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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
CIVIL COMPLEX CENTER

ANTHONY GARCIA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SYSTEM PAVERS, LLC, a California
limited liability company; and DOES 1 to
100, inclusive

Defendant.

CASE NO: 30-2023-01360706-CU-OE-CXC

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

(1) FAILURE TO PAY TIMELY WAGES
(LABOR CODE § 204, 210);
(2) FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS (LABOR
CODE § 226);
(3) FAILURE TO PROVIDE TIMELY, DUTY-
FREE MEAL PERIODS AND/OR PAY MEAL
PERIOD PREMIUMS FOR MISSED MEAL
PERIODS (LABOR CODE §§ 226.7, 512; IWC
WAGE ORDER 16-2001);
(4) FAILURE TO PROVIDE COMPLIANT
REST PERIODS AND/OR PAY REST PERIOD
PREMIUMS (LABOR CODE § 226.7; IWC
WAGE ORDER 16-2001);
(5) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802);
(6) FAILURE TO PAY MINIMUM WAGES
FOR ALL HOURS WORKED (LABOR CODE §
1197);
(7) UCL VIOLATIONS (BUS. & PROF. CODE
§§ 17200-17204); AND
(8) VIOLATION OF PRIVATE ATTORNEYS
GENERAL ACT (PAGA) (LABOR CODE §§
2698, ET SEQ.)

DEMAND FOR JURY TRIAL

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Attorneys for Plaintiff, ANTHONY GARCIA, as an individual and on behalf of all others
similarly situated,

1 Plaintiff Anthony Garcia (“Plaintiff”) on behalf of himself, and all others similarly situated
2 (hereinafter “Class Members”) complain and allege as follows:

3 OVERVIEW OF CLAIMS

4 1. Plaintiff bring this action on behalf of himself and all others similarly situated, as a
5 class action and PAGA action on behalf of the California general public, against Defendant System
6 Pavers LLC and DOES 1 to 100 (“Defendant”) for their (1) failure to provide timely wages; (2)
7 failure to provide accurate, itemized wage statements within the one year prior to the filing of this
8 Complaint; (3) failure to provide timely and duty-free meal periods and/or pay meal period
9 premiums for missed meal periods; (4) failure to provide compliant rest periods and/or pay rest
10 period premiums; (5) failure to reimburse employees for their expenses incurred in connection
11 with work-related usage of their personal cell phones and cleaning uniforms); (6) failure to pay
12 minimum wages for all hours worked; (7) UCL violations based on the foregoing; and (8)
13 Violation of the Private Attorneys General Act, Labor Code §§ 2698, et seq. As a result of the
14 foregoing, Defendant has violated California statutory laws as described below.

15 2. The “Class Period” is designated as the period from four (4) years prior to the filing
16 of this action through the trial date. Defendant’s violations of California’s wage and hour laws and
17 unfair competition laws, as described more fully below, have been ongoing throughout the Class
18 Period. The Aggrieved Employees consist of all current and former non-exempt employees of
19 Defendant, System Pavers LLC and DOES 1 through 100, inclusive (collectively, “Defendants”),
20 in the State of California during the PAGA Period. The PAGA Period is defined as one year prior
21 to Plaintiff’s notice to the LWDA through judgment.

22 VENUE

23 3. Venue is proper in this county under section 395.5 of the California Code of Civil
24 Procedure. Many, if not all, of the putative Class Members and Aggrieved employees were
25 employed and/or performed work during the Class Period and PAGA period by Defendant in
26 Orange County. Many of the acts alleged herein including Defendant’s failure to provide timely
27 and duty-free meal periods and pay meal period premiums, failure to provide compliant rest
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1 periods and pay rest period premiums, failure to provide accurate itemized wage statements, and
2 failure to reimburse business expenses occurred in Orange County. Venue is therefore proper in
3 Orange County.

4 **JURISDICTION**

5 4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
6 dollars of business by overseeing a construction company that transforms outdoor living spaces by
7 way of installations, paving, and design. Thus, Defendant has obtained the benefits of the laws of
8 the State of California. In addition, Plaintiff asserts no claims arising under federal law. Rather,
9 Plaintiff brings causes of action based solely on, and arising from, California law. Defendant is a
10 California resident corporation so there is no federal diversity jurisdiction under CAFA or
11 otherwise. The claims of the Class are also based solely on California law described herein. The
12 total amount sought by Plaintiff, including attorneys' fees, is less than \$5,000,000.00.

13 **THE PARTIES**

14 **A. The Plaintiff**

15 5. Plaintiff is a California resident and was an employee of Defendant in California
16 during the relevant time period. From at least four years from the filing of this complaint through
17 the present, and on-going, Defendant's employees, including Plaintiff during his employment, did
18 not receive all wages timely, were not provided accurate and/or complete wage statements, were
19 not provided timely and duty-free meal periods and/or provided meal period premiums, were not
20 provided compliant rest periods and/or provided rest period premiums, and were not reimbursed
21 for all expenses incurred in the discharge of their duties.

