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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

TARYN CUBLEY, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

MEDREACH, INC., a California corporation;
and DOES 1 to 100, inclusive

Defendant.

CASE NO: 37-2023-00002230-CU-OE-CTL

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

**(1) FAILURE TO PROVIDE TIMELY,
DUTY-FREE MEAL PERIODS AND/OR
PAY MEAL PERIOD PREMIUMS FOR
LATE MEAL BREAKS (LABOR CODE §§
226.7, 512; IWC WAGE ORDER 9-2001);**
**(2) FAILURE TO PROVIDE TIMELY,
DUTY-FREE REST PERIODS AND/OR PAY
REST PERIOD PREMIUMS (LABOR CODE
§ 226.7; IWC WAGE ORDER 9-2001);**
**(3) FAILURE TO PAY ALL WAGES (Labor
Code §§ 204, 206, 510, 1194, 1194.2, 1197, 1197.1,
1182.12);**
**(4) FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS (LABOR
CODE § 226);**
**(5) WAITING TIME PENALTIES (LABOR
CODE § 201 – 203);**
**(6) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210);**
**(7) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802);**
**(8) UCL VIOLATIONS (BUS. & PROF.
CODE §§ 17200-17204); AND**
**(9) PAGA AND OTHER PENALTIES
(LABOR CODE §§ 2698 – 2699.5).**
DEMAND FOR JURY TRIAL

1 Plaintiff Taryn Cubley (“Plaintiff”), alleges and complains on her own behalf individually
2 and on behalf of all others similarly situated (hereinafter “Class Members”) and also as an
3 aggrieved employee and on behalf of other aggrieved employees¹, on behalf of the State of
4 California, pursuant to California Labor Code² section 2698, et seq. as follows:

5 OVERVIEW OF CLAIMS

6 1. Plaintiff brings this action as a class action, and as a representative action pursuant
7 to California’s Private Attorney General Act of 2004 (“PAGA”) Labor Code § 2698, *et seq.*, and
8 on behalf of the California general public, against Defendant MedReach, Inc. and DOES 1 to 100
9 (“Defendant”) for its (1) failure to provide timely and duty-free meal periods within the first five
10 hours of work and/or to pay a meal period for each missed, untimely, or interrupted meal period
11 and to provide lawful second meal periods for shifts worked in excess of ten hours and/or pay
12 meal period premiums for missed, untimely, or interrupted second meal breaks; (2) failure to
13 provide timely, duty-free rest periods for every four hours of work or major fraction thereof and/or
14 failure to pay rest period premiums for missed or interrupted rest breaks; (3) failure to pay all
15 wages; (4) failure to provide accurate itemized wage statements within the one year prior to the
16 filing of this Complaint; (5) failure to pay all wages due to employees based on the foregoing; (6)
17 failure to timely pay former employees’ wages, particularly final wages, based on the foregoing;
18 (7) failure to reimburse employees for their reasonable business expenses incurred in performance
19 of their required job duties using their personal cell phones; and (8) Violations of California’s
20 Business and Professions Code section 17200, et seq. based on the foregoing and (9) Violation of
21 California Labor Code section 2698 et seq. As a result of the foregoing, Defendant has violated
22 California statutory laws and is subject to myriad damages and penalties as set forth more fully
23 below.

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

26
27 ¹ “Aggrieved Employees” means all non-exempt individuals who are or were employed by MedReach of California in the
State of California and who worked one or more shifts of (3.5) hours or longer during the PAGA Period.

28 ² All references to the Labor Code herein shall be to the California Labor Code.

3. Plaintiff has fully exhausted her administrative remedies for her PAGA cause of action as she gave notice to both Defendant and the Labor Workforce Development Agency (“LWDA”) of this violation by certified mail on November 14, 2022. The LWDA has not provided Plaintiff with notice that it intends to investigate the violations enumerated against Defendant in Plaintiff’s notice despite the passage of over 65 days. Accordingly, Plaintiff is entitled to commence this action under Labor Code section 2699(a). Thus, the “PAGA Period” is designated as the period from one year prior to the sending of the PAGA letter.

VENUE

4. Venue is proper in this County pursuant California Code of Civil Procedure section 395.5. Many, if not all, of the putative Class Members were employed and/or performed work by and for Defendant in San Diego County during the Class Period. Many of the acts alleged in this Complaint, including but not limited to, Defendant's practice of failing to provide timely and duty-free meal and rest periods and its attendant practice of failing to pay meal and rest period premiums, its practice of failing to pay overtime and minimum wages, its practice of failing to provide accurate itemized wage statements and its practice of failing to reimburse its employees for business expenses all occurred in San Diego County. Venue is therefore proper in San Diego County.

JURISDICTION

5. Defendant is within the jurisdiction of this Court. Defendant transacts millions of dollars of business by managing and operating ambulance transportation services throughout the State of California, including San Diego County. Thus, Defendant has and continues to avail itself of the benefits of the laws of the State of California. Further, there are no Federal questions or claims at issue in this action, nor is there any diversity as all parties are residents of California. Plaintiff's individual claims, all Class claims and representative claims of the Aggrieved Employees are based exclusively on California law. Further the total amount of potential damages projected for this matter, inclusive of attorneys' fees, is anticipated to be less than \$5 million. Therefore, jurisdiction is appropriate in San Diego County Superior Court.

