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Kern County Superior Court
By Edith Carrillo, Deputy

Attorneys for Plaintiffs, on behalf of themselves and for all similarly situated persons

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR KERN COUNTY

BRIAN AMBRIZ, MARTIN VALDOVINOS)
BRAVO, ERASMO AMBRIZ ORTEGA, on)
behalf of themselves and for all similarly situated)
persons, and the general public;)

Plaintiffs,

vs.

THE ORIGINAL MOWBRAY'S TREE)
SERVICE, INC. DBA MOWBRAY'S TREE)
SERVICE, a California corporation; and DOES 1-)
50;)

Defendants.

Case No.: BCV-22-103083

CLASS ACTION COMPLAINT FOR
DAMAGES FOR:

- 1. Unpaid Missed Rest Breaks (Labor Code § 226.7 and IWC Wage Order No. 16-2001 section 11);**
- 2. Unpaid Missed Meal Breaks (Labor Code §§ 226.7, 512 and 1198 and IWC 16-2001 section 10);**
- 3. Failure to Pay for All Overtime Worked (Labor Code §§ 510, 1194 and 1198 and IWC 16-2001 section 3);**
- 4. Failure to Pay Minimum Wage and Pay for All Wages Earned (Labor Code §§ 204, 1194 and 1197 and IWC 16-2001 section 4);**
- 5. Failure to Maintain Accurate Payroll Records (Labor Code §§ 226(a), 1174 and 1198.5 and IWC Wage Order No. 16-2001 section 6);**
- 6. Failure to Pay Accurate Wages Upon Separation (Labor Code §§ 201 – 203);**
- 7. Failure to Reimburse Required**

) **Business Expenses (Labor Code § 2802);**
)
)

) **8. Failure to Pay for Sick Days (Labor Code §§ 246(a) and 248.5);**
)

) **9. Failure to Provide Rest Days (Labor Code sections 551-553);**
)

) **10. Violation of California Business and Professions Code § 17200, et seq.;**
)

) **11. Civil Penalties Pursuant to Labor Code § 2699 (PAGA Penalties)**
)

) **DEMAND FOR JURY TRIAL**
)
)

COME NOW PLAINTIFFS, BRIAN AMBRIZ, MARTIN VALDOVINOS BRAVO, and ERASMO AMBRIZ ORTEGA, individually on behalf of themselves and on behalf of all similarly situated individuals, and the general public, and allege as follows:

The allegations in this Class Action Complaint, stated on information and belief, have evidentiary support and/or are likely to have evidentiary support after reasonable opportunity for further investigation and discovery.

NATURE OF THE ACTION

1. Defendant, THE ORIGINAL MOWBRAY'S TREE SERVICE, INC. DBA MOWBRAY'S TREE SERVICE is operating a business in San Bernardino County, California.
2. During the relevant timeframe, Plaintiffs BRIAN AMBRIZ, MARTIN VALDOVINOS BRAVO, and ERASMO AMBRIZ ORTEGA and Class Members were employed by Defendant, THE ORIGINAL MOWBRAY'S TREE SERVICE, INC. DBA MOWBRAY'S TREE SERVICE, located at 686 E MILL STREET, 2ND FLOOR, SAN BERNARDINO, CA 92408.
3. This action for relief arises from Defendants' failure to provide off-duty rest and meal periods as required by law; failure to compensate Plaintiffs and Class Members at the required rate for each occasion in which Defendants failed to provide rest and meal

breaks; failure to pay overtime wages and for all hours worked; failure to keep accurate payroll records, such that Plaintiffs and Class Members were given no wage statements to accurately reflect all the hours worked and all wages earned; failure to timely pay all wages due upon separation; failure to timely pay all wages due upon separation; failure to pay sick days; failure to pay necessary business expenses; and failure to pay the minimum wage and all wages earned.

THE PARTIES

4. Plaintiffs, BRIAN AMBRIZ, MARTIN VALDOVINOS BRAVO, and ERASMO AMBRIZ ORTEGA and Class Members, are residents of California.
5. Defendant, THE ORIGINAL MOWBRAY'S TREE SERVICE, INC., DBA MOWBRAY'S TREE SERVICE at all times mentioned herein, is an employer whose employees worked for throughout the State of California and in different counties including Kern County and San Bernardino County in the State of California.
6. The true names and capacities, whether individual, corporate, associate or otherwise of each of the Defendants designated herein as a DOE are unknown to Plaintiffs and Class Members at this time, who therefore, sue said Defendants by fictitious names, DOES 1 to 50, and will ask leave of this Court for permission to amend this Complaint to show their names and capacities when the same have been ascertained. Plaintiffs and Class Members are informed and believe and thereon allege, that each of the Defendants designated as a DOE is legally responsible in some manner for the events and happenings herein referred to, and caused injuries and damages thereby to Plaintiffs and Class Members as herein alleged.
7. Unless otherwise individually referred to, whenever, in this Complaint, reference is made to "Defendant" such reference shall refer to all Defendants.
8. Plaintiffs and Class Members, on information and belief and based upon such basis, allege that, at all times herein mentioned, each of the Defendants were acting as the agent, servant, employee of each of the other Defendants, within the scope of said agency and employment.
9. During the times and places of the incident in question, Defendants, and each of them, their agents, servants and employees became liable to Plaintiffs and Class Members for

1 the reasons described in the complaint herein, and thereby proximately caused Plaintiffs
2 and Class Members to sustain damages as set forth herein.

3 10. Plaintiffs and Class Members, on information and belief and based upon such basis, allege
4 that all Defendants carried out a joint scheme, business plan or policy in all respects
5 pertinent hereto and all acts and omissions herein complained of were performed within
6 the course and scope of said employment, service, agency, common scheme, plan and/or
7 policy.

8 11. Plaintiffs and Class Members, on information and belief and based upon such basis, allege
9 that Defendants' founders, owners, shareholders, executive officers, managers, and
10 supervisors directed, authorized, ratified and/or participated in the conduct that gives rise
11 to the claims asserted herein and derived personal financial benefit from such conduct at
12 the expense of Plaintiffs and Class Members.

13 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

14 12. Plaintiffs and Class Members are informed and believe, and based thereon allege, that
15 that there exists such a unity of interest and ownership between Defendants and DOES 1-
16 50 that the individuality and separateness of Defendants have ceased to exist.

17 13. Plaintiffs and Class Members are informed and believe, and based thereon allege, that
18 despite the formation of purported corporate existence, Defendant and DOES 1-50 are,
19 in reality, one and the same as Defendants, including, but not limited to because:

20 a. Defendants are completely dominated and controlled by DOES 1-50, who personally
21 committed the frauds and violated the laws as set forth in this complaint, and who have
22 hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
23 accomplish some other wrongful or inequitable purpose.

24 b. DOES 1-50 derive actual and significant monetary benefits by and through Defendants'
25 unlawful conduct, and by using Defendants as the funding source for their own personal
26 expenditures.

27 c. Plaintiffs and Class Members are informed and believe, and based thereon allege, that
28 while really one and the same, were segregated to appear as though separate and distinct
for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other
wrongful or inequitable purpose.

1 d. Plaintiffs and Class Members are informed and believe, and based thereon allege, that
2 Defendants do not comply with all requisite corporate formalities to maintain a legal and
3 separate corporate existence.

4 e. Plaintiffs and Class Members are informed and believe, and based thereon allege, that
5 the business affairs of Defendant and DOES 1-50 are, and at all times relevant were, so
6 mixed and intermingled that the same cannot reasonably be segregated, and the same are
7 in inextricable confusion. Defendants are, and at all times relevant hereto were, used by
8 DOES 1-50 as a mere shell and conduit for the conduct of certain of Defendants' affairs,
9 and are, and were, the alter ego of DOES 1-50. The recognition of the separate existence
10 of Defendants would not promote justice, in that it would permit Defendants to insulate
11 themselves from liability to Plaintiffs and Class Members for violations of the
12 Government Code and other statutory violations. The corporate existence of Defendant
13 and DOES 1-50 should be disregarded in equity and for the ends of justice because such
14 disregard is necessary to avoid fraud and injustice to Plaintiffs and Class Members
15 herein.

16 14. Accordingly, Defendants constitute the alter ego of DOES 1-50, and the fiction of their
17 separate corporate existence must be disregarded.

18 15. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
19 thereon allege that Defendants and DOES 1-50 is Plaintiffs' joint employers by virtue of
20 a joint enterprise, and that Plaintiffs was an employee of Defendant, and DOES 1-50.
21 Plaintiffs and Class Members performed services for each and every one of Defendants,
22 and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiffs
23 as an employee, either directly or indirectly, and the manner in which Defendants'
24 business was and is conducted.

25 16. Alternatively, Plaintiffs and Class Members are informed and believe, and based thereon
26 allege, that as and between DOES 1-50 and Defendant, (1) there is an express or implied
27 agreement of assumption pursuant to which DOES 1-50 agreed to be liable for the debts
28 of Defendant, (2) the transaction between DOES 1-50 and Defendant amounts to a
consolidation or merger of the two corporations, (3) DOES 1-50 is a mere continuation
of Defendant, or (4) the transfer of assets to DOES 1-50 is for the fraudulent purpose of

1 escaping liability for Defendant's debts. Accordingly, DOES 1-50 are the successors of
2 Defendant, and are liable on that basis.

3 **JURISDICTION AND VENUE**

- 4 17. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure
5 § 410.10. The damages exceed the jurisdictional minimum of this Court.
6 18. Venue is proper in this Court, pursuant to California Code of Civil Procedure § 395.5
7 because some of the incidents complained of occurred in Kern County, California.

