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FILED
KERN COUNTY SUPERIOR COURT
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BY Evans, Gricelda
DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

JORGE ALMARAZ, an individual, on behalf of
himself and the State of California, as a private
attorney general,

Plaintiff,

v.

UNIVERSAL LABOR SOLUTIONS, INC., a
California Corporation; MANULIFE
INVESTMENT MANAGEMENT FARMLAND
MANAGEMENT SERVICES INC., a California
Corporation; and DOES 1 TO 50,

Defendants.

Case Number: BCV-22-102721

**First Amended Representative Action
Complaint For:**

1. Penalties Pursuant to the Labor Code
Private Attorneys General Act of 2004
("PAGA") for Violations of California
Labor Code Sections 142.3, 201, 202, 203,
204, 210, 226, 226.3, 226.7, 227.3, 256,
510, 512, 1174, 1185, 1194, 1194.2, 1197,
1197.1, 1198, 1198.5, 1199, 2802, 2804,
and Other Provisions of the California
Labor Code.

1 Plaintiff Jorge Almaraz (“Plaintiff”), on behalf of himself and the State of California, as a
2 private attorney general, complains and alleges of defendants Universal Labor Solutions, Inc., Manulife
3 Investment Management Farmland Management Services Inc., and Does 1 to 50 (collectively,
4 “Defendants”), and each of them, as follows:

5 **I. INTRODUCTION**

6 1. This action is a representative action brought pursuant to the California Labor Code
7 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698
8 through 2699.6.

9 2. The “PAGA Period” as used herein, is defined as the period from October 13, 2021, and
10 continuing into the present and ongoing.

11 3. This PAGA action is brought on behalf of Plaintiff, the State of California as private
12 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*
13 *employed by Defendants as non-exempt employees in California during the PAGA Period* (the
14 “Aggrieved Employees”).

15 4. Plaintiff is informed and believes and thereon alleges that the California Industrial
16 Welfare Commission (“IWC”) Wage Orders applicable to the facts of this case are IWC Wage Orders
17 13-2001 and/or 14-2001 (the “Applicable Wage Orders”) and possibly others that may be applicable.
18 (Cal. Code of Regs., tit. 8, §§ 11130, 11140.) Plaintiff reserves the right to amend or modify the
19 definition of “Applicable Wage Orders” with greater specificity or add additional IWC Wage Orders
20 if additional applicable wage orders are discovered in litigation.

21 **II. JURISDICTION & VENUE**

22 5. This Court has subject matter jurisdiction over all causes of action asserted herein
23 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
24 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
25 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
26 is subject to adjudication in the courts of the State of California.

27 6. This Court has personal jurisdiction over Defendants because Defendants have caused
28 injuries in the County of Kern and the State of California through their acts, and by their violation of

1 the California Labor Code and California state common law. Defendants transact millions of dollars
2 of business within the State of California. Defendants own, maintain offices, transact business, have
3 an agent or agents within the County of Kern, and/or otherwise are found within the County of Kern,
4 and Defendants are within the jurisdiction of this Court for purposes of service of process.

5 7. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
6 Code of Civil Procedure. Defendants operate within California and do business within Kern County,
7 California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of Defendants'
8 employees identified above within Kern County and surrounding counties where Defendants may
9 remotely operate. (See *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*
10 (2021) 60 Cal.App.5th 1069, 1075 ["We hold that venue is proper in any county in which an aggrieved
11 employee worked and Labor Code violations allegedly occurred."].)

12 **III. THE PARTIES**

13 **A. PLAINTIFF**

14 8. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
15 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly
16 employee in the County of Kern.

17 9. Plaintiff brings this action on behalf of himself and the State of California, as a private
18 attorney general, and on behalf of the following group of aggrieved employees: *All individuals who*
19 *are or were employed by Defendants as non-exempt employees in California during the PAGA Period*
20 (the "Aggrieved Employees").

21 10. The Aggrieved Employees, at all times pertinent hereto, are or were employees of
22 Defendants during the relevant statutory period.