THE PARTIES

A. Plaintiff

6. Plaintiff Taryn Cubley is a California resident who lives in San Diego County. Plaintiff was employed by Defendant as an Emergency Medical Technician and was paid an hourly rate during the relevant time period. As a non-exempt employee, Plaintiff was entitled to rest periods, meal breaks, overtime pay, and minimum wages pursuant to Industrial Wage Order No. 9-2001, (“IWC No. 9-2001”) Labor Code sections 510, 512, 204, 206, 226, 226.7, 1194, 1194.2, 1197, 1197.1 and 1182.12. From at least four years from the filing of this Complaint through the present, and on-going, Defendant’s non-exempt employees, including Plaintiff, were not provided with timely and duty-free meal and rest periods and/or provided meal and rest period premiums. Plaintiffs did not receive overtime and minimum wages. Defendant did not compensate plaintiff with the correct rate of overtime. Defendant has in place a bonus system, however, they failed to include the calculation of bonus in the adjusted rate of pay. Plaintiffs were not provided with accurate and/or complete wage statements, they did not receive all of their wages due upon termination of employment, and they did not timely receive all wages owed.

B. The Defendant

7. Defendant MedReach, Inc. is a California corporation with a mailing address in Compton, California and is headquartered in Compton, California. Defendant operates an ambulance transportation service. Among the various staff working at Defendant’s clinics, Plaintiff was employed as an Emergency Medical Technician on an hourly or non-exempt basis.

8. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

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

10. Defendant was and is the employer of Plaintiff, the Aggrieved Employees and Class Members for all relevant time periods. At any one time during the Class Period, and the PAGA Covered Period, Defendant employed approximately 100 non-exempt individuals in California. Due to turnover during the Class Period, the total number of Class Members is estimated to be over 250.

FACTUAL ALLEGATIONS

11. Defendant operates and, at all times during the PAGA Period and the Class Period, has done and does business in California and throughout the United States. Defendant, in the course of operating its business in California during the Class Period and the PAGA Period, employed Plaintiff, the Aggrieved Employees and the Class Members.

12. Labor Code § 512 requires employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of an employee's shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

13. Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the employee to take a 30-minute duty-free meal period on or before the fifth hour of work, liability attaches from adopting an unlawful policy.

14. Here, Defendant violated and continues to violate Labor Code § 512 and IWC Wage Order 9-2001 § 11 by, among other things, failing to provide and schedule timely and duty-free meal breaks on or before the fifth hour of work and failing to pay meal break premiums for late meal breaks. As a result of Defendant's failure to authorize or permit lawful and timely meal periods, Plaintiff and the other Class Members and Aggrieved Employees frequently did not

1 receive compliant duty-free meal periods within the first five (5) hours of their work. Furthermore,
2 when Defendant paid missed or late meal break premiums, thereby admitting to 226.7 and 512
3 violations, Defendant failed to make any PAGA penalty payments associated with these
4 violations.

5 15. Under Labor Code § 226.7, if an employer maintains a uniform policy that does
6 not authorize and permit the amount of rest time on the schedule called for under the law (as
7 specified in Section 12 of the applicable Wage Order), “it has violated the wage order and is
8 liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches
9 from adopting an unlawful policy:

10 An employer is required to authorize and permit the amount of rest break time called for
11 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
12 policy authorizing and permitting only one rest break for employees working a seven-
13 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].

14 16. Here, Defendant did not authorize Plaintiff, Class Members, and Aggrieved
15 Employees to take their ten-minute rest breaks during each 4 hours of work or major fraction
16 thereof during their shifts. Moreover, Defendant’s scheduling practices were often rest break
17 preclusive. Plaintiff, the Class and the Aggrieved Employees were instructed to remain always
18 available and not take any rest breaks. Plaintiff, the Class and the Aggrieved Employees were
19 under time pressure to finish their work-related tasks on time, which also often precluded rest
20 breaks.

21 17. Labor Code section 1198 states: “The maximum hours of work and the standard
22 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
23 conditions of labor for employees. The employment of any employee for longer hours than those
24 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

25 18. Labor Code § 510 provides that any work in excess of eight hours on any day, as
26 well as all hours worked on the seventh consecutive day of a workweek, shall be compensated at
27 the rate of no less than 1.5 times the regular rate of pay. *See also* Section 3(A) of IWC Wage
28 Order No. 9.

1 19. Here, the overtime rate received by Plaintiff, the Class and the Aggrieved
2 Employees was not an adjusted rate. Plaintiff, the Class and the Aggrieved Employees frequently
3 received bonuses, yet the rate of overtime did not include the calculation of the bonuses. In *Ferra*
4 *v. Loews*, the California Supreme Court held that “[t]he Legislature intended ‘regular rate of
5 compensation’ under section 226.7(c) to have the same meaning as ‘regular rate of pay’ under
6 section 510(a), such that the calculation of premium pay for a noncompliant meal, rest, or
7 recovery period, like the calculation of overtime pay, must account for not only hourly wages but
8 also other nondiscretionary payments for work performed by the employee.” The Court further
9 added that “‘regular rate of compensation’ under section 226.7(c), like ‘regular rate of pay’ under
10 section 510(a), encompasses all nondiscretionary payments, not just hourly wages.” *Ferra v.*
11 *Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 863, 489 P.3d 1166, 1168 (2021).

12 20. Labor Code § 1197 states the California requirement that employees must be paid
13 at least the minimum wage fixed by the Commission, and any payment of less than the minimum
14 wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the
15 legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this
16 minimum wage.” IWC Wage Order 9-2001 also obligates employers to pay each employee
17 minimum wages *for all hours worked*. These minimum wage standards apply to each hour
18 employees worked for which they were not paid. Therefore, an employer’s failure to pay for any
19 particular hour of time worked by an employee is unlawful, even if averaging an employee’s total
20 pay over all hours worked, paid or not, results in an average hourly wage above minimum wage.
21 *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 4th 314, 324.