8 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTIONS**

- 9 19. Plaintiffs and Class Members are informed and believe that Defendants own, manage,
10 and/or operate THE ORIGINAL MOWBRAY'S TREE SERVICE, INC. DBA
11 MOWBRAY'S TREE SERVICE which is a company operating in Kern County.
12 20. Defendants employed Plaintiff Bryan Ambriz as a non-exempt hourly employee
13 beginning April 2018 until July 2022. Plaintiff was employed as a laborer/groundman
14 and performed tasks including groundskeeping, traffic controlling and other maintenance.
15 Plaintiff worked over 40 hours weekly. Plaintiff's last pay rate was \$25.52 per hour.
16 21. Defendants employed Plaintiff Erasmo Ambriz Ortega as a non-exempt hourly employee
17 beginning April 2019. Plaintiff has been employed as a laborer and performed tasks
18 including groundskeeping, traffic controlling and other maintenance. Plaintiff works over
19 40 hours weekly. Plaintiff's pay rate is \$25.52 per hour.
20 22. Defendants employed Plaintiff Martino Valdovinos Bravos as a non-exempt hourly
21 employee beginning April 2019. Plaintiff has been employed as a laborer/groundman and
22 performed tasks including groundskeeping, traffic controlling and other maintenance.
23 Plaintiff works over 40 hours weekly. Plaintiff's pay rate is \$25.52 per hour.
24 23. During the relevant timeframe, Plaintiffs and Class Members often worked shifts of over
25 four hours, and were not given a ten-minute, uninterrupted rest break for each such shift.
26 Plaintiffs and Class Members worked during the rest periods either under the direction
27 and supervision of Defendants, or with Defendants' knowledge and consent. Plaintiffs
28 and Class Members frequently worked more than eight hours a day but did not receive
10 minutes of uninterrupted rest breaks. Furthermore, Defendants created schedules that
made it difficult or impossible for Plaintiffs and Class Members to take their rest breaks.

- 1 24. During the relevant timeframe, Plaintiffs and Class Members often worked shifts of over
2 five hours, and was not given a thirty-minute, uninterrupted meal breaks for each such
3 shift. Plaintiffs worked during the meal periods either under the direction and supervision
4 of Defendants, or with Defendants' knowledge and consent. Furthermore, Defendants
5 created schedules that made it difficult or impossible for Plaintiffs and Class Members to
6 take their meal breaks.
- 7 25. During the relevant timeframe, Plaintiffs and Class Members often worked more than
8 eight hours a day and more than 40 hours a week and were not paid all the accurate
9 overtime wages they were entitled to.
- 10 26. Plaintiffs are required to travel to other cities and counties to perform work for the
11 Defendants. Plaintiffs must stay in other work location 5 to 7 straight days. At times
12 Plaintiffs have used their own vehicles and phones to perform tasks and jobs for the
13 Defendants but they have not either been reimbursed at all or only partially.
- 14 27. Defendants have paid Plaintiffs' lodging expenses while working inn other locations but
15 they are not paid accurately for all the working hours and are required to work/travel to
16 and from motel/hotel to transportation van/work place without getting paid for all the
17 hours.
- 18 28. During the relevant timeframe, Defendants failed to compensate Plaintiffs and Class
19 Members at the required rate for each occasion in which Defendants failed to provide rest
20 breaks, meal breaks and overtime worked. As such, Defendants failed to pay for all the
21 hours worked and all wages earned by Plaintiffs and Class Members.
- 22 29. During the relevant timeframe, Defendants failed to maintain accurate payroll records,
23 such that Plaintiffs and Class Members were given wage statements that did not
24 accurately reflect their true compensation and all the hours worked.
- 25 30. During the relevant timeframe, Defendants did not issue an accurate final paycheck to
26 Plaintiffs in accordance with the timeframes prescribed by law.
- 27 31. During the relevant timeframe, Defendants failed to provide Plaintiffs and Class
28 Members with sick days, as required by statute.
32. During the relevant timeframe, Plaintiffs and Class Members sought reimbursement of
necessary expenses incurred at Defendants' direction and with assurance of payment, but

Defendants have consistently refused to reimburse and indemnify for Plaintiff and Class Members for these expenses.

33. During the relevant timeframe, Defendants have engaged in unfair and unlawful business practices by implementing and maintaining workplace policies that have violated California laws.

34. During the relevant timeframe, Defendants did not issue an accurate final paycheck to Plaintiff Bryan Ambriz and Class Members in accordance with the timeframes prescribed by law.

CLASS ACTION ALLEGATIONS

35. Plaintiffs brings this action on their own behalf, as well as on behalf of each and all other persons similarly situated, and thus, seek class certification. The class shall be defined as follows:

“All persons who were employed at THE ORIGINAL MOWBRAY’S TREE SERVICE, INC. DBA MOWBRAY’S TREE SERVICE, in the State of California during the period commencing four years from the date of PAGA filing, through the entry of final judgment in this action.”

36. Plaintiffs propose that the following sub-classes be created:

a. A proposed sub-class (*hereinafter* “Meal Period Class”) is defined as: All individuals who have been employed and are currently employed at THE ORIGINAL MOWBRAY’S TREE SERVICE, INC. DBA MOWBRAY’S TREE SERVICE, within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit who did not receive their required meal breaks pursuant to the *California Labor Code* and/or applicable orders of the IWC.

b. A proposed sub-class (*hereinafter* “Rest Period Class”) is defined as: All individuals who have been employed and are currently employed at THE ORIGINAL MOWBRAY’S TREE SERVICE, INC. DBA MOWBRAY’S TREE SERVICE, within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit who did not receive their required rest breaks pursuant to the *California Labor Code* and/or applicable orders of the IWC.

c. A proposed sub-class (*hereinafter* “Underpaid Class”) is defined as: All individuals who have been and are currently employed at THE ORIGINAL MOWBRAY’S

1 TREE SERVICE, INC. DBA MOWBRAY'S TREE SERVICE, within the relevant
2 time periods prior to the filing of this Complaint until resolution of this lawsuit who
3 were not paid full complete and accurate compensation for all hours worked.

4 d. A proposed sub-class (*hereinafter* "Overtime Class") is defined as: All individuals
5 who have been and are currently employed at THE ORIGINAL MOWBRAY'S
6 TREE SERVICE, INC. DBA MOWBRAY'S TREE SERVICE, within the relevant
7 time periods prior to the filing of this Complaint until resolution of this lawsuit who
8 were not paid full complete and accurate compensation for all overtime worked.

9 e. A proposed sub-class (*hereinafter* "Wage Statement Class") is defined as: All
10 individuals who have been and are currently employed at THE ORIGINAL
11 MOWBRAY'S TREE SERVICE, INC. DBA MOWBRAY'S TREE SERVICE,
12 within the relevant time periods prior to the filing of this Complaint until resolution
13 of this lawsuit whose were not provided with wage statements to accurately reflect
14 gross wages earned. Specifically, all the hours worked, the overtime and additional
15 hours of pay employees earn for each workday they did not receive a meal and/or rest
16 break. This subclass includes the Class Members whose final paycheck did not
17 accurately reflect gross wages earned. Specifically, all the hours worked, the overtime
18 and additional hours of pay employees earn for each workday they did not receive a
19 meal and/or rest break.

20 f. A proposed sub-class (*hereinafter* "Final Paycheck Class") is defined as: All
21 individuals who were employed at THE ORIGINAL MOWBRAY'S TREE
22 SERVICE, INC. DBA MOWBRAY'S TREE SERVICE, within the relevant time
23 periods prior to the filing of this Complaint until resolution of this lawsuit who did
24 not receive their final paycheck within 72 hours after the final day of work or at the
25 time of their termination.

26 g. A proposed sub-class (*hereinafter* "Minimum Wage Class") is defined as: All
27 individuals who have been and are currently employed at THE ORIGINAL
28 MOWBRAY'S TREE SERVICE, INC. DBA MOWBRAY'S TREE SERVICE,
within the relevant time periods prior to the filing of this Complaint until resolution
of this lawsuit who did not receive at least the minimum wage for all the hours
worked.

1 h. A proposed sub-class (*hereinafter* "Paid Sick Days Class") is defined as: All
2 individuals who have been and are currently employed at THE ORIGINAL
3 MOWBRAY'S TREE SERVICE, INC. DBA MOWBRAY'S TREE SERVICE,
4 within the relevant time periods prior to the filing of this Complaint until resolution
5 of this lawsuit who worked for 30 or more days within a year from the commencement
6 of employment and did not receive paid sick days.

7 i. A proposed sub-class (*hereinafter* "Business Expenses Class") is defined as: All
8 individuals who have been and are currently employed at THE ORIGINAL
9 MOWBRAY'S TREE SERVICE, INC. DBA MOWBRAY'S TREE SERVICE,
10 within the relevant time periods prior to the filing of this Complaint until resolution
11 of this lawsuit who were not adequately compensated for necessary business
12 expenses.

13 37. The proposed class (*hereinafter* "Class") shall consist of all individuals found in the
14 following sub-classes: Meal Period Class, Rest Period Class, Underpaid Class, Overtime
15 Class, Wage Statement Class, Final Paycheck Class, Paid Sick Days Class, Business
16 Expenses Class, and Minimum Wage Class.

17 38. All claims alleged herein arise under California law for which Plaintiffs and Class
18 Members seek relief authorized by California law.

19 39. Excluded from the Class are Defendant(s) in this action, any entity in which Defendant(s)
20 have a controlling interest, any officers, directors, and shareholders of Defendant, and
21 legal representatives, heirs, successors, and assigns of Defendant.

