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NATALIE SPENCER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF CONTRA COSTA**

NATALIE SPENCER, on behalf of herself and  
all others similarly situated,

Plaintiff,

vs.

BNSF RAILWAY COMPANY; and DOES 1  
through 100, inclusive,  
Defendants.

Case No. C25-00652

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION  
COMPLAINT FOR:**

- (1) FAILURE TO REIMBURSE  
BUSINESS EXPENSES (LABOR  
CODE §§ 2802, 2804, 1198);**
- (2) WAGE STATEMENT VIOLATIONS  
(LABOR CODE § 226, *et seq.*);**
- (3) UNFAIR COMPETITION (BUS. &  
PROF. CODE § 17200, *et seq.*);**
- (4) PRIVATE ATTORNEYS GENERAL  
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL  
UNLIMITED CIVIL CASE**

1 Plaintiff Natalie Spencer (“Plaintiff”), on behalf of herself and all others similarly situated,  
2 and as a private attorney general on behalf of the State of California and other aggrieved  
3 employees, hereby brings this Class and Representative Action Complaint against BNSF Railway  
4 Company; and Does 1 through 100, inclusive (collectively, “Defendants”), and on information  
5 and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself and all others similarly situated, and as a private  
8 attorney general on behalf of the State of California and other aggrieved employees, brings this  
9 class and representative action for recovery of unpaid wages and penalties under California  
10 Business and Professions Code section 17200, *et. seq.*; Labor Code sections 226, 2698 *et seq.*,  
11 2802, and 2804; and Industrial Welfare Commission Wage Order No. 9 (“Wage Order 9”), in  
12 addition to seeking declaratory relief and restitution. This class action is brought pursuant to Code  
13 of Civil Procedure section 382. This Court has jurisdiction over Defendants’ violations of the  
14 Labor Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil  
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein  
18 occurred in Contra Costa County. Defendants own, maintain offices, transact business, have an  
19 agent or agents within Contra Costa County, and/or otherwise are found within Contra Costa  
20 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,  
23 Plaintiff was, and currently is, a California resident. Within the statute of limitations periods  
24 applicable to each cause of action herein, Plaintiff was employed by Defendants as a non-exempt  
25 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of  
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code  
27 §§ 226, 2802, 2804; Business & Professions Code § 17200, *et seq.* (Unfair Competition), and  
28 Wage Order 9, which sets employment standards for the transportation industry.

1           4.       Plaintiff is informed and believes, and based thereon alleges, that during the four  
2 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)  
3 business as a railway operator. Plaintiff is further informed and believes, and based thereon  
4 alleges, that Defendants employed Plaintiff and other similarly situated employees within Contra  
5 Costa County and the state of California.

6           5.       Plaintiff does not know the true names or capacities, whether individual, partner,  
7 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said  
8 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to  
9 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed  
10 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,  
11 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,  
12 and proximately caused Plaintiff and the Classes (as defined in Paragraph 13) to be subject to the  
13 unlawful employment practices, wrongs, injuries, and damages complained of herein.

14           6.       Plaintiff is informed and believes, and based thereon alleges, that at all times  
15 mentioned herein, Defendants were and are the employers of Plaintiff and all members of the  
16 Classes defined below.

17           7.       At all times herein mentioned, each of said Defendants participated in the acts  
18 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and  
19 each of them, were the agents, servants, and employees of each of the other Defendants, as well  
20 as the agents of all Defendants, and at all times herein mentioned were acting within the course  
21 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,  
22 and/or otherwise ratified each of the acts or omissions alleged herein.

23           8.       At all times mentioned herein, Defendants, and each of them, were members of  
24 and engaged in a joint venture, partnership, and common enterprise, and acting within the course  
25 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,  
26 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class  
27 Members (as defined in Paragraph 13).

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**GENERAL FACTUAL ALLEGATIONS**

9. Plaintiff worked for Defendants as a non-exempt employee from approximately March 2024 to January 2025. Plaintiff worked out of Defendants' location in Richmond, CA.

10. During Plaintiff's employment with Defendants, Defendants failed to reimburse Plaintiff and other employees for certain expenses they incurred in the course of their employment. Specifically, Defendants required Plaintiff and other employees to use their personal cellphones to download and use various applications, including Flynet, WorkforceHub, and Microsoft Outlook. Plaintiff was required to use these applications regularly in the scope of her employment, including, among other things, to communicate with Defendants via email and perform other work-related tasks. Plaintiff would also be contacted by Defendants through "Crew Caller" on her personal cell phone.