22 21. Despite the fact that Defendants failed to provide Plaintiff, the Class and
23 Aggrieved Employees with timely meal periods of at least thirty (30) minutes in length,
24 Defendants had a policy and practice of automatically deducting thirty (30) minutes from each
25 shift worked in excess of six (6) hours, regardless of whether or not the employee received a meal
26 period and/or the amount of time spent on the meal period, if any. Therefore, during those regular
27 instances where Plaintiff, the Class and Aggrieved Employees did not receive a full thirty-minute
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1 meal period (or did not receive a meal period at all), they were deprived of minimum wages for
2 all hours worked during that shift.

3 22. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
4 or should have known that Plaintiff, Class Members and Aggrieved Employees were entitled to
5 receive wages for all hours worked, including minimum, regular, and overtime wages, and that
6 they were not receiving all wages earned for work that was required to be performed. In violation
7 of the Labor Code and IWC Wage Orders, Defendant failed to pay Plaintiff, Class Members' and
8 Aggrieved Employees' earned wages by failing to pay for all hours worked and failing to pay the
9 proper overtime and double time rates of pay, among other things. Defendant failed to include all
10 remuneration with respect to calculating Plaintiff and Class Members' minimum and overtime
11 wages. *Huntington Memorial Hosp. v. Superior Court*, (2005) 131 Cal. App. 4th 893, 905.
12 Further, Defendant failed to record and/or pay Plaintiff, Class Members and Aggrieved
13 Employees for all hours worked in excess of eight (8) hours and/or twelve (12) hours per workday
14 and failed to pay said hours at the proper minimum and overtime rates. Additionally, Defendant
15 failed to factor in non-discretionary bonuses in the regular rate of pay when calculating overtime
16 rates.

17 23. Moreover, contrary to the information and documents Defendant provided to
18 Plaintiff, Class Members' and Aggrieved Employees, Defendant did not comply with the
19 requirements of California Code of Regulations Title 8, §11170, et seq., Labor Code § 511 and
20 IWC No. 9-2001 regarding establishing an alternative workweek schedule. Defendant failed to
21 institute, by statutorily required procedures, a compliant alternative workweek schedule and
22 register any election results with the state of California rendering any purported "alternative work
23 week" void.

24 24. Labor Code § 226 obligates employers, semi-monthly or at the time of each
25 payment to furnish an itemized wage statement in writing showing:

- 26 (1) gross wages earned;
27 (2) total hours worked by the employee;
28 (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...

25. Due to, *inter alia*, Defendant's failure to pay Plaintiff, Class Members and Aggrieved Employees for all meal and rest break premiums, overtime and minimum wages, the wage statements issued by Defendant to Plaintiff, Class Members, and Aggrieved Employees do not indicate the correct amount of gross wages earned, 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).

26. Defendant's failure to furnish accurate itemized wage statements has caused Plaintiff, Class Members, and Aggrieved Employees to incur economic damages in that they were not aware that they were owed and not paid appropriate premiums for their non-compliant statutory rest breaks and meal periods. *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); 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). Further, the wage statements do not reflect the correct rate of overtime pay since nondiscretionary payments for work performed by employees were to be included in determining compensation for failure to provide a meal/rest period.

27. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for the

1 initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay
2 period, not to exceed \$4,000, as well as an award of costs and reasonable attorneys' fees, for all
3 pay periods in which the employer fails to provide accurate itemized statements to the employee
4 causing the employee to suffer injury.

5 28. Aggrieved Employees will prevail on their claim for PAGA penalties under Labor
6 Code § 226(a). *See Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To
7 obtain judgment on a PAGA claim, "all [plaintiff] needs to establish is a violation of section
8 226(a), which she has done, as discussed above."); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d
9 1222, 1232 (C.D. Cal. 2011) (holding that "for the purposes of recovering PAGA penalties, one
10 need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.");
11 *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013)
12 ("Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under §
13 2699(f) of PAGA.").

14 29. Further and in addition to the penalties outlined above, Labor Code § 226.3
15 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a
16 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation an
17 initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
18 citation, for which the employer fails to provide the employee a wage deduction statement or fails
19 to keep the records required in subdivision (a) of Section 226." As explained in detail above,
20 Defendant failed to provide Plaintiff, Class Members, and Aggrieved Employees with accurate
21 itemized wage statements. Accordingly, Defendant is additionally liable for Labor Code § 226.3
22 penalties for their violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal.
23 Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 ["the weight of authority
24 counsels that violations of Section 226.3 may be the basis of a PAGA claim."]; *Pedroza v.*
25 *PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14,
26 2012) ("Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a)
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1 may trigger civil penalties.”).³

2 30. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of
3 an employee who is discharged or who quits, the wages of the employee shall continue as a
4 penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal. App. 4th 487,
5 492.

6 31. Due to Defendant’s faulty policies described above, including its failure to pay for
7 all meal and rest break premiums due, overtime and minimum wages due, Defendant violated
8 Labor Code § 203, for those employees whose employment ended within the last three years and
9 ongoing by willfully failing to pay them all wages due upon the termination of their employment.

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

16 33. Due to Defendant’s failure to pay Plaintiff, the Class, and the other Aggrieved
17 Employees all meal and rest break period premiums owed,⁴ overtime and minimum wages,
18 Defendant violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the
19 close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*,
20 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after
21 *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and
22 204).

23 34. Labor Code § 210 provides that “in addition to, an entirely independent and apart
24 from, any other penalty provided in this article, every person who fails to pay the wages of each
25 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For

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27 ³ *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*
28 *v. Xerox Bus. Servs., LLC* (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

⁴ *See Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No. S258966.

1 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
2 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
3 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of
4 the faulty compensation policies and practices described in detail above, Plaintiff, the Class, and
5 the other Aggrieved Employees are entitled to recover penalties under Labor Code § 210.