22 40. There is a well-defined community of interest in this litigation and the Class is easily
23 ascertainable:

24 Numerosity: The members of the Class (and each subclass, if any) are so numerous that
25 joinder of all members would be unfeasible and impractical. The membership of the
26 Class are unknown to Plaintiffs at this time. However, the Class is estimated to be greater
27 than fifty (50) individuals and the identity of such membership is readily ascertainable by
28 inspection of Defendant's employment records.

Typicality: Plaintiffs are qualified to and will fairly and adequately protect the interests
of each Class Member with whom they have a well-defined community of interest, and

1 Plaintiffs' claims (or defenses, if any), are typical of all Class Members as demonstrated
2 herein.

3 Adequacy: Plaintiffs are qualified to, and will fairly and adequately protects the interests
4 of each Class Member with whom they have a well-defined community of interest and
5 typicality of claims, as alleged herein. Plaintiffs acknowledge that they have an obligation
6 to the Court to make known any relationship, conflict, or differences with any Class
7 Member. Plaintiffs' attorneys and proposed Class counsel are versed in the rules
8 governing class action discovery, certification, and settlement. Plaintiffs have incurred,
9 and, throughout the duration of this action, will continue to incur costs and attorneys' fees
10 that have been, are, and will be necessarily expended for the prosecution of this action
11 for the substantial benefit of each Class Member.

12 Superiority: The nature of this action makes the use of class action adjudication superior
13 to other methods. Class action will achieve economies of time, effort, and expense as
14 compared with separate lawsuits, and will avoid inconsistent outcomes because the same
15 issues can be adjudicated in the same manner and at the same time for the entire class.

- 16 41. There are common questions of law and fact as to the Class (and each subclass, if any),
17 that predominate over questions affecting only individual members, including but not
18 limited to:
- 19 A. Whether Defendant had a policy of not providing uninterrupted statutory mandated rest
20 periods to Plaintiffs and Class Members or compensation for rest periods;
 - 21 B. Whether Defendant had a policy of not providing uninterrupted statutory mandated meal
22 periods to Plaintiffs and Class Members or compensation for meal periods;
 - 23 C. Whether Defendant created schedules in such a manner that made it difficult or
24 impossible for Plaintiffs, and similarly situated Class Members, to take uninterrupted rest
25 periods;
 - 26 D. Whether Defendant created schedules in such a manner that made it difficult or
27 impossible for Plaintiffs, and similarly situated Class Members, to take uninterrupted
28 meal periods;
 - E. Whether Defendant failed to pay Plaintiffs and Class Members for the overtime hours
worked during the relevant timeframe;

- 1 F. Whether Defendant had a policy of requiring Plaintiffs and Class Members to continue
2 working before clocking in and/or after clocking out;
- 3 G. Whether Defendant failed to pay Plaintiffs and Class Members for the total hours worked
4 during the relevant timeframe;
- 5 H. Whether Defendant failed to keep accurate payroll records, such that accurate wage
6 statements were not issued to Plaintiffs and Class Members;
- 7 I. Whether Defendant failed to pay Plaintiffs and Class Members an accurate and timely
8 final paycheck;
- 9 J. Whether Defendant failed to pay Plaintiffs and Class Members at least minimum wage
10 for all the hours worked;
- 11 K. Whether Defendant failed to compensate Plaintiffs and Class Members for
12 necessary business expenses;
- 13 L. Whether Defendant failed to compensate Plaintiffs and Class Members for sick
14 days;
- 15 M. Whether Defendant improperly retained, converted, appropriated, or deprived Plaintiffs
16 and other Class Members of the use of monies or sums, which Plaintiffs and Class
17 Members were legally entitled to;
- 18 N. Whether Defendant engaged in unfair business practices in violation of California
19 Business and Professions Code §§ 17200, et seq.; and
- 20 O. The appropriate amount of the damages, restitution, or monetary penalties resulting from
21 Defendant's violations of California law.

22 **FIRST CAUSE OF ACTION**

23 **Unpaid Missed Rest Breaks**

24 **(Labor Code section 226.7(a) and IWC Wage Order No. 16-2001 section 11)**

25 (By Plaintiffs and Class Members Against all Defendants)

- 26 42. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
27 herein, the material allegations set out in each and all previous paragraphs of this
28 Complaint.
43. At all times herein set forth, Labor Code section 218 authorizes an employee to sue
directly for any wages or penalty due to him or her under this article of the Labor Code.

- 1 44. At all times herein set forth, Labor Code section 226.7(a) provides that no employer shall
2 require an employee to work during any rest period mandated by an applicable order of
3 the IWC.
- 4 45. The language of IWC Wage Order No. 16-2001, section 11(A), relating to rest periods
5 tracks the language of the Labor Code. (Code of Regulations, title 8, section 11070, subd.
6 11.). Pursuant to IWC Wage Order No. 16-2001, section 11(A): "Every employer shall
7 authorize and permit all employees to take rest periods, which insofar as practicable shall
8 be in the middle of each work period. Nothing in this provision shall prevent an employer
9 from staggering rest periods to avoid interruption in the flow of work and to maintain
10 continuous operations, or from scheduling rest periods to coincide with breaks in the flow
11 of work that occur in the course of the workday. The authorized rest period time shall be
12 based on the total hours worked daily at the rate of ten (10) minutes net rest time for every
13 four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer
14 designated areas, which may include or be limited to the employees' immediate work
15 area."
- 16 46. During the relevant time period, Plaintiffs and Class Members worked more than three
17 and one-half (3 ½) hours per workday, and were not allowed to take paid rest breaks that
18 they were legally entitled to pursuant to IWC Wage Order 16-2001, section 11.
- 19 47. Defendants' conduct, also including superiors, Jose Alaya and Alondra Kevin, as alleged
20 herein, violates IWC Wage Order 16-2001, section 11, and Labor Code section 226.7(a),
21 which provides that no employer shall require any employee to work during any rest
22 period mandated by an applicable order of the IWC.
- 23 48. Pursuant to Labor Code section 226.7(b), and IWC Wage Order 16-2001 section 11(D),
24 Plaintiffs and Class Members are entitled to recover from Defendants one (1) additional
25 hour of pay at Plaintiffs and Class Members' regular rate of compensation for each work
26 day that a rest period was not provided, for a three-year statutory period dating back from
27 the date of the commencement of this action.
- 28 49. Pursuant to Labor Code sections 558 and 1197.1, Plaintiffs and Class Members are
entitled to fifty dollars (\$50.00) for each pay period for which they were underpaid in
addition to an amount sufficient to recover underpaid wages and for each subsequent

violation, one hundred dollars (\$100.00) for each pay period for which they were underpaid in addition to an amount sufficient to recover underpaid wages.

SECOND CAUSE OF ACTION

Unpaid Missed Meal Breaks

(Labor Code sections 226.7(a) and 512 and IWC Wage Order No. 16-2001 section 11)

(By Plaintiffs and Class Members Against all Defendants)

50. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.
51. At all times herein set forth, Labor Code section 218 authorizes employees to sue directly for any wages or penalty due to them under this article of the California Labor Code.
52. At all times herein set forth, Labor Code section 226.7 provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.
53. At all times herein set forth, Labor Code section 512(a) provides that an employer may not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.
54. At all times herein set forth, Labor Code section 512(a) further provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee, only if the first meal period was not waived.
55. The language of applicable IWC Order, section 10 relating to meal periods tracks the language of the Labor Code. (*Cal. Code Regs.*, tit. 8, section 11090, subd. 11.)
56. Defendants fostered a work environment where the taking of uninterrupted thirty (30) minute meal breaks by its employees was essentially prohibited because Defendants were more concerned about their profit margin, than its own employees' welfare. As such,

1 Plaintiffs and Class Members could not take any thirty (30) minute uninterrupted meal
2 breaks without the risk of being reprimanded or terminated.

3 57. Because Defendants failed to afford proper meal periods, they are liable to Plaintiffs and
4 Class Members for one hour of additional pay at the regular rate of compensation for each
5 workday that the proper meal periods were not provided, pursuant to Labor Code section
6 226.7(b) and applicable IWC Wage Order 16-2001, section 10(F).

7 58. By violating Labor Code sections 226.7 and 512, and applicable Wage Order 16-2001,
8 section 10, Defendants are also liable to Plaintiffs and Class Members for reasonable
9 attorneys' fees and costs under Labor Code section 218.5.

10 **THIRD CAUSE OF ACTION**

11 **Failure to Pay for All Overtime Worked**

12 **(Labor Code sections 510, 1194 and 1198 and IWC Wage Order No. 16-2001 section 3)**

13 (By Plaintiffs and Class Members Against all Defendants)

14 59. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
15 herein, the material allegations set out in each and all previous paragraphs of this
16 Complaint.

17 60. At all relevant times during the applicable limitations period, Plaintiffs and Class
18 Members have been non-exempt employees of Defendants and are entitled to the benefits
19 of Labor Code sections 510 and 1194 and the pertinent Wage Order.

20 61. IWC Wage Order 16-2001, section 2 defines "hours worked" as "the time during which
21 an employee is subject to the control of an employer, and includes all the time the
22 employee is suffered or permitted to work, whether or not required to do so."

23 62. In relevant part, section 3 of the applicable Wage Order states: (A) Daily Overtime-
24 General Provisions:

25 (1) The following overtime provisions are applicable to employees 18 years of age or
26 over and to employees 16 or 17 years of age who are not required by law to attend school
27 and are not otherwise prohibited by law from engaging in the subject work. Such
28 employees shall not be employed more than eight (8) hours in any workday or more than
40 hours in any workweek unless the employee receives one and one-half (1 ½) times
such employee's regular rate of pay for all hours worked over 40 hours in the workweek.
Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in

any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation to be paid to a nonexempt full-time salaried employee shall be computed by using one-fortieth (1/40) of the employee's weekly salary as the employee's regular hourly rate of pay.