23 **B. DEFENDANTS**

24 11. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
25 to and doing business in Kern County and is and/or was the legal employer of Plaintiff and the other
26 Aggrieved Employees during the applicable statutory periods. Plaintiff and the other Aggrieved
27 Employees were, and are, subject to Defendants' policies and/or practices complained of herein and
28 have been deprived of the rights guaranteed to them by: California Labor Code sections 142.3, 201,

1 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1,
2 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; California Business and Professions
3 Code sections 17200 through 17210 ("UCL"); section 3364, subdivision (b), of Title 8 of the California
4 Code of Regulations; and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11130, 11140).

5 12. Plaintiff is informed and believes, and based thereon alleges, that during the PAGA
6 Period, Defendants did (and continue to do) business in the State of California, County of Kern.

7 13. Plaintiff does not know the true names or capacities, whether individual, partner, or
8 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
9 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this
10 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and
11 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
12 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff
13 and the other Aggrieved Employees to be subject to the unlawful employment practices, wrongs,
14 injuries, and damages complained of herein.

15 14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
16 herein, Defendants were and/or are the employers of Plaintiff and the other Aggrieved Employees. At
17 all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
18 alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them,
19 were the agents, servants, and employees of each and every one of the other Defendants, as well as the
20 agents of all Defendants, and at all times herein mentioned were acting within the course and scope of
21 said agency and employment. Defendants, and each of them, approved of, condoned, or otherwise
22 ratified every one of the acts or omissions complained of herein.

23 15. At all relevant times, Defendants, and each of them, were members of and engaged in a
24 joint venture, partnership, and common enterprise, and acting within the course and scope of and in
25 pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is informed,
26 and believes, and thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff
27 and the other Aggrieved Employees.
28

1 **IV. COMMON FACTS & ALLEGATIONS**

2 16. Plaintiff and the other Aggrieved Employees (collectively, the “Aggrieved Employees”)
3 are, and were at all relevant times, employed by the Defendants within the State of California.

4 17. The Aggrieved Employees are, and were, at all relevant times, non-exempt employees
5 for the purposes of minimum wages, overtime, rest breaks, meal periods, and the other claims alleged
6 in this complaint.

7 18. Specifically, Plaintiff was employed by Defendants within the statutory PAGA Period,
8 working as an hourly, non-exempt foreman for Defendants. Plaintiff’s duties included supervising
9 zone of agriculture and coordinating herbicides and pesticides for farmland.

10 **A. MINIMUM WAGE VIOLATIONS**

11 19. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed
12 by the IWC, and any payment of less than the minimum wage is unlawful. Likewise, the Applicable
13 Wage Orders also obligate employers to pay each employee minimum wages for all hours worked.
14 (Cal. Code of Regs., tit. 8, §§ 11130, 11140.) Labor Code section 1198 makes unlawful the
15 employment of an employee under conditions that the IWC Wage Orders prohibit.

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

20 21. Here, Defendants failed to fully conform their pay practices to the requirements of the
21 law during the relevant statutory periods. The Aggrieved Employees were not compensated for all
22 hours worked including, but not limited to, all hours they were subject to the control of Defendants
23 and/or suffered or permitted to work under the California Labor Code and the Applicable Wage Orders.
24 Among other violations, the Aggrieved Employees were subject to the control of Defendants while off-
25 the-clock and did not receive minimum wage for each hour worked.

26 22. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
27 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
28 damages, as follows:

1 (1) "For any initial violation that is intentionally committed, one hundred
2 dollars (\$100) for each underpaid employee for each pay period for
3 which the employee is underpaid."

4 (2) "For each subsequent violation for the same specific offense, two
5 hundred fifty dollars (\$250) for each underpaid employee for each pay
6 period for which the employee is underpaid regardless of whether the
7 initial violation is intentionally committed." (Lab. Code, § 1197.1, subd.
8 (a).)

9 23. As set forth above, Defendants failed to fully compensate the Aggrieved Employees for
10 all minimum wages. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and the
11 Aggrieved Employees are entitled to recover penalties pursuant to California Labor Code section
12 1197.1 in addition to any other applicable penalties.