6 35. Pursuant to section 2802(a) of the California Labor Code, “[a]n employer shall
7 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
8 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
9 directions of the employer....” Labor Code 2802(c) defines necessary to include all “reasonable”
10 expenses. The purpose of this statute is “to prevent employers from passing their operating
11 expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562
12 (2007) (quoting legislative history from the 2000 amendment to the statute and holding that
13 outside salespersons are entitled to gas mileage reimbursement in addition to their commission
14 pay). Labor Code section 2804 also makes it crystal clear that claims under section 2802 are not
15 waivable.

16 36. Furthermore, under Labor Code section 2802, employers must reimburse
17 employees for reasonable work-related use of their personal cell phones – regardless of whether
18 or not aggrieved employees incurred any additional out-of-pocket expense from that work-related
19 use. *See, Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137 (Cal. Aug. 12, 2014)
20 (“We hold that when employees must use their personal cell phones for work-related calls, Labor
21 Code section 2802 requires the employer to reimburse them. Whether the employees have cell
22 phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable
23 percentage of their cell phone bills.”); *see also Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17
24 (N.D.Cal. Aug. 27, 2014) (granting plaintiffs’ motion for partial summary judgment on the
25 plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL
26 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (adopting the logic of *Cochran*)

27 37. The employer’s obligation to reimburse all reasonably-incurred business-related
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1 expenses, including personal cell phone expenses for work-related usage, arises when the
2 employer “knew or should have known” that its employees incurred a business-related expense.
3 *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen);
4 *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan Illston)
5 (adopting the “knew or should have known” standard). In such cases, including this one, where
6 employees have incurred reasonable work-related cell phone expenses that the employer is or
7 should have been aware of, an employer in California thus has an affirmative obligation to
8 reimburse expenses and cannot hide behind a policy advising employees to put in for their
9 expenses if they want to be reimbursed for them. *Id.*; see also Labor Code section 2804.

10 38. Here, Plaintiff, the Class and Aggrieved Employees are and were required to use
11 their cell phone during their shifts. Defendant has no policy or practice of affirmatively
12 reimbursing employees for their out-of-pocket cell phone expenses incurred for work-related
13 purposes.

14 39. Accordingly, Defendant violated Labor Code § 2802 and continues to do so by
15 failing to reimburse the Plaintiff, Class Members and Aggrieved Employees for all work-related
16 cell phone expenses they incurred in connection with their job duties.

17 40. The administrative prerequisites of PAGA have been satisfied after 65 days have
18 elapsed from November 14, 2022 (i.e., 65 days since Plaintiff Taryn Cubley’s mailing of the
19 PAGA notice with no further communication from the LWDA to Plaintiff’s counsel). Plaintiff
20 has paid the \$75.00 fee and has otherwise satisfied the administrative prerequisites of PAGA.

21 41. Plaintiff by this action seeks to recover, on behalf of herself and all other current
22 and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as
23 specified in Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a
24 representative action as permitted by PAGA and the California Supreme Court in *Arias v.*
25 *Superior Court*, 46 Cal. 4th 969 (2009). Class certification of the PAGA claims is not required.

26 CLASS ACTION ALLEGATIONS

27 42. This action may be properly maintained as a class action pursuant to the provisions
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1 of California Code of Civil Procedure § 382.

2 43. Plaintiff brings this action, as a class action, on behalf of herself and the class of
3 individuals and all others similarly situated, who are defined as: “All non-exempt individuals who
4 or were employed by Defendant through the Class Period and ending with the date of notice to
5 the Class”; (hereinafter referred to as “Class Members” or the “Class”). In addition, Plaintiff may
6 seek to certify as a subclass of all Class Members who are no longer employed by Defendant.
7 Plaintiff further reserves the right to amend or modify the class description or establish additional
8 subclasses as appropriate.

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

13 a. Numerosity: The potential members of the Class as defined are so
14 numerous that joinder of all the members of the Class is impracticable. While the precise number
15 of Class Members has not been determined at this time, Plaintiff is informed and believes that
16 Defendant has on average, at any one time during the Class Period employed over ____ Class
17 Members as non-exempt employees who were subject to Defendant’s unlawful policies. Due to
18 turnover, the total number of Class Members is estimated to be more than _____. The Class
19 Members are dispersed throughout California. Joinder of all members of the proposed classes is
20 therefore not practicable.

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

24 i. Whether Defendant violated Labor Code sections 226.7 and 512 and
25 Section 11 of IWC Wage Order No. 9 by failing to provide timely, duty-free meal periods to
26 Plaintiff and Class Members in California during the Class Period;

27 ii. Whether Defendant violated Labor Code section 226.7 by failing to provide
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1 one hour of premium pay to each member of the Class for each day that a timely, duty-free meal
2 period was not provided in California during the Class Period;

3 iii. Whether Defendant violated Labor Code section 226.7 and Section 12 of
4 IWC Wage Order No. 9 by failing to provide timely, duty-free rest periods to Plaintiff and Class
5 Members in California during the Class Period;

6 iv. Whether Defendant violated Labor Code section 226.7 by failing to provide
7 one hour of premium pay to each member of the Class for each day that a timely, duty-free rest period
8 was not provided in California during the Class Period;

9 v. Whether Defendant violated Labor Code sections 204, 206, 510, 1194,
10 1194.2, 1197, 1197.1, 1182.12 and Wage Order 9 by failing to pay Plaintiff and the Class all
11 wages, including minimum, regular, and overtime wages earned and due during the Class Period;

12 vi. Whether Defendant failed to provide Plaintiff and Class Members accurate
13 itemized wage statements in violation of Labor Code Section 226(a);

14 vii. Whether Defendant violated Section 203 of the Labor Code by failing to pay
15 Plaintiff and Class Members all wages due to them (including their unpaid meal and rest break
16 premiums) upon their separation of employment from Defendant;

17 viii. Whether Defendant violated Sections 204 and 210 of the Labor Code by
18 failing to pay Class Members all wages due on a timely basis;