63. Labor Code section 510 states: "Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work."

64. With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. Section 207(e)). This requirement includes, but is not limited to, commissions and nondiscretionary bonuses. (See *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal App.4th 893, 904-05.)

65. During the relevant timeframe, Plaintiffs and Class Members worked more than eight hours a day and more than 40 hours a week and was not paid all the overtime wages he was entitled to. Defendants' wage statements issued to Plaintiffs and Class Members

misstated and under-reported hours worked in a misguided attempt to cover up this failure to pay overtime.

66. Plaintiffs and Class Members have been damaged in a sum to be proven and requests relief as described below.

FOURTH CAUSE OF ACTION

Failure to Pay Minimum Wage and Pay for All Wages Earned

(Labor Code sections 204, 1194 and 1197 and IWC Wage Order No. 16-2001 section 4)

(By Plaintiffs and Class Members Against all Defendants)

67. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.
68. Labor Code section 204 requires California employers to pay employees for all wages earned.
69. Labor Code section 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”
70. Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”
71. Defendants failed to compensate Plaintiffs and Class Members for all hours worked, including, but not limited to, the hours worked during their meal and rest breaks, overtime pay, and for which they did not receive the proper compensation under the law.
72. Plaintiffs and Class Members have been damaged in a sum to be proven and request relief as described below.

FIFTH CAUSE OF ACTION

Failure to Maintain Accurate Payroll Records

(Labor Code sections 226(a), 1174 and 1198.5 and IWC Wage Order No. 16-2001 section 6)

(By Plaintiffs and Class Members Against all Defendants)

- 1 73. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
2 herein, the material allegations set out in each and all previous paragraphs of this
3 Complaint.
- 4 74. Labor Code section 226(a), applicable IWC such as Wage Order No. 16-2001 section
5 6(A)-(B), and Labor Code section 1174 require employers to maintain accurate payroll
6 records and to provide semi-monthly or at the time of each payment of wages to furnish
7 each employee with a statement itemizing, among other things, the total hours worked by
8 the employee.
- 9 75. Defendants have violated Labor Code sections 226(a) and 1174, 1198.5 and applicable
10 IWC Wage Order, No. 16-2001, section 6, by willfully failing to keep required personnel
11 and payroll records showing the actual hours worked each day by Plaintiffs. Defendants
12 did not even have a clocking system. As a direct and proximate result of Defendants'
13 failure to maintain payroll records, Plaintiffs and Class Members have suffered economic
14 harm as they have been precluded from accurately monitoring the number of hours
15 worked and thus seeking payment for all hours worked, as well as for all the missed meal
16 periods and rest breaks.
- 17 76. Plaintiffs and Class Members have been damaged in a sum to be proven and request relief
18 as described below.

SIXTH CAUSE OF ACTION

Failure to Pay Accurate Wages Upon Separation

(Labor Code sections 201-203)

(By Plaintiff Bryan Ambriz and Class Members Against all Defendants)

- 20 77. Plaintiff Bryan Ambriz and Class Members incorporate by reference and re-allege, as if
21 fully stated herein, the material allegations set out in each and all previous paragraphs of
22 this Complaint.
- 23 78. Labor Code sections 201 – 203 provide that if an employer discharges an employee, the
24 wages earned and unpaid at the time of discharge are due and payable immediately, and
25 that if an employee voluntarily leaves his or her employment, his or her wages shall
26 become due and payable not later than seventy-two (72) hours thereafter; unless the
27 employee had given seventy-two (72) hours previous notice of his or her intention to quit,
28 in which case the employee is entitled to his or her wages at the time of quitting. Labor

Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with Labor Code sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

79. During the relevant time period, Defendants failed to pay Plaintiff Bryan Ambriz Bryan Ambriz and Class Members, who are no longer employed by Defendants, their final paychecks (inclusive of compensation for all hours worked, and compensation for missed rest and meal breaks overtime, and sick time) either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ in violation of Labor Code sections 201 – 203.

80. Plaintiff Bryan Ambriz and Class Members have been damaged in a sum to be proven and request relief as described below.

SEVENTH CAUSE OF ACTION

Failure to Reimburse Required Business Expenses

(Labor Code section 2802)

(By Plaintiffs and Class Members Against all Defendants)

81. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.

82. Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties...”

83. As part of their job duties, Plaintiff and Class Members incurred necessary business expenses including incurring substantial gas expenses. They also had to pay for bags to carry and distribute the newspapers. Plaintiff was required to use his own cell phone to perform his job duties for the Defendants.

84. All said expenses were necessary for Plaintiff and Class Members to fulfill their job function for the Defendants.

85. Plaintiff and Class Members sought reimbursement of these necessary expenses incurred at Defendants' direction and with assurance of payment, but Defendants have consistently refused to reimburse and indemnify for Plaintiff and Class Members for these expenses.

1 86. Accordingly, for Plaintiff and Class Members have been deprived of legally required
2 reimbursement, and Defendants should be liable to for Plaintiff and Class Members for
3 these sums, plus attorney's fees, plus interest.

4 87. The monies retained by Defendants should be deemed for Plaintiff and Class Members'
5 monies, held in trust for Plaintiff and Class Members and subject to a proper claim for
6 reimbursement and disgorgement.

7 **EIGHTH CAUSE OF ACTION**

8 **Failure to Pay for Sick Days**

9 **(Labor Code sections 246(a) and 248.5)**

10 (By Plaintiffs and Class Members Against all Defendants)

11 88. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
12 herein, the material allegations set out in each and all previous paragraphs of this
13 Complaint.

14 89. Labor Code section 246(a) provides: (a) (1) An employee who, on or after July 1, 2015,
15 works in California for the same employer for 30 or more days within a year from the
16 commencement of employment is entitled to paid sick days as specified in this section.

17 90. Labor Code section 248.5(a) provides for this action and penalties.

18 91. Defendants failed and refused to pay Plaintiff and Class Members for their sick days.
19 Plaintiff and Class Members have been damaged in a sum to be proven and request relief
20 as described below.

21 **NINTH CAUSE OF ACTION**

22 **Failure to Provide Rest Days**

23 **(Labor Code sections 551-553)**

24 (By Plaintiffs and Class Members Against all Defendants)

25 92. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
26 herein, the material allegations set out in each and all previous paragraphs of this
27 Complaint.

28 93. At all times herein set forth, Labor Code section 551 provides that "Every person
employed in any occupation of labor is entitled to one day's rest therefrom in seven."
Labor Code section 552 provides that "No employer of labor shall cause his employees
to work more than six days in seven."

1 94. Plaintiffs allege that at times, Defendants caused them to work more than six days in
2 seven, and failed to provide them with one day's of rest, in violation of Labor Code
3 sections 551 and 552.

4 95. Pursuant to California Labor Code section 558, Plaintiff and Class Members are entitled
5 to fifty dollars (\$50) for each pay period for which they were underpaid in addition to an
6 amount sufficient to recover underpaid wages and for each subsequent violation, one
7 hundred dollars (\$100) for each pay period for which the employee was underpaid in
8 addition to an amount sufficient to recover underpaid wages.

9 **TENTH CAUSE OF ACTION**

10 **Violation of California Business & Professions Code § 17200, et seq.**

11 (By Plaintiffs and Class Members Against all Defendants)

12 96. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
13 herein, the material allegations set out in each and all previous paragraphs of this
14 Complaint.

15 97. California Business & Professions Code Section 17200 prohibits unfair competition in
16 the form of any unlawful, unfair, or fraudulent business act or practice.

17 98. California Business & Professions Code Section 17204 allows "any person acting for the
18 interest of itself, its members or the general public" to prosecute a civil action for violation
19 of the UCL.

20 99. Beginning at an exact date unknown to Plaintiffs and Class Members, but at least four
21 years prior to the filing of this action, Defendants have improperly, fraudulently, and
22 unlawfully failed to provide Plaintiffs and Class Members with meal and rest breaks,
23 failed to provide compensation for the missed meal and rest breaks, failed to pay sick
24 time, failed to reimburse necessary business expenditures, failed to provide compensation
25 for all hours worked and all wages earned, failed to pay compensation for all overtime
26 hours worked, and provided Plaintiffs and Class Members with inaccurate wage
27 statements, and have thereby committed unlawful, unfair, and/or fraudulent business acts
28 and practices as defined by California Business & Professions Code Section 17200, by
engaging in the following:

Failing and refusing to provide meal periods and rest breaks to Plaintiffs and Class
Members;

1 Failing and refusing to provide sick time to Plaintiffs and Class Members;

2 Failing and refusing to reimburse necessary business expenditures to Plaintiffs and
3 Class Members;

4 Failing to pay all accrued meal period and rest break compensation to Plaintiffs and
5 Class Members;

6 Failing to pay for all hours worked and pay for all overtime compensation to Plaintiffs
7 and Class Members;

8 Failing to maintain accurate payroll records and provide accurate itemized wage
9 statement to Plaintiffs and Class Members; and

10 The violation of these laws serve as unlawful, unfair, and/or fraudulent predicate acts and
11 practices for purposes of California Business and Professions Code Section 17200.