13 **B. OVERTIME VIOLATIONS**

14 24. Labor Code section 510 requires employers to compensate employees who work more
15 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
16 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
17 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
18 employees at no less than twice the regular rate of pay when an employee works more than twelve
19 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
20 subd. (a).) These rules are also reflected in the Applicable Wage Orders.

21 25. IWC Wage Order 14-2001, section 3(A), is similar, but provides in pertinent part:

22 "(1) Such employees shall not be employed more than ten (10) hours in any
23 one workday or more than six (6) days in any workweek unless the
24 employee receives one and one-half (1½) times such employee's regular
25 rate of pay for all hours worked over ten (10) hours in any workday and
26 for the first eight (8) hours on the seventh (7th) day of work and double
27 the employee's regular rate of pay for all hours worked over eight (8) on
28 the seventh (7th) day of work in the workweek.

1 “(2) For employers of more than 25 employees:

2 “(a) Starting January 1, 2019, an employee shall not be employed more than
3 nine and one-half (9½) hours per workday or fifty-five (55) hours per
4 workweek unless the employee receives one and one-half (1½) times
5 such employee’s regular rate of pay for all hours worked over nine and
6 one-half (9½) hours in any one workday or more than fifty-five (55)
7 hours in any one workweek.

8 “(b) Starting January 1, 2020, an employee shall not be employed more than
9 nine (9) hours per workday or fifty (50) hours per workweek unless the
10 employee receives one and one-half (1½) times such employee’s regular
11 rate of pay for all hours worked over nine (9) hours in any one workday
12 or more than fifty (50) hours in any one workweek.” (Cal. Code of Regs.,
13 tit. 8, § 11140, subd. 3.)

14 26. In accordance with Labor Code section 1194 and the Applicable Wage Orders, the
15 Aggrieved Employees could not then agree and cannot now agree to work for a lesser wage than the
16 amount provided by Labor Code sections 510 or the Applicable Wage Orders.

17 27. Here, Defendants violated their duty to accurately and completely compensate the
18 Aggrieved Employees for all overtime worked. The Aggrieved Employees periodically worked hours
19 that entitled them to overtime compensation under the law but were not fully compensated for those
20 hours.

21 28. Defendants also had a policy and practice of denying the Aggrieved Employees meal
22 breaks, but nevertheless deducting meal break time from the Aggrieved Employees’ pay. As a result,
23 the Aggrieved Employees’ on-the-clock hours were unlawfully reduced below what was actually
24 worked and, by extension, overtime hours were also reduced below what was actually worked. The
25 Aggrieved Employees were thus periodically shorted the full amount of overtime pay lawfully owed.

26 29. These actions were and are in clear violation of California’s overtime laws as set forth
27 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of Regs., tit. 8,
28

1 §§ 11130, 11140.) As a result of Defendants' faulty policies and practices, the Aggrieved Employees
2 were not compensated for all hours worked or paid accurate overtime compensation.

3 **C. UNPAID ACCRUED VACATION TIME**

4 30. California Labor Code section 227.3 states that:

5 "[W]henever a contract of employment or employer policy provides for paid
6 vacations, and an employee is terminated without having taken off his vested
7 vacation time, all vested vacation shall be paid to him as wages at his final rate
8 in accordance with such contract of employment or employer policy respecting
9 eligibility or time served; provided, however, that an employment contract or
10 employer policy shall not provide for forfeiture of vested vacation time upon
11 termination."

12 31. Thus, when an employer has a vacation policy, it must pay out all accrued but unused
13 vacation time upon termination. An employer may not adopt policies that require forfeiture of vested
14 vacation time without compensation. (*Rhea v. General Atomics* (2014) 227 Cal.App.4th 1560, 1571
15 ["California law prohibits an employer from requiring the forfeiture of vacation time"].)

