16 **(Cal. Labor Code § 226.7; SECTIONS 11 and 12 OF THE APPLICABLE IWC WAGE**
17 **ORDER)**
18 **On Behalf of Plaintiffs and the Class Against Defendant**

19 78. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
20 in the preceding paragraphs.

21 79. The actionable period for this cause of action is June 1, 2018 through the present,
22 and on-going until the violations are corrected or the Class is certified.

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

28 81. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
authorize and permit the amount of meal period and/or rest period time or the proper timing for

breaks called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

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

82. Here, Plaintiffs and the Class were not provided with timely rest breaks and did not take their rest breaks on a timely basis during their shifts. Plaintiffs and the Class did not receive their first and/or second rest breaks (for shifts that were longer than 8 hours, or a major fraction thereof). Therefore, Defendant is and was in violation of applicable California law by failing to provide them with rest breaks and for failing to pay missed rest period premiums.

SEVENTH CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS AND PAY MISSED MEAL PERIOD
PREMIUMS
(Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; section 11 of the applicable IWC Wage Order)
On Behalf of Plaintiffs and the Class Against Defendant

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

84. The actionable period for this cause of action is June 1, 2018 through the present, and on-going until the violations are corrected or the Class is certified.

85. Pursuant to Cal. Lab. Code § 226.7, 512 and IWC Wage Order No. 4-2001, § 11, no employer shall employ any non-exempt employee for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes. Employers in California are required to pay one (1) hour of compensation for each missed or non-compliant meal period to their non-exempt employees. Additionally, if a non-exempt-employee is not relieved of all duty during a meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal period is permitted only when (1) the nature of the work prevents an employee from being relieved of all duty and (2) the parties have a written agreement agreeing

1 to on duty meal periods

2 86. Here, Plaintiffs and the Class were not provided with compliant meal periods
3 during their shifts. Therefore, Defendant is and was in violation of applicable California law by
4 failing to provide them with meal periods and for failing to pay missed meal period premiums.

5 **EIGHTH CAUSE OF ACTION**
6 **FAILURE TO MAINTAIN REQUIRED RECORDS (LABOR CODE §§ 1174, 1174.5;**
7 **SECTION 7 OF THE APPLICABLE IWC WAGE ORDER)**

8 87. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
9 in the preceding paragraphs.

10 88. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall
11 keep at a central location in the state or at the plants or establishments at which employees are
12 employed, payroll records showing the hours worked daily by and wages paid to employees
13 employed at the respective plants or establishments. These records must be kept in accordance
14 with rules established for this purpose by the commission, but in any case shall be kept on file for
15 not less than two years.

16 89. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's
17 failure to maintain accurate and complete records.

18 90. Defendant has intentionally and willfully failed to keep accurate and complete
19 records showing the hours worked daily and wages paid to Plaintiffs and the other Class Members.
20 Thus, Plaintiffs and the other Class Members have been denied their legal right and protected
21 interest in having available at a central location at the plant or establishment where they are
22 employed, accurate and complete payroll records showing the hours worked daily by, and the
23 wages paid to, employees at those respective locations pursuant to Labor Code 1174

24 **NINTH CAUSE OF ACTION**
25 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
26 **(Cal. Labor Code § 2802)**
27 **On Behalf of Plaintiffs and the Class Against Defendant**

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

1 92. The actionable period for this cause of action is June 1, 2018 through the present,
2 and on-going until the violations are corrected or the Class is certified.

3 93. California Labor Code § 2802(a) requires employers to indemnify non-exempt
4 employees for all necessary expenditures or losses incurred by the employee in direct consequence
5 of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

6 94. Defendant fails to indemnify Plaintiffs, Class Members, and Aggrieved Employees
7 for all business expenses and/or losses incurred in direct consequence of the discharge of their
8 duties while working under its direction in violation of Cal. Lab. Code § 2802 including but not
9 limited to the costs of cellular phone usage. Plaintiffs and Class Members are entitled to
10 reimbursement for these necessary expenditures, plus interest and attorneys' fees and costs, under
11 Labor Code section 2802(c).

12 **TENTH CAUSE OF ACTION**
13 **UNFAIR COMPETITION LAW VIOLATIONS**
14 **(BUS. & PROF. CODE § 17200, ET SEQ.)**
 On Behalf of Plaintiffs and the Class Against Defendant

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

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

22 97. Under Section 17208 of the California Business and Professions Code, the statute
23 of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for
24 this cause of action is June 1, 2018 through the present, and on-going until the violations are
25 corrected, or the Class is certified.