11. Despite requiring Plaintiff and other employees to use their personal cell phones for work-related purposes, Defendants have failed to reimburse any portion of their monthly cell phone bill. As a result of the foregoing, Plaintiff and other employees are entitled to reimbursement pursuant to Labor Code § 2802 and *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (holding employer must reimburse employees for "reasonable percentage" of their cell phone bills if they are required to use their cell phones for work, even if employees did not incur specific out-of-pocket expense).

12. In addition, Defendants have issued facially deficient wage statements to Plaintiff and other employees, in that the wage statements did not always include total hours worked, and consistently do not include all rates of pay or all hours worked at each rate of pay, in violation of Labor Code § 226(a). Specifically, some of Plaintiff's wage statements – including her wage statements dated April 10, 2024 and April 25, 2024 – failed to include any information pertaining to the hours worked by Plaintiff during the pay period, and instead listed "0.00" as "hours worked/gross." In other wage statements, Defendants failed to include the accurate number of overtime hours worked and/or the accurate overtime rates in effect during the pay period. For example, in Plaintiff's wage statement dated May 24, 2024, Defendants simply listed 1.00 "unit" of overtime at a "rate" of 224.54000, resulting in \$224.54 in overtime wages. On information and

1 belief, at no time was Plaintiff's overtime rate of pay actually \$224.54. As another example, in  
2 Plaintiff's wage statement dated September 25, 2024, Defendants listed two line items for  
3 overtime, one with 1.00 overtime "unit" at a "rate" of 159.42000 and another 1.00 overtime "unit"  
4 at a "rate" of 215.07000. On information and belief, neither of those "rates" was Plaintiff's actual  
5 rate of overtime pay, nor was the listed "unit" of exactly 1.00 accurate with respect to the number  
6 of overtime hours Plaintiff worked. These are not isolated payroll errors, as the same sort of  
7 overtime reporting occurred on many occasions during Plaintiff's employment.

### 8 **CLASS ACTION ALLEGATIONS**

9 13. Class Definitions: Plaintiff bring this action on behalf of herself and the following  
10 Classes pursuant to Section 382 of the Code of Civil Procedure:

11 a. The Expense Reimbursement Class consists of all of Defendants' employees who  
12 worked for Defendants in California and were required to use their personal cell phones  
13 for work-related purposes and did not receive reimbursement, at any time from four years  
14 prior to the filing of this action through the present.

15 b. The Wage Statement Class consists of all of Defendants' non-exempt employees  
16 who worked for Defendants in California and who received a wage statement that (i)  
17 reported 0.00 "hours worked/gross" for a pay period in which the employee performed  
18 work for Defendants; and/or (ii) did not include accurate reporting of all hourly rates and  
19 the hours worked at each hourly rate, at any time from one year prior to the filing of this  
20 action through the present.

21 14. **Numerosity/Ascertainability:** The members of the Classes are so numerous that  
22 joinder of all members would be unfeasible and impracticable. The membership of the Classes is  
23 unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than  
24 fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via  
25 Defendants' employment records.

26 15. **Common Questions of Law and Fact Predominate/Well Defined Community**  
27 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly  
28 situated employees, which predominate over questions affecting only individual members

including, without limitation to:

- i. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- ii. Whether Defendants properly reimbursed expenses incurred by members of the Expense Reimbursement Class.

16. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' wage statement, expense reimbursement, and final wage policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

17. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants in California as a non-exempt employee during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was furnished with inaccurate wage statements and was not reimbursed for all expenses she incurred in carrying out her job duties for Defendants.

18. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

19. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws protect the average employee from exploitation by employers who have the responsibility to follow the law and who may seek to take advantage of superior economic

1 and bargaining power in setting onerous terms and conditions of employment. The nature of this  
2 action and the format of laws available to Plaintiff and Class members make the class action  
3 format a particularly efficient and appropriate procedure to redress the violations alleged herein.  
4 If each employee were required to file an individual suit, Defendants would gain an unfair  
5 advantage as they would be able to exploit and overwhelm the limited resources of each individual  
6 plaintiff with their vastly superior resources. Moreover, requiring each Class member to pursue  
7 an individual remedy would discourage the assertion of lawful claims by employees who would  
8 be disinclined to file an action against an employer for fear of potential retaliation by such  
9 employer. Further, prosecution of separate actions by individual class members would create a  
10 substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual  
11 class members against Defendants herein; and which would establish potentially incompatible  
12 standards of conduct for Defendants. Further, the claims of the individual members of the Classes  
13 are not sufficiently large to warrant vigorous individual prosecution considering all of the  
14 concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph  
15 13 are maintainable under Section 382 of the Code of Civil Procedure.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

18 **(AGAINST ALL DEFENDANTS)**

19 20. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 21. At all relevant times, Defendants were subject to Labor Code § 2802, which states  
21 that “an employer shall indemnify his or her employees for all necessary expenditures or losses  
22 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or  
23 her obedience to the directions of the employer.”