16 32. Here, Defendants had a vacation policy, and the Aggrieved Employees had completed
17 all prerequisites and/or necessary limitations of service required by Defendants' vacation policy to
18 accumulate vested vacation pay. Despite that fact, many of the Aggrieved Employees were denied all
19 accrued but unused vacation time at termination in violation of California law.

20 33. By failing to pay accrued vacation time at termination of employment, Defendants have
21 violated California Labor Code provisions including, but not limited to, sections 201, 202, and 227.3.

22 **D. REST BREAK VIOLATIONS**

23 34. Pursuant to Labor Code section 226.7 and the Applicable Wage Orders, Defendants
24 were and are required to provide the Aggrieved Employees with compensated, duty-free rest periods
25 of not less than ten minutes for every major fraction of four hours worked. Under the Applicable Wage
26 Orders, an employer must authorize and permit all employees to take ten minute duty free rest periods
27 for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, §§ 11130, 11140.)
28

1 35. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
2 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
3 or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, §
4 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees
5 one additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or
6 recovery period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes
7 must factor in all nondiscretionary payments for work performed by the employee, including non-
8 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base
9 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage
10 Orders set when and for how long the rest period must take place and the Labor Code establishes that
11 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay
12 their employees when employers fail to provide rest periods.

13 36. The California Supreme Court has held that, during required rest periods, “employers
14 must relieve their employees of all duties and relinquish any control over how employees spend their
15 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing
16 control over employees during rest periods requires that employees be “free to leave the employer’s
17 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
18 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
19 policy:

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

26 37. Here, Defendants periodically did not permit the Aggrieved Employees to take
27 compliant duty-free rest breaks, free from Defendants’ control as required by Labor Code section
28 226.7, the Applicable Wage Orders, and applicable precedent. (See *Augustus v. ABM Security Services*,

1 *Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must relieve employees
2 of all duties and relinquish control over how employees spend their time.”].) At all relevant times, the
3 Aggrieved Employees were periodically not provided with legally-compliant and timely rest periods
4 of at least ten minutes for each four hour work period, or major fraction thereof due to Defendants’
5 unlawful rest period policies/practices. The Aggrieved Employees were often expected and required
6 to continue working through rest periods to meet the expectations Defendants and finish the workday.
7 In some cases when the Aggrieved Employees worked more than ten hours in a shift, Defendants failed
8 to authorize and/or permit a third mandated rest period. As a result, the Aggrieved Employees were
9 periodically unable to take compliant rest periods.

10 38. In such cases where Defendants did not offer the Aggrieved Employees the opportunity
11 to receive a compliant off-duty rest period, “the court may not conclude employees voluntarily chose
12 to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410
13 (2015) [“If an employer fails to provide legally compliant meal or rest breaks, the court may not
14 conclude employees voluntarily chose to skip those breaks.”]; *Brinker Rest. Corp. v. Superior Court*,
15 *supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break that was required by law
16 but never authorized; if a break is not authorized, an employee has no opportunity to decline to take
17 it.”].)

18 39. In addition to failing to authorize and permit compliant rest periods, the Aggrieved
19 Employees were not compensated with one hour’s worth of pay at their regular rate of compensation
20 when they were not provided with a compliant rest period in accordance with Labor Code section
21 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the Applicable
22 Wage Orders.

23 E. MEAL BREAK VIOLATIONS

24 40. Labor Code section 512 and the Applicable Wage Orders require employers to provide
25 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
26 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
27 more than five hours per day without providing the employee with a meal period of not less than 30
28 minutes”]; Cal. Code of Regs., tit. 8, §§ 11130, 11140 [“No employer shall employ any person

1 for a work period of more than five (5) hours without a meal period of not less than 30 minutes”].)
2 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-
3 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not
4 employ an employee for a work period of more than 10 hours per day without providing the employee
5 with a second meal period of not less than 30 minutes”].)

6 41. “An on-duty meal period is permitted only when the nature of the work prevents an
7 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
8 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must
9 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California
10 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts
11 have “found that the nature of the work exception applies: (1) where the work has some particular
12 external force that requires the employee to be on duty at all times, and (2) where the employee is the
13 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*
14 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation
15 to determine whether the nature of the work prevents an employee from being relieved before requiring
16 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th
17 at p. 946.)