12 100. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent acts
13 and practices described herein, Defendants have received and continue to hold ill-gotten
14 gains belonging to Plaintiffs and Class Members. As a direct and proximate result of
15 Defendants' unlawful business practices, Plaintiffs and Class Members have suffered
16 economic injuries including, but not limited to, compensation for missed meal periods
17 and over-time hours worked. Defendants have profited from their unlawful, unfair, and/or
18 fraudulent acts and practices in failing to provide meal period and rest break
19 compensation to Plaintiffs and Class Members, as well as compensation for overtime
20 hours worked. Plaintiffs and Class Members are entitled to restitution pursuant to
21 California Business & Professions Code. Sections 17203 and 17208 for all meal period
22 and rest break compensation, unpaid wages and interest since four years prior to the filing
23 of this action.

24 101. Plaintiffs and Class Members are entitled to enforce all applicable penalty provisions of
25 the California Labor Code pursuant to California Business & Professions Code Section
26 17202.

27 102. Plaintiffs and Class Members' success in this action will enforce important rights
28 affecting the public interest. In this regard, they sue on behalf of themselves and the
general public. Plaintiffs and Class Members seek and are entitled to unpaid
compensation, declaratory and injunctive relief, civil penalties, and any other appropriate
remedy.

- 1 103. Injunctive relief is necessary and appropriate to prevent Defendants from continuing and
2 repeating their unlawful, unfair and fraudulent business acts and practices alleged above.
- 3 104. In order to prevent Defendants from profiting and benefitting from their wrongful and
4 illegal acts and continuing those acts, an order requiring Defendants to disgorge all the
5 profits and gains they have reaped and restore such profits and gains to Plaintiffs and
6 Class Members, from whom they were unlawfully taken.
- 7 105. Plaintiffs and Class Members have assumed the responsibility of enforcement of the laws
8 and lawful claims specified herein. There is a financial burden incurred in pursuing this
9 action, which is in the public interest. Therefore, reasonable attorneys' fees are
10 appropriate pursuant to Code of Civil Procedure section 1021.5.
- 11 106. By all of the said foregoing alleged conduct Defendants have committed, and are
12 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within
13 the meaning of Cal. Business & Professions Code Section 17200, et seq.
- 14 107. As a direct and proximate result of the unfair business practices described above,
15 Plaintiffs and Class Members have suffered significant losses and Defendants have been
16 unjustly enriched.
- 17 108. Pursuant to Cal. Business & Professions Code Section 17203, Plaintiffs and Class
18 Members are entitled to: (a) restitution of money acquired by Defendants by means of
19 their unfair business practices, in amounts not yet ascertained but to be ascertained at
20 trial; (b) injunctive relief against defendants' continuation of their unfair business
21 practices, and (c) a declaration that defendants' business practices are unfair within the
22 meaning of the statute.

23 **ELEVENTH CAUSE OF ACTION**

24 **Civil Penalties Pursuant to Labor Code § 2699**

25 **(PAGA penalties)**

26 (By Plaintiffs, as the representatives of Aggrieved Employees, Against all Defendants)

- 27 109. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material
28 allegations set out in previous paragraphs of this Complaint.
110. Plaintiffs on behalf of the people of the State of California and as "Aggrieved Employees"
acting as private attorney under the California Labor Code Private Attorneys General Act
of 2004, §2698, *et seq.*, brings this action, on a representative basis. All current and former

employees of Defendant within one year of serving notice on the LWDA to the present are Aggrieved Employees.

111. Defendants failed to comply with Labor Code requirements due to erroneous, willful and intentional employment practices and policies. Plaintiffs brings this representative action on behalf of himself, all other similarly situated aggrieved employees, and the State of California, based upon the claims articulated below. Plaintiffs provided notice of their claims pursuant to § 2698 *et. seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The LWDA has not provided any notice to Plaintiffs following the exhaustion of the 65-day notice period required by 2699.3(a)(2)(B). Accordingly, Plaintiffs now brings this Complaint for civil penalties under the Private Attorneys General Act (“PAGA”), *Labor Code* §2698 *et seq.*

112. As a result of the actions alleged herein, Plaintiffs seeks penalties under Labor Code sections 2698 and 2699 because of Defendants’ violation of Labor Code sections 98.6, 201-204, 210, 216, 218.5, 221, 225.5, 223, 226, 226(a), 226(b), 226.2, 226.3, 226.7, 226.8, 233, 234, 246, 256, 510-512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.5, 1198-1199.5 and 2698-2699, 2699.5, 2802 and applicable IWC, which call for civil penalties.

113. Plaintiffs and Aggrieved Parties request for penalties pursuant to Labor Code § 2699:

- A. As applicable, for civil penalties under Labor Code § 2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation; and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation;
- B. As applicable, civil penalties under Labor Code § 558 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for violations of Labor Code sections 500-556, in the amount of \$50.00 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages, and \$100.00 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;

- 1 C. As applicable, for civil penalties under Labor Code section 1197.1 (in addition to and
2 entirely independent and apart from any other penalty provided in the Labor Code), for
3 violations of Labor Code sections 1194 and 1197, in the amount of \$100.00 for each
4 underpaid aggrieved employee for each pay period the aggrieved employee was
5 intentionally underpaid in addition to an amount sufficient to recover underpaid wages,
6 and \$250.00 for each subsequent violation for each underpaid aggrieved employees
7 regardless of whether the initial violation was intentionally committed in addition to an
8 amount sufficient to recover underpaid wages;
- 9 D. As applicable, for civil penalties under Labor Code § 210 (in addition to and entirely
10 independent and apart from any other penalty provided in the Labor Code), for each
11 employee who is/was not paid wages in accordance with Labor Code §§ 201.3, 204, 204b,
12 204.1, 204.2, 205, 205.5 and 1197.5) in the amount of a civil penalty of \$100.00 for each
13 aggrieved employee per pay period for each initial violation, and \$200.00 for each
14 aggrieved employee per pay period for each subsequent violation;
- 15 E. As applicable, for civil penalties under Labor Code § 226.3 (in addition to and entirely
16 independent and apart from any other penalty provided in the Labor Code), for each
17 violation of Labor Code § 226(a), in the amount of \$250.00 for each aggrieved employee
18 per pay period for each violation and \$1,000.00 for each aggrieved employee per pay
19 period for each subsequent violation; and
- 20 F. As applicable, for any and all additional civil penalties and sums as provided by the Labor
21 Code and/or other relevant statutes.
- 22 114. In addition, Plaintiffs seeks seventy-five percent (75%) of all penalties obtained under
23 Labor Code section 2699 to be allocated to the LWDA, for education of employers and
24 employees about their rights and responsibilities under the Labor Code, and twenty-five
25 percent (25%) to Plaintiffs and all other similarly situated aggrieved employees.
- 26 115. Further, Plaintiffs is entitled to recover reasonable attorneys' fees and costs pursuant to
27 Labor Code section 2699(g)(1) and any other applicable statute.
- 28 116. Labor Code section 2699.3 provides: "The aggrieved employee or representative shall
give written notice by certified mail to the Labor and Workforce Development Agency
and the employer of the specific provisions of this code alleged to have been violated,
including the facts and theories to support the alleged violation."

1 117. Plaintiffs complied with Labor Code section 2699.3. Written notice was served on
2 Defendant in accordance with the provision of Section 2699.3, on August 27, 2022. To
3 date, the California Labor and Workforce Development Agency has not provided
4 Plaintiffs with a notice of intent to investigate these violations, and more than 65 days
5 have since passed from the postmark date of the notice provided by Plaintiffs. Attached
6 to this complaint as **Exhibit "A"**, is a copy of the proof of mailing. Moreover, Defendant
7 has failed to provide Plaintiffs with notice that it has cured the violations, will cure the
8 violations now, or will cure the violations in the future. Consequently, pursuant to Labor
9 Code section 2699.3(a)(2)(A), Plaintiffs may proceed and file a complaint for penalties
pursuant to Labor Code section 2699.

10 **REQUEST FOR JURY TRIAL**

11 Plaintiffs and Class Members demand a trial by jury of all issues in this action triable by
12 a jury, including but not limited to issues of liability and damages.

13 **PRAYER FOR RELIEF**

- 14 1. That this action be certified as a class action;
15 2. That Plaintiffs be appointed as the representative of the Class; and
16 3. That counsel for Plaintiffs is appointed as Class counsel.
17 4. For general and special compensatory damages, according to proof;
18 5. For statutory damages;
19 6. For payments pursuant to California Labor Code sections 226.8 and 226.7;
20 7. For payments pursuant to California Code of Civil Procedure section 338;
21 8. For reasonable attorney's fees and for costs of suit incurred herein pursuant to Labor Code
22 sections 218.5 and 226(e);
23 9. For pre-judgment interest on any unpaid wages from the date such amounts were due pursuant
24 to Labor Code section 218.6;
25 10. For civil penalties pursuant to Labor Code section 558;
26 11. For the disgorgement of any and all "unpaid wages" and incidental losses, according to proof;
27 12. For restitution of "unpaid wages" and pre-judgment interest from the day such amounts were
28 due and payable;
13. For reasonable attorney's fees pursuant to Code of Civil Procedure section 1021.5;
14. For exemplary and punitive damages;

- 1 15. For to injunctive relief including reinstatement, reimbursement of lost wages/benefits;
2 16. For such other and further relief as the court deems just and proper.