26 98. Section 90.5(a) of the Labor Code states that it is the public policy of California to
27 enforce vigorously minimum labor standards in order to ensure employees are not required to work
28

1 under substandard and unlawful conditions, and to protect employers who comply with the law
2 from those who attempt to gain competitive advantage at the expense of their workers by failing to
3 comply with minimum labor standards.

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

7 100. Plaintiffs and similarly situated Class Members are entitled to monetary relief
8 pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid minimum wages, all
9 unpaid overtime wages, the right to receive accurate itemized wage statements, and missed meal
10 and rest periods, from at least June 1, 2018 through to the date of such restitution, at rates specified
11 by law. Defendant should be required to disgorge all the profits and gains they have reaped and
12 restore such profits and gains to Plaintiffs and Class Members, from whom they were unlawfully
13 taken.

14 101. Through the actions alleged herein, Defendant has engaged in unfair competition
15 within the meaning of Section 17200 of the California Business & Professions Code, because
16 Defendant's conduct, as herein alleged has damaged Plaintiffs and the Class Members by
17 wrongfully denying them minimum wages and overtime wages, the right to receive accurate
18 itemized wage statements, wrongfully denying them reimbursement, and wrongfully denying them
19 meal rest periods, and therefore was substantially injurious to Plaintiffs and the Class Members.

20 102. Defendant engaged in unfair competition in violation of Sections 17200 et seq. of
21 the California Business & Professions Code by violating Section 1194 of the California Labor
22 Code.

23 103. Defendant's course of conduct, act, and practice in violation of the California laws
24 mentioned above constitute independent violations of Sections 17200 et seq. of the California
25 Business and Professions Code.

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

28 105. Plaintiffs have assumed the responsibility of enforcement of the laws and public

1 policies specified herein by suing on behalf of himself and other similarly situated Class Members
2 previously or presently employed by Defendant in California. Plaintiffs' success in this action will
3 enforce important rights affecting the public interest. Plaintiffs will incur a financial burden in
4 pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to
5 Plaintiffs is appropriate pursuant to Code of Civil Procedure § 1021.5.

6 **ELEVENTH CAUSE OF ACTION**
7 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**
8 **PENALTIES FOR LABOR CODE VIOLATIONS**
9 **(Labor Code §§ 2698-2699.5)**

10 **On Behalf of Plaintiffs, the LWDA and the Aggrieved Employees Against Defendant**

11 106. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
12 in the preceding paragraphs.

13 107. Plaintiffs and the "Aggrieved Employees" under PAGA, i.e., those employees who,
14 during the PAGA Period, suffered the Labor Code violations alleged herein; specifically,
15 violations of §§ 201, 202, 203, 204, 210, 226(a), 226(e), 226.7, 512, 1194, 1197, 1197.1, 1198,
16 1199, 2802 of the Labor Code as well as sections 11 and 12 of the applicable IWC Wage Order
17 bring claims under PAGA. Plaintiffs were employed by Defendant during the one year preceding
18 the submission of their PAGA letters to the LDWA on or around June 1, 2022 and January 12,
19 2023, respectively. As such, they seek to recover, on behalf of themselves and all other current
20 and former aggrieved employees of Defendant, the civil penalties provided by PAGA.

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

24 \$100 for the initial violation per employee per pay period; and

25 \$200 for each subsequent violation per employee per pay period.

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

28 109. The Aggrieved Employees are all individuals who worked for Defendant as hourly-
paid employees in California during the PAGA Period. These employees were subject to the

1 aforementioned Labor Code violations, during the period of time from one year prior to the
2 submission of Plaintiff Villazon's letter to the LDWA on June 1, 2022 through to the present and
3 on-going, i.e., from June 1, 2021 to the present.

4 110. Further, Plaintiffs, and the Aggrieved Employees, need not demonstrate or prove
5 that Defendant's conduct in refusing to provide itemized wage statements was knowing,
6 intentional, or willful. *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017); *see*
7 *also Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment
8 on a PAGA claim, "all [plaintiff] needs to establish is a violation of section 226(a), which she has
9 done, as discussed above."); *McKenzie v. Fed. Express Corp.*, 765 F.Supp.2d 1222, 1231-1232
10 (C.D. Cal. 2011) (holding that "for the purposes of recovering PAGA penalties, one need only
11 prove a violation of Section 226(a), and need not establish a Section 226(e) injury."); *Aguirre v.*
12 *Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) ("Plaintiffs do
13 not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of
14 PAGA.").