18 42. Here, the Aggrieved Employees were never asked to sign any enforceable document
19 agreeing to an on-duty meal period. Moreover, nothing in the nature of their work involved the kind
20 of “external force” that might justify on-duty meal breaks. (*Lubin v. The Wackenhut Corp.*, *supra*, 5
21 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not provide compliant off-duty meal
22 periods within the first five hours of work for the Aggrieved Employees.

23 43. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
24 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s
25 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal
26 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend
27 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under
28 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit

1 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable
2 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
3 *Court, supra*, 53 Cal.4th at p. 1033.)

4 44. During the applicable statutory periods here, the Aggrieved Employees were
5 periodically denied legally-compliant and timely off-duty meal periods of at least thirty minutes due to
6 Defendants’ unlawful meal period policy and practices. As a result of Defendants’ uniform meal period
7 policies and practices, the Aggrieved Employees were often not permitted to take compliant first meal
8 periods before the end of the fifth hour of work. The Aggrieved Employees were also periodically not
9 permitted to take second meal periods for shifts in excess of ten hours. Defendants thus violated Labor
10 Code section 512 and the Applicable Wage Orders by failing to advise, authorize, or permit the
11 Aggrieved Employees to receive thirty-minute, off-duty meal periods within the first five hours of their
12 shifts.

13 45. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
14 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
15 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
16 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Orders further obligate
17 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
18 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
19 Regs., tit. 8, §§ 11130, 11140 [“If an employer fails to provide an employee a meal period in accordance
20 with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay
21 at the employee’s regular rate of compensation for each workday that the meal period is not
22 provided.”].) The “regular rate” for these purposes must factor in all nondiscretionary payments for
23 work performed by the employee, including non-discretionary bonuses, commissions, and other forms
24 of wage payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC*
25 (2021) 11 Cal.5th 858, 878.)

26 46. Accordingly, for each day that the Aggrieved Employees did not receive compliant meal
27 periods, they were and are entitled to receive meal period premiums pursuant to Labor Code section
28 226.7 and the Applicable Wage Orders. Defendants, however, failed to pay the Aggrieved Employees

1 applicable meal period premiums for many workdays that the employees did not receive a compliant
2 meal period. Thus, Defendants have violated Labor Code section 226.7 and the Applicable Wage
3 Orders.

4 **F. UNTIMELY WAGES DURING EMPLOYMENT**

5 47. Labor Code section 204 expressly requires employers who pay employees on a weekly,
6 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
7 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
8 Labor Code section 204 subject to a penalty of:

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

11 “(2) For each subsequent violation, or any willful or intentional violation, two
12 hundred dollars (\$200) for each failure to pay each employee, plus 25
13 percent of the amount unlawfully withheld.” (Lab. Code, § 210, subd.
14 (a).)

15 48. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
16 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
17 subd. (a).)

18 49. Due to Defendants’ failure to pay the Aggrieved Employees the wages described above,
19 along with rest and meal break premiums, Defendants failed to timely pay the Aggrieved Employees
20 within seven calendar days following the close of payroll in accordance with Labor Code section 204
21 on a regular and consistent basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No.
22 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure
23 to pay rest period premiums can support claims under Labor Code sections 203 and 204].)

24 **G. UNTIMELY WAGES AT SEPARATION**

25 50. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
26 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
27 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result
28

1 of Defendants' failure to pay the Aggrieved Employees for the wages described above, along with rest
2 and meal break premiums, Defendants violated and continue to violate Labor Code section 203.

3 51. Due to Defendants' faulty pay policies, those Aggrieved Employees whose employment
4 with Defendants concluded were not compensated for each and every hour worked at the appropriate
5 rate. Defendants have failed to pay formerly-employed Aggrieved Employees whose sums were
6 certain at the time of termination within at least seventy-two hours of their resignation and have failed
7 to pay those sums for thirty days thereafter.