19 ix. Whether Defendant violated Section 2802 of the Labor Code by failing to
20 reimburse Plaintiff and Class Members for reasonably incurred business expenses;

21 x. Whether Defendant engaged in an unfair practice and violated section
22 17200 of the California Business and Professions Code by failing to provide Plaintiff and Class
23 Members with timely, duty-free meal breaks, overtime and minimum wages during the Class
24 Period;

25 xi. Whether Defendant engaged in an unfair practice and violated section
26 17200 of the California Business and Professions Code by failing to provide Plaintiff and Class
27 Members with meal period premiums for each day they were not provided a compliant meal
28

1 break;

2 xii. Whether Defendant engaged in an unfair practice and violated section
3 17200 of the California Business and Professions Code by failing to provide Plaintiff and Class
4 Members with timely, duty-free rest breaks during the Class Period;

5 xiii. Whether Defendant engaged in an unfair practice and violated section
6 17200 of the California Business and Professions Code by failing to provide Plaintiff and Class
7 Members with rest period premiums for each day they were not provided a compliant rest break;

8 xiv. Whether Plaintiff and the Class are entitled to restitution under Business
9 and Professions Code § 17200;

10 xv. The proper formula(s) for calculating damages, interest, and restitution
11 owed to Plaintiff and the Class Members;

12 xvi. The nature and extent of class-wide damages.

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

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

24 e. Superiority of Class Action: A class action is superior to other available
25 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
26 Members is not practicable, and questions of law and fact common to the Class predominate over
27 any questions affecting only individual members of the Class. Each Class Member has been
28

1 damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or
2 practices. Certification of this case as a class action will allow those similarly situated persons to
3 litigate their claims in the manner that is most efficient and economical for the parties and the
4 judicial system. Certifying this case as a class action is superior because it allows for efficient
5 and full disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining its unlawful
6 break and compensation policies and will thereby effectuate California's strong public policy of
7 protecting employees from deprivation or offsetting of compensation earned in their employment.
8 If this action is not certified as a Class Action, it will be impossible as a practical matter, for many
9 or most Class Members to bring individual actions to recover monies unlawfully withheld from
10 their lawful compensation due from Defendant, due to the relatively small amounts of such
11 individual recoveries relative to the costs and burdens of litigation.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PROVIDE TIMELY AND DUTY-FREE MEAL BREAKS AND PAY** 14 **MISSED MEAL BREAK PREMIUMS** 15 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order 9-2001 Section 11]** 16 **Against Defendant and Does 1 through 100**

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

19 46. California Labor Code § 226.7(a) provides, "No employer shall require any
20 employee to work during any meal or rest period mandated by an applicable order of the Industrial
21 Welfare Commission."

22 47. Section 512(a) of the California Labor Code provides, in relevant part, that: An
23 employer may not employ an employee for a work period of more than five hours per day without
24 providing the employee with a meal period of not less than 30-minutes, except that if the total
25 work period per day of the employee is no more than six hours, the meal period may be waived
26 by mutual consent of both the employer and employee. An employer may not employ an
27 employee for a work period of more than 10 hours per day without providing the employee with
28 a second meal period of not less than 30-minutes, except that if the total hours worked is no more

1 than 12 hours, the second meal period may be waived by mutual consent of the employer and the
2 employee only if the first meal period was not waived

3 48. Here, Defendant violated and continues to violate Labor Code § 512 and IWC
4 Wage Order 9-2001 § 11 by, among other things, failing to provide and schedule duty-free meal
5 breaks on or before the fifth hour of work for Plaintiff and Class Members and failing to advise
6 Plaintiff and Class Members of their meal break rights with respect to the timing of meal breaks,
7 failing to provide Plaintiff and Class Members with thirty-minute, uninterrupted meal periods
8 within the first five (5) hours of their shifts, and failing to pay meal break premiums for late meal
9 breaks. As a result of Defendant's failure to authorize or permit lawful and timely meal periods,
10 Plaintiff and Class Members frequently did not receive compliant duty-free meal periods within
11 the first five (5) hours of their work.

12 **SECOND CAUSE OF ACTION**
13 **FAILURE TO PROVIDE TIMELY AND DUTY-FREE REST BREAKS**
14 **AND PAY MISSED REST BREAK PREMIUMS**
15 **[Cal. Labor Code § 226.7; Section 12 of IWC Wage Order 9-2001]**
16 **Against Defendant and Does 1 through 100**

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

19 50. Under Labor Code § 226.7, if an employer maintains a uniform policy that does
20 not authorize and permit the amount of rest time on the schedule called for under the law (as
21 specified in Section 12 of the applicable Wage Order), "it has violated the wage order and is
22 liable." The *Brinker* Court explained in the context of rest breaks that employer liability attaches
23 from adopting an unlawful policy:

24 An employer is required to authorize and permit the amount of rest break time called for
25 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
26 policy authorizing and permitting only one rest break for employees working a seven-hour
27 shift when two are required—***it has violated the wage order and is liable.***

28 (*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

51. Here, Defendant did not authorize Plaintiff and Class Members to take their ten-
minute rest breaks during each 4 hours of work or major fraction thereof during their shifts.
Plaintiff and Class Members did not receive timely rest breaks during their shifts. Accordingly,

1 Defendant is liable to Plaintiff and Class Members for rest break premiums for all such shifts on
2 which they were not able to take compliant rest breaks.

3 **THIRD CAUSE OF ACTION**
4 **FAILURE TO PAY ALL WAGES**

5 **[Cal. Labor Code §§ 204, 206, 510, 1194, 1194.2, 1197, 1197.1, 1182.12 and IWC No. 9]**
6 **Against Defendant and Does 1 through 100**

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

9 53. Any employee receiving less than the legal minimum wage or legal overtime
10 compensation is entitled to recover in a civil action the amount of unpaid wages, attorneys' fees
11 and costs of suit. (Lab. Code, § 1194, subd. (a).)