22 6. Each of the Class Members consists of identifiable, current, and/or former similarly
23 situated persons, who were/are employed by Defendant as non-exempt employees in the state of
24 California during the Class Period (hereinafter referred to as "Class Members" or the "Class").

25 7. Each of the Aggrieved employees consist of identifiable, current, and/or former
26 similarly situated persons, who were/are employed by Defendant as non-exempt employees in the
27 state of California during the PAGA Period (hereinafter referred to as "Aggrieved employees."
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1 **B. The Defendant**

2 8. Defendant System Pavers LLC is a California limited liability company
3 headquartered in Santa Ana, California. Defendant is a construction company that transforms
4 outdoor living spaces by way of installations, paving, and design. Defendant employs employees,
5 such as the Plaintiff, Class Members, and Aggrieved employees.

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

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

18 11. Defendant was and is the employer of Plaintiff, Class Members, and Aggrieved
19 employees for all relevant time periods. During the Class Period, the total number of Class
20 Members is estimated to be over 300.

21 **ADMINISTRATIVE PREREQUISITES**

22 12. Plaintiff brings this case as a representative action seeking penalties for the State
23 of California in a representative capacity, as provided for under PAGA, Labor Code section 2698
24 et seq., to the extent permitted by law, as an aggrieved employee who was employed by Defendant
25 and did not receive all minimum, regular, and overtime wages due, was not provided compliant
26 meal or rest periods or premium compensation in lieu thereof, was not provided accurate itemized
27 wage statements, was not reimbursed for necessary business expenditures, and was not paid in a
28 timely manner.

13. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause of action under PAGA only after giving the Labor Workforce Development Agency (“LWDA”) and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after sixty-five (65) days have passed without notice from the LWDA.

14. On October 27, 2023, prior to the filing of this complaint, Plaintiff gave written notice of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. This written notice was given via certified mail to Defendant(s), and to the LWDA by electronically filing the notice via the Department of Industrial Relations website. Plaintiff was given an LWDA case number of [LWDA-CM-990282-23](#). A true and correct copy of Plaintiff's notice to the LWDA and Defendants, dated October 27, 2023, is attached hereto as **Exhibit A**.

15. Under Labor Code section 2699.3, subdivision (a)(2)(C), “Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within sixty (60) days of the time periods specified in this part.”

16. More than sixty-five (65) days have passed since Plaintiff submitted his October 27, 2023 notice to the LWDA and Defendant of the specific alleged Labor Code violations, and the LWDA has not provided notice to Plaintiff of its intent to investigate such alleged violations. Also, Plaintiff has not received notice of Defendant's intent to cure any of the alleged violations. Accordingly, Plaintiff has satisfied the administrative prerequisites for filing this action.

FACTUAL ALLEGATIONS

17. Defendant operates and, at all times during the Class Period and PAGA period, has done and does business in California as a construction company. Defendant, in the course of operating its business in California during the Class Period, employed Plaintiff, the Class Members, and Aggrieved employees.

18. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in

1 advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these
2 requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly
3 payroll if the wages are paid not more than seven calendar days following the close of the payroll
4 period.

5 19. At all times relevant hereto, whenever Plaintiff and other employees paid on a
6 commission basis earned commissions, Defendant only paid them their commissions due once per
7 month, in violation of Labor Code section 204. *See Amaral v. Cintas Corp.* No. 2, 163 Cal.App.4th
8 1157, 1209 (2008); *see also Peabody v. Time Warner Cable*, 59 Cal. 4th 662 (2014) (commissions
9 must be paid twice every calendar month).

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

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

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

1 22. Here, Defendant failed to provide Plaintiff, the Class, and Aggrieved employees
2 with twice monthly wage statements that included all commissions due, thus violating Labor Code
3 § 226(a). Specifically, the wage statements issued by Defendant to Plaintiff, the Class, and
4 Aggrieved employees did not and do not include the correct gross and net wages in violation of
5 Labor Code § 226(a), since they did not include all commissions earned on a twice monthly basis.

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

11 24. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
12 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
13 per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee
14 for each violation in a subsequent citation, for which the employer fails to provide the employee a
15 wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As
16 explained in detail above, Defendant failed to provide Plaintiff, the Wage Statement Class
17 Members, and Aggrieved employees with accurate itemized wage statements.

18 25. Labor Code § 512 requires employers to provide employees with a thirty (30)
19 minute uninterrupted and duty-free meal period within the first five (5) hours of an employee's
20 shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a
21 second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512,
22 an employer may not employ an employee for a work period of more than ten (10) hours, without
23 providing the employee with a second meal period of not less than thirty (30) minutes. The second
24 meal period may not be waived if the total hours worked is more than twelve (12) hours.