8 52. Under Labor Code section 256, "[t]he Labor Commissioner shall impose a civil penalty
9 in an amount not exceeding 30 days pay as waiting time under the terms of Section 203." (Lab. Code,
10 § 256.) This type of waiting time penalty can be recovered through PAGA because PAGA allows an
11 employee to recover civil penalties on behalf of the state against his or her employer for Labor Code
12 violations. (*Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 579 [recovery of the section
13 256 "civil penalty falls within the PAGA"]); *Iskanian v. CLS Transportation Los Angeles, LLC* (2014)
14 59 Cal.4th 348, 381; *Esparza v. KS Industries, L.P.* (2017) 13 Cal.App.5th 1228, 1242.) Defendants
15 have failed to pay the Aggrieved Employees' worked wages that were due within at least seventy-two
16 hours of their separation. Thus, the Aggrieved Employees were and are entitled to waiting time
17 penalties as civil penalties under PAGA and Labor Code section 256.

18 **H. FAILURE TO REIMBURSE BUSINESS EXPENSES**

19 53. At all relevant times herein, Defendants were subject to Labor Code section 2802, which
20 states that "an employer shall indemnify his or her employees for all necessary expenditures or losses
21 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
22 obedience to the directions of the employer." The purpose of this section is to "prevent employers
23 from passing along their operating expenses onto their employees." (*Gattuso v. Harte-Hanks Shoppers,*
24 *Inc.* (2007) 42 Cal.4th 554, 562.)

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

1 55. Thus, the Aggrieved Employees were and are entitled to reimbursement for the expenses
2 they incurred during the course of their duties. The duty to reimburse even extends to the use of
3 equipment the employee may already own and would be required to pay for anyway. (*Cochran v.*
4 *Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold question in this case
5 is this: Does an employer always have to reimburse an employee for the reasonable expense of the
6 mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in
7 which the employee incurred an extra expense that he or she would not have otherwise incurred absent
8 the job? The answer is that reimbursement is always required. Otherwise, the employer would receive
9 a windfall because it would be passing its operating expenses on to the employee.”].)

10 56. Here, Defendants failed to fully reimburse the Aggrieved Employees for necessary
11 expenditures incurred as a direct consequence and requirement of performing their job duties, including
12 the costs associated with their personal cell phone and work supplies such as gloves, vest, protective
13 glasses, and tools they required to perform their work. Consequently, Defendants failed to comply
14 with Labor Code section 2802.

15 **I. WAGE STATEMENT VIOLATIONS**

16 57. Defendants also failed to provide accurate itemized wage statements in accordance with
17 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision
18 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
19 statement in writing showing:

- 20 (1) The gross wages earned;
- 21 (2) The total hours worked by the employee;
- 22 (3) The number of piece-rate units earned and any applicable piece rate if
23 the employee is paid on a piece rate basis;
- 24 (4) All deductions, provided that all deductions made on written orders of
25 the employee may be aggregated and shown as one item;
- 26 (5) The net wages earned;
- 27 (6) The inclusive dates of the period for which the employee is paid;
- 28

1 (7) The name of the employee and only the last four digits of his or her social
2 security number or an employee identification number other than a social
3 security number;

4 (8) The name and address of the legal entity that is the employer; and

5 (9) All applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the
7 employee.

8 58. Due to Defendants' failure to pay the Aggrieved Employees properly as described
9 above, the wage statements issued do not indicate the correct amount of gross wages earned, total hours
10 worked, or the net wages earned, or the applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor
12 Code section 226, subdivisions (a)(1), (2), (5), and (9).

13 59. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and
14 intentionally failed to provide the Aggrieved Employees with accurate itemized wage statements in
15 violation of Labor Code section 226, subdivision (e). Defendants knew that they were not providing
16 the Aggrieved Employees with wage statements required by California law but nevertheless failed to
17 correct their unlawful practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d
18 1121, 1134 [finding the defendant knowingly and intentionally violated Labor Code section 226
19 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other
20 employees paid on commission" even though it believed that employees paid solely on commission or
21 commission and salary "are exempt and therefore we do not record hours on a wage statement."].)