12 54. Labor Code section 1182.12 provides for employers who employed 26 or more
13 people from January 18, 2018 to December 31, 2018, the minimum wage rate in California was
14 eleven dollars (\$11.00) per hour. From January 1, 2019 to December 31, 2019, the minimum
15 wage rate in California is twelve dollars (\$12.00) per hour. From January 1, 2020 to December
16 31, 2020, the minimum wage rate in California is thirteen dollars (\$13.00) per hour. From January
17 1, 2021 to December 31, 2021, the minimum wage rate in California is fourteen dollars (\$14.00)
18 per hour. From January 1, 2022, the minimum wage rate in California, and specifically, in San
19 Diego County, is fifteen dollars (\$15.00) per hour. Plaintiff is informed and believes Defendant
20 employed more than twenty-six (26) employees.

21 55. Notwithstanding any other provision of the Labor Code, hourly minimum wage
22 rates are set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay
23 employees no less than minimum wage for each hour worked. (Lab. Code, § 1194.)

24 56. In any action to recover payment of wages less than the minimum wage an
25 employee shall be entitled to recover liquidated damages in an amount equal to the wages
26 unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.)

27 57. Any work in excess of eight (8) hours in any workday and any work in excess of
28 forty (40) hours in a workweek, shall be compensated at a rate of no less than one and one-half

1 times the regular rate of pay for an employee. (Lab. Code, § 510, subd. (a).) Any work in excess
2 of twelve (12) hours in a workday shall be compensated at the rate of twice the regular rate of pay
3 for an employee. (Lab. Code, § 510, subd. (a).)

4 58. Wage Order 9-2001 provides for civil penalties for violations of the Wage
5 Order. As result of Defendant's violation of Wage Order 9-2001 the Plaintiffs and Class
6 Members are entitled to and hereby seek civil penalties in the amount of \$50 for the first
7 violation and \$100 for each subsequent violation.

8 59. All wages earned in employment are due and payable twice during each calendar
9 month on dates designated in advance by the employer. (Lab. Code, § 204.)

10 60. In case of a dispute over wages, the employer shall pay, without condition and
11 promptly under the Labor Code all wages conceded due, leaving to the employee all remedies
12 he/she is otherwise entitled to as to any balance claimed. (Lab. Code, § 206.)

13 61. At all relevant times herein, Plaintiff and Class Members were and are paid as non-
14 exempt employees.

15 62. Defendant failed to compensate Plaintiff and Plaintiff Class for all wages earned.
16 Specifically, Defendant failed to include all remuneration when calculating Plaintiff and Plaintiff
17 Class's overtime.

18 63. As a consequence, Defendant failed to pay Plaintiff and Plaintiff Class all
19 minimum, regular, overtime wages for all hours worked, including hours in excess of over eight
20 (8) per day and forty (40) per workweek. Pursuant to Labor Code sections, *inter alia*, 204, 510,
21 1182.12, and 1194, the Plaintiff and Plaintiff Class seek the payment of all minimum, regular,
22 and overtime, compensation which they earned and accrued for four (4) years prior to filing this
23 complaint, according to proof.

24 64. Additionally, Plaintiff and Plaintiff Class are entitled to liquidated damages,
25 attorneys' fees and costs pursuant to Labor Code section 1194 and Code of Civil Procedure
26 section 1021.5, and prejudgment interest.

27 **FOURTH CAUSE OF ACTION**
28 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**

[Cal. Labor Code § 226(A)]
Against Defendant and Does 1 through 100

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

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

Every employer shall...furnish each of his or her employees...an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (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...

67. As set forth above, because of Defendant's failure to pay Plaintiff and Class Members for all meal and rest break premiums, overtime and minimum wages, the wage statements issued by Defendant to Plaintiff and Class Members are inaccurate and do not indicate the correct amount of gross wages earned, 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).

68. Defendant's 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 plaintiff 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").

69. Defendant's failure to furnish accurate and complete itemized wage statements has caused Plaintiff and Class Members to incur economic damages in that they were not aware that they were owed and not paid appropriate premiums for their non-compliant statutory rest breaks and meal periods. *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); 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).

70. 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 attorneys' fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES FOR
FAILURE TO PAY WAGES DUE ON TERMINATION
[Cal. Labor Code §§ 201-203]
Against Defendant and Does 1 through 100

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

72. 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,

1 492.

2 73. Due to Defendant's unlawful policies described above, including its failure to pay
3 meal and rest break premiums, overtime and minimum wages, Defendant violated Labor Code §
4 203, for those employees Class Members whose employment ended within the last three years
5 and ongoing by willfully failing to pay them all wages due upon the termination of their
6 employment.

7 **SIXTH CAUSE OF ACTION**
8 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
9 **[Cal. Labor Code §§ 204, 210]**
10 **Against Defendant and Does 1 through 100**

11 74. Plaintiff re-alleges and incorporates by reference each and every allegation set
12 forth in the preceding paragraph.

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

19 76. Due to Defendant's failure to pay Plaintiff and Class Members all meal and rest
20 break period premiums owed,⁵ and overtime and minimum wages, Defendant violated Labor
21 Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll period
22 on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS
23 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to
24 pay rest period premiums can support claims under Labor Code §§ 203 and 204).

25 77. Labor Code § 210 provides that "in addition to, an entirely independent and apart
26 from, any other penalty provided in this article, every person who fails to pay the wages of each
27 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For

28 ⁵ See *Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No. S258966.

1 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
2 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
3 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of
4 the faulty compensation policies and practices described in detail above, Plaintiff and Class
5 Members are entitled to recover penalties under Labor Code § 210.