24 22. At all relevant times, Defendants were subject to Labor Code § 2804, which states,  
25 “any contract or agreement, express or implied, made by any employee to waive the benefits of  
26 this article or any part thereof, is null and void, and this article shall not deprive any employee or  
27 his personal representative of any right or remedy to which he is entitled under the laws of this  
28 State.”

23. Due to Defendants' unlawful policy and practice of requiring employees to use their personal property, including personal cell phones, for work purposes, and their failure to reimburse Plaintiff and members of the Expense Reimbursement Class, Defendants have violated Labor Code § 2802.

24. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class have suffered damages in sums, which will be shown according to proof.

25. Plaintiff and members of the Expense Reimbursement Class are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

26. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

## **SECOND CAUSE OF ACTION**

### **WAGE STATEMENT VIOLATIONS**

#### **(AGAINST ALL DEFENDANTS)**

27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, an accurate accounting of total hours worked, all hourly rates in effect, and/or all hours worked at each hourly rate, in violation of Labor Code § 226.

29. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, confusion over the number of hours worked, and deprived them of the information necessary to identify and reconcile the discrepancies in Defendants' reported data.

30. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor



Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit, pursuant to Labor Code §§ 226 and 226.3.

**THIRD CAUSE OF ACTION**

**UNFAIR COMPETITION**

**(AGAINST ALL DEFENDANTS)**

31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

32. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to reimburse business expenses, to Plaintiff and members of the Classes.

33. Defendants' utilization of these unfair and/or unlawful business practices has deprived Plaintiff and members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

34. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff, for herself and on behalf of the members of the Classes, seeks full restitution of monies as necessary and according to proof, to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

35. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

36. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil Procedure § 1021.5.

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1 from one year prior to the date of Plaintiff's PAGA notice letter through the date that judgment  
2 is entered in Plaintiff's PAGA action or any other alternative date agreed upon by the parties and/or  
3 approved by the Court.

4 41. Plaintiff was compelled to retain the services of counsel to file this court action to  
5 protect her interests and the interests of other aggrieved employees, and to assess and collect the  
6 civil penalties owed by Defendants and to seek injunctive relief under the PAGA. Plaintiff has  
7 thereby incurred attorneys' fees and costs, which she is entitled to recover under Labor Code §  
8 2699(k).

9 **PRAYER**

10 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf  
11 this suit is brought against Defendants, as follows:

- 12 1. For an order certifying the proposed Classes;
- 13 2. For an order appointing Plaintiff as representative of the Classes;
- 14 3. For an order appointing counsel for Plaintiff as counsel for the Classes;
- 15 4. Upon the First Cause of Action, for compensatory, consequential, general, and  
16 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
- 17 5. Upon the Second Cause of Action, for statutory penalties pursuant to Labor Code §  
18 226, *et seq.*;
- 19 6. Upon the Third Cause of Action, for restitution to Plaintiff and members of the  
20 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or  
21 practices declared by this Court to be in violation of Bus. & Prof Code § 17200, *et seq.*;
- 22 7. Upon the Fourth Cause of Action, for any and all civil penalties available to Plaintiff,  
23 the State of California, and other aggrieved employees under the Private Attorneys General Act,  
24 as well as injunctive relief under the Private Attorneys General Act prohibiting Defendants from  
25 engaging in the unlawful conduct alleged herein;
- 26 8. Prejudgment interest on all due and unpaid wages and other damages pursuant to  
27 Cal. Labor Code § 2802(b); Civil Code § 3287; and Art. XV, § 1 of the California Constitution;

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1           9.    On all causes of action, for attorneys' fees and costs as provided by Labor Code §§  
2 226(e), 2699(k), 2802(c), and Code of Civil Procedure § 1021.5; and

3           10.   For such other and further relief the Court may deem just and proper.

4  
5 Date: May 16, 2025

Respectfully submitted,  
MARQUEE LAW GROUP, APC

6  
7 By: \_\_\_\_\_

  
Tuvia Korobkin  
Attorneys for Plaintiff

8  
9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

11  
12 Dated: May 16, 2025

Respectfully submitted,  
MARQUEE LAW GROUP, APC

13  
14 By: \_\_\_\_\_

  
Tuvia Korobkin  
Attorneys for Plaintiff