15 111. Plaintiffs seek to recover the PAGA civil penalties through a representative action
16 as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*. 46 Cal.4th
17 969 (2009). Therefore, class certification hereby of the PAGA claims is not required. *Id.*

18 112. Pursuant to Labor Code § 2699.3 (a), on June 1, 2022 and January 12, 2023,
19 Plaintiffs each gave written notice by certified mail to Defendant, and to the Labor and Workforce
20 Development Agency ("LWDA") of their claims, including the facts and theories supporting all
21 claims outlined in this Complaint. Accordingly, Plaintiffs have fulfilled all administrative
22 prerequisites to the pursuit of his PAGA claim on behalf of themselves and all other current and
23 former aggrieved employees of Defendant.

24 JURY DEMAND

25 113. Plaintiffs hereby demand trial by jury of their and the Class Members' claims
26 against Defendant, except for the PAGA and UCL claims which will be tried to the Court.

27 PRAYER FOR RELIEF

28 Wherefore, Plaintiffs, on behalf of themselves and the members of the Class, and the

LWDA and the Aggrieved Employees, prays for judgment against Defendant 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 Defendant violated California Labor Code § 226 by failing to issue compliant wage statements to Plaintiffs and the Wage Statement Subclass members;

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

3. On the Second Cause of Action:

a. A declaratory judgment that Defendant has violated California Labor Code Sections 1194 and 1197 in failing to pay Plaintiffs and the Class all minimum wages due;

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

4. On the Third Cause of Action:

a. A declaratory judgment that Defendant has violated California Labor Code Sections 510 and 1198 in failing to pay Plaintiffs and the Class all overtime wages due;

b. An award to Plaintiffs and other members of the Class in the amount of their unpaid overtime wages owed, plus interest and/or liquidated damages during the Class Period;

5. On the Fourth 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 Plaintiffs and the Late Wage Subclass for penalties pursuant to Labor Code § 210;

6. On the Fifth Cause of Action:

1 a. A declaratory judgment that Defendant has violated California Labor Code
2 §§ 201 through 203 in failing to pay the Class all final wages due;

3 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiffs and
4 members of the Class whose employment with Defendant ended in the amount 30 days wages
5 under Labor Code § 203;

6 7. On the Sixth Cause of Action:

7 a. A declaratory judgment that Defendant has violated California Labor Code
8 Section 226.7 and the applicable IWC Wage Order;

9 b. Pursuant to Labor Code section 226.7, an award of one hour of pay for each
10 workday where a compliant rest break was not provided to the members of the Class;

11 8. On the Seventh Cause of Action:

12 a. A declaratory judgment that Defendant has violated California Labor Code
13 Sections 226.7 and 512 and the applicable IWC Wage Order;

14 b. Pursuant to Labor Code section 226.7, an award of one hour of pay for each
15 workday where a compliant meal period was not provided to the members of the Class;

16 9. On the Eighth Cause of Action:

17 a. A declaration judgment that Defendant has violated California Labor Code
18 Sections 1174 and 1174.5;

19 b. Pursuant to Labor Code section 1174.5, an award of penalties to Plaintiffs
20 and Class Members;

21 10. On the Ninth Cause of Action:

22 a. A declaratory judgment that Defendant has violated California Labor Code
23 Section 2802;

24 b. Pursuant to Labor Code section 2802, an award of all unreimbursed business
25 expenses, and interest thereon to Plaintiffs and the Class, as well as attorneys' fees pursuant to
26 Labor Code section 2802(c);

27 11. On the Tenth Cause of Action:

28 a. That the Court find and declare that Defendant has violated the UCL and

1 committed unfair and unlawful business practices by failing to pay Plaintiffs and the Class
2 minimum wages owed, by failing to overtime owed, and by failing to pay missed meal and rest
3 breaks premiums owed;

4 b. Restitution, including, but not limited to, the relief permitted by sections
5 1194 of the California Labor Code (i.e., unpaid minimum wages owed, and unpaid overtime wages
6 owed, and premiums payments owed for missed meal and rest breaks to Plaintiffs and the
members of the Class during the Class Period);

7 12. On the Eleventh Cause of Action:

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

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

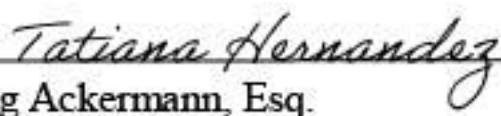
15 e. An award of all costs incurred by the undersigned counsel for Plaintiffs in
16 connection with Plaintiffs' and Class Members' PAGA claim against Defendant, as provided for in
17 Labor Code § 2699(g)(1); and

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

19 Dated: March 15, 2023,

20 Respectfully submitted,

21 ACKERMANN & TILAJEF, P.C.
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THE WAND LAW FIRM, P.C.

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