6
7 **SEVENTH CAUSE OF ACTION**
8 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
9 **[Cal. Labor Code § 2802]**
10 **Against Defendant and Does 1 through 100**

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

13 79. Pursuant to section 2802(a) of the California Labor Code, “[a]n employer shall
14 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
15 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
16 directions of the employer....” Labor Code 2802(c) defines necessary to include all “reasonable”
17 expenses. The purpose of this statute is “to prevent employers from passing their operating
18 expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562
19 (2007) (quoting legislative history from the 2000 amendment to the statute and holding that
20 outside salespersons are entitled to gas mileage reimbursement in addition to their commission
21 pay). Labor Code section 2804 also makes it crystal clear that claims under section 2802 are not
22 waivable.

23 80. Furthermore, under Labor Code section 2802, employers must reimburse
24 employees for reasonable work-related use of their personal cell phones – regardless of whether
25 or not aggrieved employees incurred any additional out-of-pocket expense from that work-related
26 use. *See, Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137 (2014) (“We hold
27 that when employees must use their personal cell phones for work-related calls, Labor Code
28 section 2802 requires the employer to reimburse them. Whether the employees have cell phone
plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable
percentage of their cell phone bills.”); *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) (adopting the logic of *Cochran*).

81. The employer’s obligation to reimburse all reasonably-incurred business-related expenses, including personal cell phone and laptop-related expenses for work-related usage, arises when the employer “knew or should have known” that its employees 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). In such cases, including this one, where employees have incurred reasonable work-related cell phone expenses that the employer is or should have been aware of, an employer in California thus has an affirmative obligation to reimburse expenses and cannot hide behind a policy advising employees to put in for their expenses if they want to be reimbursed for them. *Id.*; see also Labor Code section 2804.

82. Here, Plaintiff and Class Members are and were required to use their cell phone during their shifts. Defendant has no policy or practice for reimbursing its employees for their expenses incurred in using their personal cell phones for work-related purposes and, in fact, Defendant did not reimburse its employees for such expenses.

83. Accordingly, Defendant violated Labor Code § 2802 and continues to do so by failing to reimburse Plaintiff and Class Members for all work-related cell phone and laptop expenses they incurred in connection with their job duties.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
(BUS. & PROF. CODE § 17200, ET SEQ.)
Against Defendant and Does 1 through 100

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

85. Section 17200 of the California Business & Professions Code prohibits any unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person who has suffered injury in fact and has lost money or property” to prosecute a civil

1 action for violation of the UCL. Such a person may bring such an action on behalf of themselves,
2 and others similarly situated who are affected by the unlawful, unfair, or fraudulent business
3 practice.

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

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

13 88. As a direct and proximate result of Defendant's unlawful business practices,
14 Plaintiff and Class Members have suffered economic injuries. Defendant has profited from its
15 unlawful, unfair, and/or fraudulent acts and practices.

16 89. Plaintiff and Class Members are entitled to monetary relief pursuant to Business
17 & Professions Code §§ 17203 and 17208 for unpaid meal and rest period premiums, overtime and
18 minimum wages and unreimbursed business expenses due and interest thereon, from at least four
19 years prior to the filing of this Complaint through the date of such restitution, at rates specified
20 by law. Defendant should be required to disgorge all the profits and gains it has reaped and restore
21 such profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

22 90. Through its actions alleged herein, Defendant has engaged in unfair competition
23 within the meaning of section 17200 of the California Business & Professions Code, because
24 Defendant's conduct, as herein alleged has damaged Plaintiff and Class Members by wrongfully
25 denying them all meal and rest period premiums due, and all wages owed, and therefore was
26 substantially injurious to Plaintiff and Class Members.

27 91. Defendant engaged in unfair competition in violation of sections 17200 *et seq.* of
28

1 the California Business & Professions Code by violating Sections 226.7 and 512 of the California
2 Labor Code, and Sections 11 and 12 of the IWC Wage Order 9-2001.

3 92. Defendant's course of conduct, act and practice in violation of the California laws
4 mentioned above constitute independent violations of sections 17200 *et seq.* of the California
5 Business and Professions Code.

6 93. Plaintiff and Class Members are entitled to enforce all applicable penalty
7 provisions of the Labor Code pursuant to Business & Professions Code § 17202.

8 94. Plaintiff has assumed the responsibility of enforcement of the laws and public
9 policies specified herein by suing on behalf of herself and Class Members previously or presently
10 employed by Defendant in California. Plaintiff's success in this action will enforce important
11 rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action
12 in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff are
13 appropriate pursuant to Code of Civil Procedure §1021.5.

14 **NINTH CAUSE OF ACTION**
15 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
16 **PAGA PENALTIES FOR VIOLATIONS OF**
17 **LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 1194, 1197, 1198, 510 AND**
18 **512**
(Labor Code §§ 2698-2699.5)
Against Defendant and Does 1 through 100

19 95. Plaintiff, on behalf of herself and all Aggrieved Employees, realleges and
20 incorporates by reference all previous paragraphs.

21 96. Based on the above allegations incorporated by reference, Defendant violated
22 Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 1194, 1197, 1198, 510 and 512, as
23 well as IWC Wage Order 9-2001.

24 97. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
25 all other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of
26 trial subject to the following formula:

27 \$100 for the initial violation per employee per pay period; and
28

1 \$200 for each subsequent violation per employee per pay period.