22 J. RECORDKEEPING VIOLATIONS

23 60. Labor Code section 226, subdivision (a), requires employers to keep an accurate record
24 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in
25 pertinent part, as follows:

26 "Any employer who violates subdivision (a) of Section 226 shall be subject to a
27 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
28 violation in an initial citation and one thousand dollars (\$1,000) per employee

1 for each violation in a subsequent citation, for which the employer fails to
2 provide the employee a wage deduction statement or fails to keep the records
3 required in subdivision (a) of Section 226. The civil penalties provided for in
4 this section are in addition to any other penalty provided by law.” (Lab. Code,
5 § 226.3, emphasis added.)

6 61. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including
7 Defendants, to:

8 “Keep, at a central location in the state or at the plants or establishments at which
9 employees are employed, payroll records showing the hours worked daily by
10 and the wages paid to, and the number of piece-rate units earned by and any
11 applicable piece rate paid to, employees employed at the respective plants or
12 establishments. These records shall be kept in accordance with rules established
13 for this purpose by the commission, but in any case shall be kept on file for not
14 less than three years. An employer shall not prohibit an employee from
15 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
16 piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

17 62. As explained in detail above, Defendants failed to provide the Aggrieved Employees
18 with accurate itemized wage statements. Defendants did so, in part, because they failed to accurately
19 track hours worked by the Aggrieved Employees. Defendants have thus failed to keep accurate records
20 of the “total hours worked by the employee[s]” in violation of Labor Code section 226, subdivision (a),
21 and are therefore subject to the penalties provided by Labor Code section 226.3. These penalties are
22 “in addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

23 63. The failure to accurately track hours worked also resulted in a failure of Defendants to
24 keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,
25 including Plaintiff, in violation of Labor Code section 1174, subdivision (d).

26 **K. FAILURE TO PROVIDE RESTROOMS**

27 64. Labor Code section 142.3 authorizes the California Occupational Safety and Health
28 Standards Board (“OSHSB”) to adopt occupational safety and health standards and orders. Pursuant

1 to its authority, OSHSB has adopted a standard requiring California employers to provide separate
2 toilet facilities for males and females based on the numbers of employees of each sex. (Cal. Code
3 Regs., tit. 8, § 3364.) These toilet facilities must be “kept clean, maintained in good working order and
4 be accessible to the employees at all times.” (Cal. Code Regs., tit. 8, § 3364, subd. (b).) Likewise,
5 “[w]here practicable, toilet facilities should be within 200 feet of locations at which workers are
6 regularly employed” (Cal. Code Regs., tit. 8, § 3364, subd. (b).)

7 65. Here, Defendants failed to provide the Aggrieved Employees with suitable toilet
8 facilities within a reasonable distance of their worksite. The Aggrieved Employees were often forced
9 to urinate and defecate outdoors in unsanitary, humiliating, and exposed conditions. This failure, in
10 addition to violating OSHSB’s safety and health standards (and, by extension, the Labor Code),
11 resulted in a failure to provide adequate cool-down recovery periods pursuant to Labor Code section
12 226.7, subdivision (c).

13 **V. EXHAUSTION OF REMEDIES**

14 66. Plaintiff has fully and completely exhausted administrative remedies under PAGA prior
15 to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA notice online
16 with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to
17 Defendants setting forth the facts and theories of the violations alleged against Defendants, as
18 prescribed by PAGA. (Lab. Code, §§ 2698–2699.6.)

19 67. As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by
20 regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by
21 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the
22 postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil
23 action pursuant to Labor Code section 2699.

1 **VI. CAUSES OF ACTION**

2 **First Cause of Action**

3 *Penalties Pursuant to PAGA for Violations of Labor Code Sections 142.3, 201, 202,*
4 *203, 204, 210, 226, 226.3, 226.7, 227.3, 256, 510, 512, 1174, 1185, 1194, 1194.2,*
5 *1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the California*
6 *Labor Code*

7 *(Against All Defendants)*

8 68. Plaintiff realleges and incorporates by reference all previous paragraphs.