3
4 DATED: November 15, 2022

LAW OFFICES OF FARRAH MIRABEL
BY: /s/ Farrah Mirabel
Farrah Mirabel, Esq.
ATTORNEY FOR PLAINTIFFS

EXHIBIT “A”

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

The original Monbray's Tree Service
Incorporated

9531 Pittsburgh Ave.
Rancho Cucamonga, CA 91730



9590 9402 7248 1284 7743 54

2. Article Number (Transfer from service label)

7020 1290 0000 8818 3566

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
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Tel (714) 972-0707 Fax (949) 417-1796

November 10, 2022

**Via Online Filing with the LWDA & email and
Certified Mail to Defendant's attorney**

Attn. PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
(510) 286-1362

Michael I. Kim, Esq.
Managing Partner
CKB VIENNA LLP
9531 Pittsburgh Avenue
Rancho Cucamonga, CA 91730
mkim@ckbvienna.com

**In Re: Martin Valdovinos Bravo, Erasmo Ambriz Ortega, Bryan Ambriz v. The
Original Mowbray's Tree Services Incorporated**

Amended PAGA Notice, Case Number: LWDA-CM-904815-22

Dear PAGA Administrator:

Our firm represents the interests of *Martin Valdovinos Bravo, Erasmo Ambriz Ortega, Bryan Ambriz* (Plaintiffs), employees of *The Original Mowbray's Tree Services Incorporated* (referred to as the "Defendant").

Pursuant to Labor Code § 2699.3, the foregoing is to update you and the Labor and Workforce Development Agency of the additional facts and information and/or points of clarification set forth above in connection with Plaintiffs' PAGA claim based on Defendant's violations of the Labor Code described in our original PAGA letter, and our amended notice, herein. Plaintiffs incorporate by reference all of the allegations in their prior letter to the LWDA and continues to pursue PAGA penalties based on the claims, allegations and facts set forth therein as well.

Plaintiffs were employed by Defendant as follows:

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Bryan Ambriz, between April 2018 until July 2022, as a laborer/groundman
Erasmus Ambriz Ortega has been an employee since April 2019, as a laborer/maintenance
Martin Valdovinos Bravo, has been an employee since April 2019, as a laborer/groundman

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

This notice is submitted, at a foundation level, on behalf of the Plaintiffs and all other Defendant's employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

1. **Violation of Labor Code § 226.7(a) (Missed Rest Breaks);**
2. **Violation of Labor Code § 226.7, 512 and 1198 (Missed Meal Breaks);**
3. **Violation of Labor Code §1194 & §1197 (Failure to Pay Minimum Wages);**
4. **Violation of Labor Code §510 and 1194, 1198 (Failure to Pay All Overtime Worked);**
5. **Violation of Labor Code § 204 (Failure to Pay All Wages Earned);**
6. **Violation of Labor Code § 226, 1174, 1198.5 and 226, (Failure to Keep Records, Improper Wage Statements and maintain accurate personnel and payroll records);**
7. **Violation of Labor Code § 201-203 (Failure to Pay Wages Upon Separation);**
8. **Violation of Labor Code Sections 1197.5, 1199.5 (paying Hispanic employees from South America, less than other employees);**
9. **Violation of Labor Code § 2802 (Failure To Reimburse Required Business Expenses);**
10. **Violation of Labor Code § § 551-553 (Forcing employees to work seven days a week);**

During the relevant timeframe, Defendant employed Plaintiffs as non-exempt hourly employees. Plaintiffs were employed as laborers to perform various jobs such as groundman, grassman, traffic controller, maintenance etc.

Their superiors, Jose Alaya and Alondra Kevin, were not allowing them to take any rest breaks for full day of work which lasted minimum of 4 hours. Plaintiffs were hired to work shifts of over four hours, up but were not allowed to take a ten-minute, uninterrupted rest break for each 4 hour shift. Plaintiffs worked during the rest periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent.

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Page 3

Defendant failed to compensate Plaintiffs at the required rate for each occasion in which Defendant failed to provide rest breaks. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiffs and other employees to take their rest breaks during each of the 4 hour shifts.

Also, during their employment, Plaintiffs did not receive a thirty-minute, uninterrupted, off-duty meal break for every shift they worked that lasted more than five hours. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiffs to take uninterrupted meal breaks every 5 hours. When they were working more than 10 hours, they never got a second meal break either. Also, Plaintiffs' meal breaks were interrupted by their superiors.

Plaintiffs and other employees received wages and wage statements which did not account for all the hours worked and did not account for the premiums due to employees for the missed breaks, nor accounted for overtime pay for hours employees worked. When Plaintiffs worked more than 40 hours a week, they were not paid over time for all the hours worked more than 40 hours per week.

Therefore, Plaintiffs claim that Defendant did not provide them and all other past and present employees with uninterrupted rest and meal breaks. Defendant is understaffed and cannot possibly provide its employees including Plaintiffs with their statutory breaks. Furthermore, Plaintiffs claim that the past and present employees did not receive an hour of premium pay, for each missed break, for all days they did not receive a proper rest or meal break. As a result, Defendant failed to pay its employees for all wages earned.

Defendant failed to maintain accurate payroll records, such that Plaintiffs were given wage statements which were inaccurate and Plaintiffs were not paid for all their wages and overtime compensation.

Defendant did not issue an accurate final paycheck to Plaintiffs in accordance with the timeframes prescribed by law.

Plaintiffs claim on their own behalf and also on behalf of all past and present employees that they worked in excess of statutory hours per week and did not receive compensation for all the hours worked and were not paid overtime.

Plaintiffs claim that because Defendant did not properly compensate its employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest and meal break, and failed to pay them overtime for all hours worked, the employees' wage statements did not accurately reflect all the hours worked and the wages earned. As such, Plaintiffs claim that Defendant provided all its past and present employees with improper wage statements.

Plaintiffs claim that Defendant intentionally discriminated against them and other employees because they are Latino immigrant, non sophisticated laborers from Southern

America with no knowledge of labor law and Defendant purposefully hires them to exploit them and take advantage of them by underpaying their wages, without getting accurate overtime payment. Plaintiffs were discouraged from taking sick days and were told that if they needed sick days, they had to prove it by having medical proof.

Moreover, Defendant failed to pay timely accurate paycheck upon the separation of the employees. Therefore, Plaintiffs also claim a violation of Labor Code section 201-203 on behalf of all employees who stopped working for the Defendant.

Plaintiffs claim that Defendant's conduct, as stated herein, including not keeping track of actual working hours and meal periods, not paying its employees all wages owed, including wages for all hours worked, overtime, missed rest and meal breaks, and not providing its employees with accurate wage statements, not paying timely paycheck upon the separation of the employee, has been unfair, unlawful, and harmful to all its past and present employees, including Plaintiffs, and to the general public. As such, this letter is written to comply with the notice and reporting requirements of Labor Code section 2699.3.

In connection with his PAGA claims, Plaintiffs seek PAGA penalties from at least one year prior to the date of this Notice and ongoing (the "PAGA Period"). Plaintiffs seek to represent the following groups of aggrieved employees:

a. The "Aggrieved Employees":

All non-exempt individuals who are or were California residents for state tax purposes and who are or were employed by Defendants as hourly employees in the State of California and who worked one or more shifts of (3.5) hours or longer during the PAGA Period.

i. The "Overtime Aggrieved Employees":

All Aggrieved Employees who worked more than 8 hours in a workday or more than 40 hours in a workweek for Defendants during the PAGA Period;

ii. The "Rest Break Aggrieved Employees":

All Aggrieved Employees who did not receive their duty free rest break from Defendants during the PAGA Period;

iii. The "Meal Break Aggrieved Employees":

All Aggrieved Employees who did not receive their duty free meal break from Defendants during the PAGA Period;

iv. The "Wage Statement Aggrieved Employees":

All Aggrieved Employees who were issued one or more wage statements from Defendants during the PAGA Period;

v. The "Waiting Time Penalty Aggrieved Employees":

All Aggrieved Employees whose employment with Defendants terminated during the PAGA Period;

vi. **The “Reimbursement Aggrieved Employees”:**

All Aggrieved Employees who did not receive reimbursement for work-related personal cell-phone expenses from Defendants and payment for Aggrieved employees’ such as boots, helmets, gloves and ear plugs during the PAGA Period

vii. **The “Overworked Aggrieved Employees”:**

All Aggrieved Employees who had to work 7 days in a row during the PAGA Period

DEFENDANT’S OVERTIME VIOLATIONS

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

Here, Defendant hired Plaintiffs and the Overtime Aggrieved Employees to work as laborers in California and to work on various projects of Defendants. Plaintiffs and the Overtime Aggrieved Employees often worked more than 8 hours and over 40 hours per week. In fact, Plaintiffs and the Aggrieved Employees submitted daily and weekly time logs showing daily overtime. The same time records also show that Plaintiffs and the Overtime Aggrieved Employees routinely worked over 40 hours per week. Despite these records, Defendants’ wage statements issued to Plaintiffs and the Aggrieved Employees intentionally misstated and under-reported hours worked in a misguided attempt to cover up this failure to pay overtime.

Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order, Defendant did not accurately pay Plaintiffs and the Overtime Aggrieved Employees any overtime wages corresponding to one and a half time of Plaintiffs and the Overtime Aggrieved Employees’ hourly rates of pay. Plaintiffs and the Overtime Aggrieved Employees often worked eight hours per day and often worked over 40 hours per week. Defendant violated Labor Code § 510 by failing to pay Plaintiffs and Aggrieved Employees their overtime wages at the applicable overtime rates, including daily overtime and weekly overtime, and instead merely paid Plaintiffs and the Overtime Aggrieved Employees straight time wages for all hours worked.

DEFENDANTS’ REST PERIOD VIOLATIONS

Under California law, employees are entitled to ten minute duty free rest breaks for each 4 hours of work, or major fraction thereof. See the applicable IWC Wage Order, Section 12 and Labor Code section 226.7.