2 These penalties will be allocated 75% to the Labor Workforce Development Agency and
3 25% to the affected employees.

4 98. As set forth above, Defendant failed to provide Plaintiff and all Aggrieved
5 Employees with accurate itemized wage statements in compliance with Labor Code § 226(a).
6 Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226
7 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee
8 per violation in an initial violation and one thousand dollars (\$1,000) per employee for each
9 violation in a subsequent citation, for which the employer fails to provide the employee a wage
10 deduction statement or fails to keep the required in subdivision (a) of Section 226.” Also, with
11 respect to all pay periods in which a missed or late meal break premium was paid, Defendant
12 failed to make any associated PAGA penalties that were triggered by same. In these instances,
13 when Defendant paid late or missed meal break premiums to Plaintiff pursuant to Labor Code
14 section 226.7, these late or missed meal break premiums demonstrated violations of Labor Code
15 section 226.7, as well as Section 512 of the Labor Code, that give rise to independent PAGA
16 penalty claims. *See Kim v. Reins International California, Inc.*, 9 Cal.5th 73 (Mar. 12, 2020) (“For
17 example, employers can pay an additional hour of wages as a remedy for failing to provide meal
18 and rest breaks. (section 226.7(c)) But we have held that payment of this statutory remedy “does
19 not excuse a section 226.7 violation.” (*Kirby v. Immoos Fire Protection, Inc.* (2012), 53 Cal.4th
20 1244, 1256”).

21 99. Further, Plaintiff, and Aggrieved Employees, need not demonstrate or prove that
22 Defendant’s conduct in refusing to provide accurate and itemized wage statements was knowing,
23 intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above; *see also Willner v. Manpower*
24 *Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all
25 [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed
26 above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that
27 “for the purposes of recovering PAGA penalties, one need only prove a violation of Section
28

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.”).

100. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, et seq. because of Defendant’s violation of Labor Code §§ Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, and 512, as well as IWC Wage Order 9-2001.

JURY DEMAND

101. Plaintiff hereby demands trial by jury of her and the Class’s claims against Defendant, and of all claims except for the PAGA and UCL, claims which are subject to a bench trial.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of herself, Class Members and Aggrieved Employees prays for judgment against Defendant as follows:

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

2. On the First Cause of Action:

a. A declaratory judgment that Defendant violated California Labor Code §§ 226.7, 512 and Section 11 of IWC Wage Order 9-2001;

b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and Class Members for an hour of pay for each day that a timely, duty-free meal period was not provided during the Class Period.

3. On the Second Cause of Action:

a. A declaratory judgment that Defendant violated California Labor Code § 226.7, and Section 12 of IWC Wage Order 4-2001;

b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiffs and Class Members for an hour of pay for each day that a timely, duty-free rest period was not provided during the Class Period.

4. On the Third Cause of Action:

1 a. For compensatory damages in the amount of unpaid overtime and minimum
2 wages due to Plaintiff and Class Members, according to proof;

3 b. For liquidated damages in an amount equal to the wages unlawfully unpaid
4 and interest thereon pursuant to Lab. Code, § 1194.2.;

5 c. For attorneys' fees pursuant to Cal. Lab. Code §1194(a) and CCP §1021.5.

6 5. On the Fourth Cause of Action:

7 a. A declaratory judgment that Defendant violated California Labor Code
8 §226 by issuing inaccurate and/or incomplete wage statements that failed to include the correct
9 amount of gross wages earned, net wages earned, or the applicable hourly rates in effect during
10 the pay period and the corresponding number of hours worked at each hourly rate to Plaintiff and
11 Class Members;

12 b. An award to Plaintiff and Class Members of \$50 for each initial pay period,
13 one year prior to the filing of this Complaint through the date of trial, in which a violation of
14 Section 226 occurred and \$100 for each subsequent pay period, one year prior to the filing of this
15 Complaint through the date of trial, in which a violation of Section 226 occurred, not to exceed
16 \$4,000 for each member of the Class, as well as an award of costs and reasonable attorneys' fees,
17 pursuant to Labor Code § 226(e).

18 5. On the Fifth Cause of Action:

19 a. A declaratory judgment that Defendant violated California Labor Code §§
20 201 through 203;

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

24 6. On the Sixth Cause of Action:

25 a. A declaratory judgment that Defendant violated California Labor Code §§
26 204 and 210;

27 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiff and Class
28 Members for penalties pursuant to Labor Code § 210.

1 7. On the Seventh Cause of Action:

2 a. A declaratory judgement that Defendant violated Labor Code § 2802;

3 b. Pursuant to 2802 (a)-(c), reimbursement to Plaintiff and Class Members
4 for all the unreimbursed business-related expenses including cell phones expenses, plus interest
5 and attorneys' fees.

6 8. On the Eighth Cause of Action:

7 a. That the Court find and declare that Defendant has violated the UCL and
8 committed unfair and unlawful business practices by failing to pay meal and rest break premiums
9 and all wages owed;

10 b. Restitution, including, but not limited to, the relief permitted by section
11 226.7 of the California Labor Code (i.e., pay as specified for meal and rest period premiums and
12 all wages owed to Plaintiffs and Class Members).

13 9. On the Ninth Cause of Action:

14 a. A civil penalty against Defendant in the amount of \$100 for the initial
15 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the
16 California Labor Code for Plaintiff and the Aggrieved Employees during all of the pay periods in
17 the PAGA Period in which an underlying Labor Code violation occurred, and on-going until the
18 violations are corrected;

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

22 c. An award of all costs incurred by the undersigned counsel for Plaintiff in
23 connection with Plaintiff's and Aggrieved Employees' PAGA claim against Defendant, as
24 provided for in Labor Code § 2699(g)(1); and

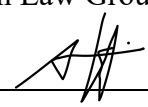
25 10. On all Causes of Action:

26 a. All other relief as this Court deems just and proper.
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1 Dated: January 18, 2023

Respectfully,

2 Employment Rights Law Group, APC
3 Elizabeth Law Group, APC

4 By: 

5 Amir Seyedfarshi, Esq.
6 Elizabeth Zepeda
7 Counsel for Plaintiff, the Class, and the
8 Aggrieved Employees
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