25 26. Under Labor Code § 512, if an employer maintains a uniform policy that does not
26 authorize and permit the amount of meal time called for under the law (as specified in the
27 applicable Wage Order), "it has violated the wage order and is liable." The *Brinker* Court explained
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1 in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

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

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

5 27. Following *Brinker*, the Courts of Appeal have confirmed that liability for meal
6 period violations arises when an employer adopts a uniform policy that fails to provide a duty-free
7 meal period as required by Labor Code section 512.¹

8 28. Here, the Plaintiff and the other labor employees who are the Class for this claim,
9 and Aggrieved employees are not relieved of all duties during their meal periods several times per
10 week because they were required to remain on the premises for lunch. As a result, the meal periods
11 taken by Plaintiff, the Class, and Aggrieved employees are all on-duty.

12 29. “An on-duty meal period is permitted only when the nature of the work prevents an
13 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
14 break.” *Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement
15 must include a provision allowing the employee to revoke it at any time. *Id.* Here, neither Plaintiff,
16 nor the Class, nor the Aggrieved employees were ever asked to sign an on-duty meal period
17 agreement. But even if Plaintiff, the Class, and Aggrieved employees had been asked to sign on-
18 duty meal period agreements, it is likely that such agreements would violate California law.
19 Generally, the DLSE and courts have “found that the nature of the work exception applies: ‘(1)
20 where the work has some particular external force that requires the employee to be on duty at all
21 times, and (2) where the employee is the sole employee of a particular employer.” *Id.* at p. 945;
22 *Abdullah v. U.S. Security Associates, Ifenc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the
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24 ¹ For example, in *Faulkinbury*, the Court applied *Brinker*: “In *Faulkinbury I*, we concluded that even if [defendant]’s
25 on-duty meal break policy was unlawful, [defendant] would be liable only when it actually failed to provide a required
26 off-duty meal break. *Brinker* leads us now to conclude [defendant] would be liable upon a determination that
[defendant]’s uniform on-duty meal break policy was unlawful.” *Faulkinbury*, 216 Cal.App.4th at p. 235.) The Court
27 went on: “the employer’s liability arises by adopting a uniform policy that violates the wage and hour laws. Whether
or not the employee was able to take the required break goes to damages” (*Ibid.* [citations omitted]; see also
28 *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal. App. 4th 701, 728.)

1 employer's obligation to determine whether the nature of the work prevents an employee from
2 being relieved *before* requiring an employee to take an on-duty meal period.” *Lubin*, 5 Cal. App.
3 5th at p. 946.) Nor may an employer “discharge its duty by arguing that its clients who requested
4 on-duty meal periods determined that the nature of the work prevented officers from being relieved
5 of all duty.” *Id.* at p. 947; *Benton*, 220 Cal. App. 4th at p. 729.)

6 30. Labor Code § 226.7 provides “an employer shall not require an employee to work
7 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
8 regulation, standard, or order of the Industrial Welfare Commission (“IWC”).

9 31. Pursuant to Labor Code § 226.7 and IWC Wage Order No. 16-2001, Defendant
10 failed to provide Plaintiff, the Class, and the Aggrieved employees in various labor positions
11 within the construction company with duty-free rest periods of not less than ten (10) minutes for
12 every major fraction of four (4) hours worked. Instead, Defendant regularly and consistently
13 required Plaintiff, the Class, and the Aggrieved employees to remain on the premises for rest
14 breaks. This constitutes a failure to provide duty-free rest periods and triggers rest period
15 premiums.

16 32. Plaintiff, the Class, and the Aggrieved employees do not fall under the professional
17 exemption stated in IWC Wage Order 16-2001. The Wage Order states that the Order does not
18 apply to all persons employed in professional occupations. To qualify for the exemption a
19 professional must earn a monthly salary equivalent to no less than two (2) times the state minimum
20 wage for full-time employment. Full time employment is defined in Labor Code § 515(c) as 40
21 hours per week. *See* IWC Wage Order 16-2001, Section 1(A)(3)(d). Here, Plaintiff, the Class, and
22 the Aggrieved employees earned approximately \$58,240.00 per year in 2022, which is less than
23 the double minimum wage in the state of California, falling short of the \$62,400 threshold needed
24 to qualify for the professional exemption. Therefore, Plaintiff, the Class, and the Aggrieved
25 employees are not exempt from meal period and rest period requirements under the professional
26 exemption of IWC Wage Order 16-2001.

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

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

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

6 **CLASS ACTION ALLEGATIONS**

7 36. Plaintiff brings this action, on behalf of himself and all others similarly situated, as
8 a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
9 composed of and defined as:

10 All individuals who or were employed by System Pavers LLC in the State of California
11 during the Class Period (hereinafter referred to as “Class Members” or the “Class”).

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

16 a. Numerosity: The potential members of the Class as defined are so
17 numerous that joinder of all the members of the Class is impracticable. According to Defendant,
18 the total number of Class Members is estimated to be more than 300. The Class Members are
19 dispersed throughout California. Joinder of all members of the proposed classes is therefore not
20 practicable.