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

Here, Plaintiffs and the Rest Break Aggrieved Employees were not provided their first timely ten- minute duty-free rest break. Furthermore, because Defendant was understaffed, Plaintiffs and the Rest Break Aggrieved Employees were under time pressures to finish their work-related tasks on time, which was often rest break-preclusive.

DEFENDANTS’ MEAL BREAK VIOLATIONS

Section 512 of the Labor Code and Section 11 of the applicable IWC Wage Order state that California employers must provide 30-minute duty-free meal breaks on or before the 5th and 10th hour of employees shifts. California employers are obligated to keep records of meal breaks taken pursuant to Section 7(A) of the applicable IWC Wage Order.

Here, Plaintiffs and the Meal Break Aggrieved Employees were not provided their first timely thirty- minute duty-free meal break. Furthermore, because Defendant was understaffed, Plaintiffs and the Meal Break Aggrieved Employees were under time pressures to finish their work-related tasks on time, which was often full thirty minute meal break-preclusive.

DEFENDANTS’ WAGE STATEMENT VIOLATIONS

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;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;

- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...; and,
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Due to, *inter alia*, Defendants' failure to pay Plaintiffs and the other Wage Statement Aggrieved Employees accurate overtime payments and rest and meal break premiums, the wage statements issued by Defendants to Plaintiffs and the other Wage Statement Aggrieved Employees do not indicate the correct amount of gross wages earned, total hours worked, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

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

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

Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all

pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

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

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

DEFENDANTS’ FAILURE TO PAY WAGES ON A TIMELY BASIS

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

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

Due to Defendants' failure to pay Plaintiffs and the other Wage Statement Aggrieved Employees for overtime wages, rest period premiums owed,² Defendants violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

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

DEFENDANT'S FAILURE TO REIMBURSE BUSINESS EXPENSES

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

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

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

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

Under Labor Code § 2802, where, as here, an employer expects Plaintiffs and the Reimbursement Aggrieved Employees to use their cell phone for work, their vehicle mileage, and to buy or use other items such as boots, helmet, gloves, ear plugs then Defendant must reimburse employees.

Accordingly, Defendant violated Labor Code § 2802 and continue to do so by failing to reimburse Plaintiffs and all other Reimbursement Aggrieved Employees for all work-related charges they incurred in connection with their job duties. By failing to reimburse Plaintiffs and the Reimbursement Aggrieved Employees for their personal expenses incurred for work-related purposes, Defendant violated Labor Code § 2802, as well as the applicable IWC Wage Order.

DEFENDANT’S FAILURE TO PAY ALL WAGES DUE UPON TERMINATION

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

DEFENDANT’S VIOLATION OF Labor Code § § 551-553

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At times, Defendants forced Plaintiffs and other employees to work seven days a week. Labor Code § 551 provides: “Every person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” Labor Code § 552 states that: “No employer of labor shall cause his employees to work more than six days in seven.” An employer that violates these provisions may be sued under Labor Code § 558(a)(2) (penalty of \$100/pay period) the Private Attorney General Act (penalty of \$200/pay period).

Plaintiffs claim that Defendants intentionally discriminated against them and other employees because they are Hispanics and laborers, with no knowledge of labor law and Defendants purposefully hires them to exploit them and take advantage of them by underpaying their wages.

Due to Defendant’s faulty policies described above, including its failure to pay for overtime wages and rest period premiums, Defendants violated Labor Code § 203, for those employees whose employment ended within the last one year and ongoing (i.e., the Waiting Time Aggrieved Employees) by willfully failing to pay them all wages due upon the termination of their employment. Moreover, Plaintiffs and the Reimbursement Aggrieved Employees did not receive their last paystub within 72 hours of their termination.

This notice is hereby given to and is made against Defendants, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of those alleges violations as to any locations or employees who worked at any time in the state of California. Plaintiffs can be contacted through their attorney of record:

Farrah Mirabel, Esq.
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.
Los Angeles, California 90077

Plaintiffs and other similarly situated individuals, past and present employees, may also be entitled to penalties pursuant to Labor Code section 2699, et seq.

On behalf of Plaintiffs, and all other past and present employees, our office will be filing a civil complaint against Defendant, alleging the above causes of action including PAGA claim and request damages pursuant to but not limited to the following labor code sections ***98.6, 201-205, 210, 216, 218.5, 221, 225.5, 223, 226.2, 226.3, 226.7, 233, 234, 246, 246.5, 510-512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.1, 1198-1199.5, 2802 and 2698-2699, 2699.5 and 2802 and applicable IWC.***

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our

Law Offices of Farrah Mirabel

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intent to pursue a PAGA representative action (and a class action) against Defendant seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiffs individually, on a class basis, and on behalf of the Aggrieved Employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the putative class and the aggrieved employees. If Defendant is interested in attempting to resolve this matter, including the PAGA claims, please have counsel contact us by **November 30, 2022**, so that we may discuss an informal discovery plan and the possibility of early mediation.

Very truly yours,

LAW OFFICES OF FARRAH MIRABEL
/s/ Farrah Mirabel
Farrah Mirabel, Esq.

Law Offices of
Farrah Mirabel
Fmesq@mirabel.com
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Los Angeles, California 90077
Tel (714) 972-0707 Fax (949) 417-1796

August 27, 2022

via CERTIFIED MAIL to DEFENDANT
and ONLINE filing with LWDA

Attn. PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
(510) 286-1362

1305649
MIN STEPHEN CHO
THE ORIGINAL MOWBRAY'S TREE SERVICE, INCORPORATED
9531 PITTSBURGH AVE.
RANCHO CUCAMONGA, CA 91730

In Re: Martin Valdovinos Bravo, Erasmo Ambriz Ortega, Bryan Ambriz v. The Original Mowbray's Tree Services Incorporated

Dear PAGA Administrator:

Our firm represents the interests of *Martin Valdovinos Bravo, Erasmo Ambriz Ortega, Bryan Ambriz* (Plaintiffs), employees of *The Original Mowbray's Tree Services Incorporated* (referred to as the "Defendant"). Plaintiffs were employed by Defendant as follows:

Bryan Ambriz, between April 2018 until July 2022, as a laborer/groundman
Erasmo Ambriz Ortega has been an employee since April 2019, as a laborer/maintenance
Martin Valdovinos Bravo, has been an employee since April 2019, as a laborer/groundman

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

This notice is submitted, at a foundation level, on behalf of the Plaintiffs and all other Defendant's employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

1. Violation of Labor Code § 226.7(a) (Missed Rest Breaks);
2. Violation of Labor Code § 226.7, 512 and 1198 (Missed Meal Breaks);
3. Violation of Labor Code §1194 & §1197 (Failure to Pay Minimum Wages);
4. Violation of Labor Code §510 and 1194, 1198 (Failure to Pay All Overtime Worked);
5. Violation of Labor Code § 204 (Failure to Pay All Wages Earned);
6. Violation of Labor Code § 226, 1174, 1198.5 and 226, (Failure to Keep Records, Improper Wage Statements and maintain accurate personnel and payroll records);
7. Violation of Labor Code § 201-203 (Failure to Pay Wages Upon Separation);
8. Violation of Labor Code Sections 1197.5, 1199.5 (paying Hispanic employees from South America, less than other employees);
9. Violation of Labor Code § 2802 (Failure To Reimburse Required Business Expenses);

During the relevant timeframe, Defendant employed Plaintiffs as non-exempt hourly employees. Plaintiffs were employed as laborers to perform various jobs such as groundman, grassman, traffic controller, maintenance etc.

Their superiors, Jose Alaya and Alondra Kevin, were not allowing them to take any rest breaks for full day of work which lasted minimum of 4 hours. Plaintiffs were hired to work shifts of over four hours, up but were not allowed to take a ten-minute, uninterrupted rest break for each 4 hour shift. Plaintiffs worked during the rest periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent.

Defendant failed to compensate Plaintiffs at the required rate for each occasion in which Defendant failed to provide rest breaks. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiffs and other employees to take their rest breaks during each of the 4 hour shifts.

Also, during their employment, Plaintiffs did not receive a thirty-minute, uninterrupted, off-duty meal break for every shift they worked that lasted more than five hours. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiffs to take uninterrupted meal breaks every 5 hours. When they were working more than 10 hours, they never got a second meal break either. Also, Plaintiffs' meal breaks were interrupted by their superiors.

Plaintiffs and other employees received wages and wage statements which did not account for all the hours worked and did not account for the premiums due to employees for the missed breaks, nor accounted for overtime pay for hours employees worked. When Plaintiffs worked more than 40 hours a week, they were not paid over time for

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all the hours worked more than 40 hours per week.

Therefore, Plaintiffs claim that Defendant did not provide them and all other past and present employees with uninterrupted rest and meal breaks. Defendant is understaffed and cannot possibly provide its employees including Plaintiffs with their statutory breaks. Furthermore, Plaintiffs claim that the past and present employees did not receive an hour of premium pay, for each missed break, for all days they did not receive a proper rest or meal break. As a result, Defendant failed to pay its employees for all wages earned.

Defendant failed to maintain accurate payroll records, such that Plaintiffs were given wage statements which were inaccurate and Plaintiffs were not paid for all their wages and overtime compensation.

Defendant did not issue an accurate final paycheck to Plaintiffs in accordance with the timeframes prescribed by law.

Plaintiffs claim on their own behalf and also on behalf of all past and present employees that they worked in excess of statutory hours per week and did not receive compensation for all the hours worked and were not paid overtime.

Plaintiffs claim that because Defendant did not properly compensate its employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest and meal break, and failed to pay them overtime for all hours worked, the employees' wage statements did not accurately reflect all the hours worked and the wages earned. As such, Plaintiffs claim that Defendant provided all its past and present employees with improper wage statements.