9 69. Based on the above allegations incorporated by reference, Defendants violated Labor
10 Code sections 142.3, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 256, 510, 512, 1174, 1185,
11 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; section
12 3364, subdivision (b), of Title 8 of the California Code of Regulations; and the Applicable Wage Orders
13 (Cal. Code of Regs., tit. 8, §§ 11130, 11140), and others that may be applicable.

14 70. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections
15 2698 through 2699.6 because of Defendants' violation of Labor Code sections 142.3, 201, 202, 203,
16 204, 210, 226, 226.3, 226.7, 227.3, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198,
17 1198.5, 1199, 2802, 2804, and others that may be applicable; section 3364, subdivision (b), of Title 8
18 of the California Code of Regulations; and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§
19 11130, 11140), and others that may be applicable.

20 71. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation,
21 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time
22 of trial subject to the following formula:

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

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

25 72. Moreover, under Labor Code section 256, the Aggrieved Employees are entitled to
26 penalties "in an amount not exceeding 30 days pay as waiting time under the terms of Section 203"
27 through PAGA. (Lab. Code, §§ 256, 2699.)
28

1 73. These penalties must be allocated seventy-five percent to the Labor and Workforce
2 Development Agency (“LWDA”) and twenty-five percent to the affected employees. These penalties
3 may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v.*
4 *Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v.*
5 *Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9,
6 for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section
7 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also
8 *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL
9 2373372, at *17 fn. 70 [noting that federal courts applying California law have found that “PAGA
10 penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for
11 different Labor Code violations.”], internal quotation marks omitted).

12 74. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all
13 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section
14 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code
15 section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at
16 pp. 780, 788.)

17 75. For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default
18 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny
19 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
20 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
21 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
22 to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of
23 Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the
24 Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and
25 seeks default PAGA penalties for each of Defendants’ numerous violations of Labor Code section 226,
26 subdivision (e).

27 76. Labor Code section 210 provides that “in addition to, an entirely independent and apart
28 from, any other penalty provided in this article, every person who fails to pay the wages of each

1 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any
2 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
3 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
4 to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
5 compensation policies and practices, Plaintiff and the Aggrieved Employees are also entitled to recover
6 penalties under Labor Code section 210 through PAGA.

7 77. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
8 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is
9 intentionally committed for each underpaid employee for each pay period for which the employee is
10 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific
11 offense for each underpaid employee for each pay period for which the employee is underpaid
12 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and
13 to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant
14 to Labor Code section 1197.1.

15 78. Plaintiff was compelled to retain the services of counsel to file this action to protect his
16 interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed
17 by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which Plaintiff is also entitled
18 to recover under Labor Code section 2699, subdivision (g)(1).

19 **VII. PRAYER FOR RELIEF**

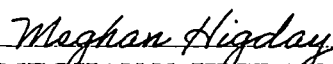
20 Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought
21 against Defendants, as follows:

- 22 1. For the failure to maintain accurate employment records, penalties pursuant to Labor
23 Code sections 226.3, 1174.5, and others that may be applicable;
- 24 2. For the violations of California’s Unfair Competition Law, restitution to Plaintiff of all
25 money and/or property unlawfully acquired by Defendants by means of any acts or
26 practices declared by this Court to be in violation of Business and Professions Code
27 sections 17200 through 17210;

3. For the claim of penalties pursuant to PAGA and other provisions of the California Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2), in the representative action brought on behalf of Plaintiff and the Aggrieved Employees pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties available under Labor Code section 210 and Labor Code section 256;
4. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;
5. On all causes of action for which attorneys' fees may be available, for attorneys' fees and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure section 1021.5, and others as may be applicable;
6. For an order enjoining Defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this complaint; and
7. For such other and further relief, this Court may deem just and proper.

Dated: December 28, 2022

MELMED LAW GROUP P.C.


MEGHAN N. HIGDAY

Attorney for Plaintiff and the Aggrieved
Employees