21 b. Commonality: There are questions of law and fact common to Plaintiff and
22 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 Sections 204 and 210 of the Labor Code by
25 failing to pay member of the Class all wages due on a timely basis;

26 ii. Whether Defendant failed to provide Plaintiff and the members of the Wage
27 Statement Class complete wage statements in violation of Labor Code Section 226(a);
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1 iii. Whether Defendant violated Labor Code sections 226.7 and 512 and
2 Section 10 of IWC Wage Order No. 16 by failing to provide timely, duty-free meal periods to
3 Plaintiff and the members of the Class in California during the Class Period;

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

7 v. Whether Defendant violated Labor Code sections 226.7 and Section 11 of
8 IWC Wage Order No. 16 by failing to provide compliant rest periods to Plaintiff and the members
9 of the Class in California during the Class Period;

10 vi. Whether Defendant violated Labor Code section 226.7 by failing to provide
11 one hour of premium pay to each member of the Class for each day that a compliant rest period was
12 not provided in California during the Class Period;

13 vii. Whether Defendant violated 2802 of the Labor Code and section 17203 of
14 the California Business and Professions Code during the Class Period by failing to reimburse
15 Plaintiff and the Class Members for their work-related expenses including personal cell phone and
16 uniform cleaning expenses;

17 viii. Whether Defendant engaged in an unfair practice and violated section
18 17200 of the California Business and Professions Code by failing to provide Plaintiff and the
19 members of the Class with timely, duty-free meal breaks during the Class Period;

20 ix. Whether Defendant engaged in an unfair practice and violated section
21 17200 of the California Business and Professions Code by failing to provide Plaintiff and members
22 of the Class with meal period premiums for each day they were not provided a compliant meal
23 break;

24 x. Whether Defendant engaged in an unfair practice and violated section
25 17200 of the California Business and Professions Code by failing to provide Plaintiff and the
26 members of the Class with compliant breaks during the Class Period;

27 xi. Whether Defendant engaged in an unfair practice and violated section
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1 17200 of the California Business and Professions Code by failing to provide Plaintiff and members
2 of the Class with rest period premiums for each day they were not provided a compliant rest break;

3 xii. Whether Defendant engaged in an unfair practice and violated section
4 17200 of the California Business and Professions Code by failing to reimburse Plaintiff and the
5 Class for their business-related expenses including cell phone and uniform cleaning expenses
6 during the Class Period;

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

9 xiv. Whether defendant violated Labor Code section 1197 by failing to pay
10 minimum wages for all hours worked;

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

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

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

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

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

FIRST CAUSE OF ACTION
FAILURE TO PAY WAGES ON A TIMELY BASIS
[Cal. Labor Code §§ 204, 210]

On Behalf of Plaintiff, the Class, and the Aggrieved employees Against Defendant

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

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

40. At all times relevant hereto, whenever Plaintiff and other employees paid on a commission basis earned commissions, Defendant only paid them their commissions due once per month, in violation of Labor Code section 204. *See Amaral v. Cintas Corp.* No. 2, 163 Cal.App.4th 1157, 1209 (2008); *see also Peabody v. Time Warner Cable*, 59 Cal. 4th 662 (2014) (commissions

1 must be paid twice every calendar month).

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

11 **SECOND CAUSE OF ACTION**
12 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
13 **[Cal. Labor Code § 226(a)]**

14 **On behalf of Plaintiff, the Wage Statement Class Members, and the Aggrieved employees**
15 **Against Defendant**

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

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

19 Every employer shall...furnish each of his or her employees...an accurate itemized
20 statement in writing showing (1) gross wages earned, (2) total hours worked by the
21 employee, except for any employee whose compensation is solely based on a salary and
22 who is exempt from payment of overtime under subdivision (a) of Section 515 or any
23 applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units
24 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
25 deductions, provided that all -deductions made on written orders of the employee may be
26 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
27 period for which the employee is paid, (7) the name of the employee and only the last four
28 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...

43. Here, Defendant failed to provide Plaintiff, the Class, and the Aggrieved employees
with twice monthly wage statements that included all commissions due, thus violating Labor Code

§ 226(a). Specifically, the wage statements issued by Defendant to Plaintiff, the Class, and the Aggrieved employees did not and do not include the correct gross and net wages in violation of Labor Code § 226(a), since they did not include all commissions earned on a twice monthly basis. See Exhibit A, a sample of Plaintiff's wage statement.

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

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE TIMELY AND DUTY-FREE MEAL BREAKS AND PAY
MISSED MEAL BREAK PREMIUMS
[Cal. Labor Code §§ 226.7, 512; IWC Wage Order 16-2001 Section 10]
On Behalf of Plaintiff, the Class, and the Aggrieved employees Against Defendant

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

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

47. 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. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a second meal period of not less than thirty (30) minutes. The second meal period may not be waived if the total hours worked is more than twelve (12) hours.

48. Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the

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

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

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

6 49. Following *Brinker*, the Courts of Appeal have confirmed that liability for meal
7 period violations arises when an employer adopts a uniform policy that fails to provide a duty-free
8 meal period as required by Labor Code section 512.²

9 50. Here, the Plaintiff and the other labor employees who are the Class for this claim,
10 and the Aggrieved employees, are not relieved of all duties during their meal periods several times
11 per week because they were required to remain on the premises for lunch. As a result, the meal
12 periods taken by Plaintiff, the Class, and the Aggrieved employees are all on-duty.

13 51. “An on-duty meal period is permitted only when the nature of the work prevents an
14 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
15 break.” *Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement
16 must include a provision allowing the employee to revoke it at any time. *Id.* Here, neither Plaintiff,
17 nor the Class, nor the Aggrieved employees were ever asked to sign an on-duty meal period
18 agreement. But even if Plaintiff, the Class, and the Aggrieved employees had been asked to sign
19 on-duty meal period agreements, it is likely that such agreements would violate California law.
20 Generally, the DLSE and courts have “found that the nature of the work exception applies: ‘(1)
21 where the work has some particular external force that requires the employee to be on duty at all
22 times, and (2) where the employee is the sole employee of a particular employer.” *Id.* at p. 945;

23
24 ² For example, in *Faulkinbury*, the Court applied *Brinker*: “In *Faulkinbury I*, we concluded that even if [defendant]’s
25 on-duty meal break policy was unlawful, [defendant] would be liable only when it actually failed to provide a required
26 off-duty meal break. *Brinker* leads us now to conclude [defendant] would be liable upon a determination that
[defendant]’s uniform on-duty meal break policy was unlawful.” *Faulkinbury*, 216 Cal.App.4th at p. 235.) The Court
27 went on: “the employer’s liability arises by adopting a uniform policy that violates the wage and hour laws. Whether
or not the employee was able to take the required break goes to damages” (*Ibid.* [citations omitted]; see also
Benton v. Telecom Network Specialists, Inc. (2013) 220 Cal. App. 4th 701, 728.)

1 *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the
2 employer’s obligation to determine whether the nature of the work prevents an employee from
3 being relieved *before* requiring an employee to take an on-duty meal period.” *Lubin*, 5 Cal. App.
4 5th at p. 946.) Nor may an employer “discharge its duty by arguing that its clients who requested
5 on-duty meal periods determined that the nature of the work prevented officers from being relieved
6 of all duty.” *Id.* at p. 947; *Benton*, 220 Cal. App. 4th at p. 729.)

7 52. Here, there is nothing in the job duties of Plaintiff, the Class, and the Aggrieved
8 employees that would require them to remain on-duty and on premises while taking a meal period.
9 The California Supreme Court has made it clear that requiring an employee to remain on premises
10 is inconsistent with requiring duty-free breaks. *See Augustus v. ABM Security Services, Inc.*, 2016
11 D.J. 12608 (2016)³; see also *Frlekin v. Apple Inc.*, No. S243805, 2020 WL 727813 (Cal. Feb. 13,
12 2020).⁴ Here, Plaintiff and the other labor employees were required to remain on premises several
13 times per week. This constitutes a failure to provide duty-free lunches and triggers meal period
14 premiums.

15 53. As a result, for each day on which Plaintiff, other Class members, and the
16 Aggrieved employees were not provided a timely meal break, Plaintiff, the Class Members, and
17 the Aggrieved employees are entitled to recover one hour of premium pay pursuant to Labor Code
18 section 226.7 and Section 10 of the IWC Wage Order.

19 **FOURTH CAUSE OF ACTION**
20 **FAILURE TO PROVIDE COMPLIANT REST BREAKS AND PAY REST BREAK**
21 **PREMIUMS**
22 **[Cal. Labor Code § 226.7; IWC Wage Order 16-2001 Section 11]**
23 **On Behalf of Plaintiff, the Class, and the Aggrieved employees Against Defendant**

24 54. Plaintiff re-alleges and incorporates by reference each and every allegation set forth

25 ³ In *Augustus v. ABM*, the California Supreme Court declared that state law prohibits on-duty and on-call rest
26 periods. It stated that **employers must (1) relieve their employees of all duties during rest periods and (2)**
27 **relinquish any control over how employees spend their break time.**

28 ⁴ *ABM* and *Frelekin* together stand for the proposition that the proposition that on-premises breaks are not labor code
complaint.

1 in the preceding paragraph.

2 55. Labor Code § 226.7 provides “an employer shall not require an employee to work
3 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
4 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
5 Order Nos. 16-2001, an employer must authorize and permit all employees to take ten (10) minute
6 duty free rest periods for every major fraction of four hours worked. *See Augustus v. ABM Security*
7 *Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods employers must
8 relieve employees of all duties and relinquish control over how employees spend their time.”).