Plaintiffs claim that Defendant intentionally discriminated against them and other employees because they are Latino immigrant, non sophisticated laborers from Southern America with no knowledge of labor law and Defendant purposefully hires them to exploit them and take advantage of them by underpaying their wages, without getting accurate overtime payment. Plaintiffs were discouraged from taking sick days and were told that if they needed sick days, they had to prove it by having medical proof.

Moreover, Defendant failed to pay timely accurate paycheck upon the separation of the employees. Therefore, Plaintiffs also claim a violation of Labor Code section 201-203 on behalf of all employees who stopped working for the Defendant.

Plaintiffs claim that Defendant's conduct, as stated herein, including not keeping track of actual working hours and meal periods, not paying its employees all wages owed, including wages for all hours worked, overtime, missed rest and meal breaks, and not providing its employees with accurate wage statements, not paying timely paycheck upon the separation of the employee, has been unfair, unlawful, and harmful to all its past and present

employees, including Plaintiffs, and to the general public. As such, this letter is written to comply with the notice and reporting requirements of Labor Code section 2699.3.

In connection with his PAGA claims, Plaintiffs seek PAGA penalties from at least one year prior to the date of this Notice and ongoing (the “PAGA Period”). Plaintiffs seek to represent the following groups of aggrieved employees:

a. **The “Aggrieved Employees”:**

All non-exempt individuals who are or were California residents for state tax purposes and who are or were employed by Defendants as hourly employees in the State of California and who worked one or more shifts of (3.5) hours or longer during the PAGA Period.

i. **The “Overtime Aggrieved Employees”:**

All Aggrieved Employees who worked more than 8 hours in a workday or more than 40 hours in a workweek for Defendants during the PAGA Period;

ii. **The “Rest Break Aggrieved Employees”:**

All Aggrieved Employees who did not receive their duty free rest break from Defendants during the PAGA Period;

iii. **The “Meal Break Aggrieved Employees”:**

All Aggrieved Employees who did not receive their duty free meal break from Defendants during the PAGA Period;

iv. **The “Wage Statement Aggrieved Employees”:**

All Aggrieved Employees who were issued one or more wage statements from Defendants during the PAGA Period;

v. **The “Waiting Time Penalty Aggrieved Employees”:**

All Aggrieved Employees whose employment with Defendants terminated during the PAGA Period;

vi. **The “Reimbursement Aggrieved Employees”:**

All Aggrieved Employees who did not receive reimbursement for work-related personal cell-phone expenses from Defendants and payment for Aggrieved employees’ such as boots, helmets, gloves and ear plugs during the PAGA Period

DEFENDANT'S OVERTIME VIOLATIONS

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

Here, Defendant hired Plaintiffs and the Overtime Aggrieved Employees to work as laborers in California and to work on various projects of Defendants. Plaintiffs and the Overtime Aggrieved Employees often worked more than 8 hours and over 40 hours per week. In fact, Plaintiffs and the Aggrieved Employees submitted daily and weekly time logs showing daily overtime. The same time records also show that Plaintiffs and the Overtime Aggrieved Employees routinely worked over 40 hours per week. Despite these records, Defendants' wage statements issued to Plaintiffs and the Aggrieved Employees intentionally misstated and under-reported hours worked in a misguided attempt to cover up this failure to pay overtime.

Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order, Defendant did not accurately pay Plaintiffs and the Overtime Aggrieved Employees any overtime wages corresponding to one and a half time of Plaintiffs and the Overtime Aggrieved Employees' hourly rates of pay. Plaintiffs and the Overtime Aggrieved Employees often worked eight hours per day and often worked over 40 hours per week. Defendant violated Labor Code § 510 by failing to pay Plaintiffs and Aggrieved Employees their overtime wages at the applicable overtime rates, including daily overtime and weekly overtime, and instead merely paid Plaintiffs and the Overtime Aggrieved Employees straight time wages for all hours worked.

DEFENDANTS' REST PERIOD VIOLATIONS

Under California law, employees are entitled to ten minute duty free rest breaks for each 4 hours of work, or major fraction thereof. See the applicable IWC Wage Order, Section 12 and Labor Code section 226.7.

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

Here, Plaintiffs and the Rest Break Aggrieved Employees were not provided their first timely ten- minute duty-free rest break. Furthermore, because Defendant was understaffed, Plaintiffs and the Rest Break Aggrieved Employees were under time pressures to finish their work-related tasks on time, which was often rest break-preclusive.

DEFENDANTS' MEAL BREAK VIOLATIONS

Section 512 of the Labor Code and Section 11 of the applicable IWC Wage Order state that California employers must provide 30-minute duty-free meal breaks on or before the 5th and 10th hour of employees shifts. California employers are obligated to keep records of meal breaks taken pursuant to Section 7(A) of the applicable IWC Wage Order.

Here, Plaintiffs and the Meal Break Aggrieved Employees were not provided their first timely thirty- minute duty-free meal break. Furthermore, because Defendant was understaffed, Plaintiffs and the Meal Break Aggrieved Employees were under time pressures to finish their work-related tasks on time, which was often full thirty minute meal break-preclusive.

DEFENDANTS' WAGE STATEMENT VIOLATIONS

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;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...; and,
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

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Due to, *inter alia*, Defendants' failure to pay Plaintiffs and the other Wage Statement Aggrieved Employees accurate overtime payments and rest and meal break premiums, the wage statements issued by Defendants to Plaintiffs and the other Wage Statement Aggrieved Employees do not indicate the correct amount of gross wages earned, total hours worked, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

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

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

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

Aggrieved Employees will prevail on their claim for PAGA penalties under Labor Code § 226(a). *See Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed above."); *McKenzie v. Fed. Exp. Corp.* 765

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F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

Further and in addition to the penalties outlined above, Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendants failed to provide Plaintiffs and the other Wage Statement Aggrieved Employees with accurate itemized wage statements. Accordingly, Defendants are additionally liable for Labor Code § 226.3 penalties for their violations of Labor Code § 226(a). *See FINDER v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 [“the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.”).¹

DEFENDANTS’ FAILURE TO PAY WAGES ON A TIMELY BASIS

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

Due to Defendants’ failure to pay Plaintiffs and the other Wage Statement Aggrieved Employees for overtime wages, rest period premiums owed,² Defendants violated Labor

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

² Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5’”); *Parson v. Golden State FC*,

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Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

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

DEFENDANT’S FAILURE TO REIMBURSE BUSINESS EXPENSES

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

Specifically, under Labor Code § 2802, employers must reimburse employees for required work-related use of personal cell phones, regardless of whether they incur any additional out-of-pocket expense from that work-related use. *See Cochran v. Schwan’s Home Service*, 228 Cal. App. 4th 1137 (2014) (reversing denial of class certification in cell phone reimbursement class action). *Cochran* held that “[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an

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.

expense for the purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all. . . . It is irrelevant whether the employee changed plans to accommodate work-related cell phone usage. . . . *To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed.*” *Id.* at 1144-45 (emphasis added); *see also Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion for partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

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

Under Labor Code § 2802, where, as here, an employer expects Plaintiffs and the Reimbursement Aggrieved Employees to use their cell phone for work, their vehicle mileage, and to buy or use other items such as boots, helmet, gloves, ear plugs then Defendant must reimburse employees.

Accordingly, Defendant violated Labor Code § 2802 and continue to do so by failing to reimburse Plaintiffs and all other Reimbursement Aggrieved Employees for all work-related charges they incurred in connection with their job duties. By failing to reimburse Plaintiffs and the Reimbursement Aggrieved Employees for their personal expenses incurred for work-related purposes, Defendant violated Labor Code § 2802, as well as the applicable IWC Wage Order.

DEFENDANT’S FAILURE TO PAY ALL WAGES DUE UPON TERMINATION

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

Due to Defendant’s faulty policies described above, including its failure to pay for overtime wages and rest period premiums, Defendants violated Labor Code § 203, for those employees whose employment ended within the last one year and ongoing (i.e., the Waiting Time Aggrieved Employees) by willfully failing to pay them all wages due upon the termination of their employment. Moreover, Plaintiffs and the Reimbursement Aggrieved Employees did not receive their last paystub within 72 hours of their termination.

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This notice is hereby given to and is made against Defendants, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of those alleges violations as to any locations or employees who worked at any time in the state of California. Plaintiffs can be contacted through their attorney of record:

Farrah Mirabel, Esq.
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.
Los Angeles, California 90077

Plaintiffs and other similarly situated individuals, past and present employees, may also be entitled to penalties pursuant to Labor Code section 2699, et seq.

On behalf of Plaintiffs, and all other past and present employees, our office will be filing a civil complaint against Defendant, alleging the above causes of action including PAGA claim and request damages pursuant to but not limited to the following labor code sections ***98.6, 201-205, 210, 216, 218.5, 221, 225.5, 223, 226.2, 226.3, 226.7, 233, 234, 246, 246.5, 510-512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.1, 1198-1199.5, 2802 and 2698-2699, 2699.5 and 2802 and applicable IWC.***

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action (and a class action) against Defendant seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiffs individually, on a class basis, and on behalf of the Aggrieved Employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the putative class and the aggrieved employees. If Defendant is interested in attempting to resolve this matter, including the PAGA claims, please have counsel contact us by **September 31, 2022**, so that we may discuss an informal discovery plan and the possibility of early mediation.

Very truly yours,

LAW OFFICES OF FARRAH MIRABEL
/s/ Farrah Mirabel
Farrah Mirabel, Esq.

Law Offices of Farrah Mirabel

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