9 56. Pursuant to Labor Code § 226.7 and IWC Wage Order No. 16-2001, Defendant
10 failed to provide Plaintiff, all Class Members, and the Aggrieved employees in various labor
11 positions with duty-free rest periods of not less than ten (10) minutes for every major fraction of
12 four (4) hours worked. Instead, Defendant regularly and consistently required Plaintiff, other Class
13 Members, and the Aggrieved employees to remain on the premises for rest breaks. This constitutes
14 a failure to provide duty-free rest periods and triggers rest period premiums.

15 57. As a result, for each day on which Plaintiff, other Class members, and the
16 Aggrieved employees were not provided a compliant rest break, Plaintiff, the Class Members, and
17 the Aggrieved employees are entitled to recover one hour of premium pay pursuant to Labor Code
18 section 226.7 and Section 11 of the IWC Wage Order.

19 **FIFTH CAUSE OF ACTION**
20 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
21 **[Cal. Labor Code § 2802]**

22 **On Behalf of Plaintiff, the Class, and the Aggrieved employees Against Defendant**

23 58. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
24 in the preceding paragraph.

25 59. Pursuant to section 2802(a) of the California Labor Code, “[a]n employer shall
26 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
27 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
28 directions of the employer...” Labor Code 2802(c) defines necessary to include all “reasonable”

1 expenses. The purpose of this statute is “to prevent employers from passing their operating
2 expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562
3 (2007) (quoting legislative history from the 2000 amendment to the statute and holding that outside
4 salespersons are entitled to gas mileage reimbursement in addition to their commission pay).
5 Labor Code section 2804 also makes it crystal clear that claims under section 2802 are not
6 waivable.

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

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

62. Here, Plaintiff, the Class, and the Aggrieved employees are and were employees working in various labor positions. Defendant has no policy or practice of affirmatively reimbursing employees for their out of pocket cell phone expenses incurred for work-related purposes. Additionally, Defendant had no policy or practice of affirmatively reimbursing employees for maintaining and washing their uniforms. Plaintiff, the Class, and the Aggrieved employees used their personal cell phone for work, and washed and maintained their uniforms without any reimbursement in violation of Labor Code section 2802.

63. Accordingly, Defendant violated Labor Code § 2802 and continues to do so by failing to reimburse the Class Members, and the Aggrieved employees for all work-related cell phone and uniform cleaning expenses they incurred in connection with their job duties.

SIXTH CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES FOR ALL HOURS WORKED
(Labor Code §§ 1197)
On Behalf of Plaintiff, the Class, and the Aggrieved employees Against Defendant

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

65. Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order 9-2001 also obligates employers to pay each employee minimum wages for all hours worked. These minimum wage standards apply to each hour employees worked for 3 which they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

66. Furthermore, pursuant to Labor Code § 1198, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and

1 the standard conditions of labor for employees. The employment of any employee for longer hours
2 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

3 67. During the relevant time period, Plaintiff, the Class, and the Aggrieved employees
4 were paid on an hourly basis by the Defendants in the state of California. Plaintiff, the Class, and
5 the Aggrieved employees received a salary payment for 80 hours a week at \$28.00 per hour.
6 Plaintiff, the Class, and the Aggrieved employees worked overtime every day and did not received
7 overtime payment. Moreover, there is no records of clocking in and clocking out for every shifts
8 that Plaintiff, the Class, and the Aggrieved employees have worked.

9 **SEVENTH CAUSE OF ACTION**
10 **UNFAIR COMPETITION LAW VIOLATIONS**
11 **(BUS. & PROF. CODE § 17200, ET SEQ.)**

12 **On Behalf of Plaintiff, the Class, and the Aggrieved employees Against Defendant**

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

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

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

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

1 72. As a direct and proximate result of Defendant's unlawful business practices,
2 Plaintiff, the Class Members, and the Aggrieved employees have suffered economic injuries.
3 Defendant has profited from its unlawful, unfair, and/or fraudulent acts and practices.

4 73. Plaintiff, similarly situated Class Members, and the Aggrieved employees are
5 entitled to monetary relief pursuant to Business & Professions Code §§ 17203 and 17208 for
6 unpaid meal and rest period premiums and unreimbursed business expenses due and interest
7 thereon, from at least four years prior to the filing of this complaint through to the date of such
8 restitution, at rates specified by law. Defendant should be required to disgorge all the profits and
9 gains it has reaped and restore such profits and gains to Plaintiff, Class Members, and the
10 Aggrieved employees, from whom they were unlawfully taken.

11 74. Through its actions alleged herein, Defendant has engaged in unfair competition
12 within the meaning of section 17200 of the California Business & Professions Code, because
13 Defendant's conduct, as herein alleged has damaged Plaintiff, the Class Members, and the
14 Aggrieved employees by wrongfully denying them reimbursement for business expenses, and
15 wrongfully denying them meal and rest period premiums, and therefore was substantially injurious
16 to Plaintiff, the Class Members, and the Aggrieved employees.

17 75. Defendant engaged in unfair competition in violation of sections 17200 et seq. of
18 the California Business & Professions Code by violating Sections 226.7 and 512 of the California
19 Labor Code, and Sections 10 and 11 of the IWC Wage Order 16-2001.

20 76. Defendant's course of conduct, act and practice in violation of the California laws
21 mentioned above constitute independent violations of sections 17200 et seq. of the California
22 Business and Professions Code.

23 77. Plaintiff, similarly situated Class Members, and the Aggrieved employees are
24 entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business &
25 Professions Code § 17202.

26 78. Plaintiff has assumed the responsibility of enforcement of the laws and public
27 policies specified herein by suing on behalf of themselves, other similarly situated Class Members,
28

1 and the Aggrieved employees previously or presently employed by Defendant in California.
2 Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff
3 will incur a financial burden in pursuing this action in the public interest. Therefore, an award of
4 reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5,
5 and Labor Code § 2802.

6
7 **EIGHTH CAUSE OF ACTION**

8 **VIOLATION OF CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL**
9 **ACT**

10 **(Lab. Code, §§ 2698 et seq.)**

11 **(By Plaintiff and the Aggrieved Employees against All Defendants)**

12 79. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
13 as if fully allege herein.

14 80. Labor Code sections 2698–2699.5 provide that a civil penalty, assessed and
15 collected by the Labor and Workforce Development Agency or any of its departments, divisions,
16 commissions, boards, agencies or employees (“LWDA”) for certain violations of the Labor Code,
17 may be recovered through a civil action by an aggrieved employee on behalf of himself and
18 collectively on behalf of all other current or former employees.

19 81. Labor Code section 2699, subdivision (a), also known as the Private Attorneys
20 General Act of 2004 (or PAGA), states: “Notwithstanding any other provision of law, any
21 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
22 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
23 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
24 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
25 or former employees pursuant to the procedures specified in section 2699.3.”

26 82. Plaintiff and Class Members are “aggrieved employees” as defined by Labor Code
27 section 2698 et seq. in that they are all current or former employees of Defendant, and one or
28 more of the alleged violations was committed against them.

83. On October 27, 2023, prior to filing this complaint, Plaintiff gave written notice

1 by certified mail to the LWDA and to Defendant of the specific provisions alleged to have been
2 violated, including the facts and theories to support the alleged violations as required by Labor
3 Code section 2699.3, subdivision (a)(1). (See "Exhibit A"), which are hereby incorporated by
4 reference.

5 84. The LWDA has not provided Plaintiff with any notice that it intends to investigate
6 the alleged violations. Plaintiff does not anticipate an investigation into his claims by the LWDA.

7 85. Pursuant to Labor Code section 2699.3, notwithstanding any other provision of
8 law, Plaintiff may, as a matter of right, amend the existing complaint to add a cause of action
9 under Labor Code section 2698.

10 86. Plaintiff, individually and on behalf of all aggrieved Class Members, asserts all of
11 the claims in this complaint against Defendant under the capacity of PAGA, and seeks all statutory
12 penalties available under the Labor Code.

13 87. Pursuant to Labor Code section 2698 et seq., Plaintiff, individually and on behalf
14 of all aggrieved Class Members, requests and is entitled to recover from Defendant: unpaid wages,
15 overtime compensation, rest and meal period compensation and penalties, business expenditure
16 reimbursements and penalties, waiting period wages and penalties according to proof, penalties
17 for failure to keep accurate payroll records, interest, attorneys' fees and costs pursuant to Labor
18 Code sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 2802, as well
19 as all statutory penalties, and attorneys' fees against Defendants. The aforementioned penalties
include, but are not limited to, the following:

- 20 a. Penalties under Labor Code section 2698 in the amount of one hundred dollars
21 (\$100.00) for each aggrieved employee per pay period for each initial
22 violation, and two hundred dollars (\$200.00) for each aggrieved employee per
23 pay period for each subsequent violation;
- 24 b. Penalties under Code of Regulations, Title 8, Section 11070 in the amount of
25 fifty dollars (\$50.00) for each aggrieved employee per pay period for the initial
26 violation, and two-hundred dollars (\$200.00) for each aggrieved employee per
27 pay period for each subsequent violation;
- 28

1 c. Any and all additional penalties and sums as provided by the Labor Code
2 and/or other statutes.

3 88. In addition, thereto, pursuant to Labor Code section 2699, subdivision (i), Plaintiff
4 seeks and is entitled to: seventy percent (75%) of all penalties obtained under Labor Code section
5 2698 to be allocated to the Labor and Workforce Development Agency for enforcement of labor
6 laws, including the administration of this part, and for education of employers and employees
7 about their rights and responsibilities under this code, to be continuously appropriated to
8 supplement and not supplant the funding to the agency for those purposes; and twenty five percent
9 (25%) to the aggrieved employees.

10 89. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and
11 costs pursuant to Labor Code section 2699(g)(1), and any other applicable statute.

12 **JURY DEMAND**

13 90. Plaintiff hereby demands trial by jury of his, the Class's, and the Aggrieved
14 employees' claims against Defendant, and of all claims which are subject to a bench trial.

15 **PRAYER FOR RELIEF**

16 Wherefore, Plaintiff, on behalf of himself, the members of the Class, and the
17 Aggrieved employees pray for judgment against Defendant as follows:

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

20 2. On the First Cause of Action:

21 a. A declaratory judgment that Defendant violated California Labor Code §§
22 204 and 210;

23 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiff, the Class,
24 and the Aggrieved employees for penalties pursuant to Labor Code § 210.

25 3. On the Second Cause of Action:

26 a. A declaratory judgment that Defendant violated California Labor Code
27 §226 by issuing inaccurate and/or incomplete wage statements to Plaintiff, the wage statement
28

1 Class Members, and the Aggrieved employees;

2 b. An award to Plaintiff, Class Members, and the Aggrieved employees of \$50
3 for each initial pay period, one year prior to the filing of this Complaint through the date of trial,
4 in which a violation of Section 226 occurred and \$100 for each subsequent pay period, one year
5 prior to the filing of this Complaint through the date of trial, in which a violation of Section 226
6 occurred, not to exceed \$4,000 for each member of the Class, and the Aggrieved employees, as
7 well as an award of costs and reasonable attorney's fees, pursuant to Labor Code § 226(e).

8 4. On the Third Cause of Action:

9 a. A declaratory judgment that Defendant violated California Labor Code §§
10 226.7, 512 and Section 10 of IWC Wage Order 16-2001;

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

14 5. On the Fourth Cause of Action:

15 a. A declaratory judgment that Defendant violated California Labor Code §
16 226.7 and Section 11 of IWC Wage Order 16-2001;

17 b. Pursuant to Labor Code § 226.7, an award to Plaintiff, the Class Members,
18 and the Aggrieved employees for an hour of pay for each day that a compliant rest period was not
19 provided during the Class Period and PAGA period.

20 6. On the Fifth Cause of Action:

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

22 a. Pursuant to 2802 (a)-(c), reimbursement for all the unreimbursed business
23 related expenses including cell phones and uniform cleaning expenses, plus interest and attorney's
24 fees.

25 7. On the Sixth Cause of Action:

26 a. A declaratory judgement that Defendant violated California Labor Code
27 §1197 by failing to pay Plaintiff, the minimum Class Members and the Aggrieved employees;
28

1 8. On the Seventh Cause of Action:

2 a. That the Court find and declare that Defendant have violated the UCL and
3 committed unfair and unlawful business practices by failing to pay meal break premiums, and by
4 failing to reimburse Plaintiff, the Class, and the Aggrieved employees for all their personal cell
5 phone and uniform cleaning expenses;

6 b. Restitution, including but not limited to, the relief permitted by sections
7 226.7, and 2802 of the California Labor Code (i.e., pay as specified for meal and rest period
8 premiums and reimbursement of all business-related expenses by Plaintiff, the members of the
9 Class, and the Aggrieved employees during the Class period and PAGA period;

10 9. On All Causes of Action

11 a. All other relief as this Court deems proper.

12
13 Dated: January 4, 2024

Respectfully,

14 MAHONEY LAW GROUP, APC
15 EMPLOYMENT RIGHTS LAWYERS, APC

16 By:



17
18 _____
19 Kevin Mahoney, Esq.
20 Amir Seyedfarshi, Esq.
21 Counsel for Plaintiff and the Class
22
23
24
25
26
27
28

EXHIBIT A



Employment Rights Lawyers, APC
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424-777-0964
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October 27, 2023

Via Online Filing with the LWDA & Defendant s Attorney of Record

Systems Pavers, LLC
C/O NATIONAL REGISTERED AGENTS, INC.
330 N BRAND BLVD,
GLENDALE, CA 91203

Juli Trotter, Esq.
Call Jensen
jtrotter@calljensen.com

Re: NOTICE OF INTENT TO FILE SUIT (Labor Code § 2699.3)

Anthony Garcia v. Systems Pavers, LLC

Dear Gentlepersons:

This letter is the written notice required by the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Section 2698 *et seq.*, including without limitation California Labor Code Sections 2699.33 (a)(1), 2699.3(b)(1), and/or 2699.3(c)(1) of the California Labor Code, and any other applicable provision of statute, rule, or law. This letter is being sent simultaneously via online filing to the California Labor and Workforce Development Agency. This letter is an important formal legal notice which may lead to action against you and your company in a court of law and in administrative proceedings, or both and the imposition of substantial penalties and other order and remedies against you and your company.

This office, along with our co-counsel, Kevin Mahoney and Beyonca Alem from Mahoney Law Group, represents Plaintiff Anthony Garcia (“Plaintiff”) and a proposed group (and subgroups) of current and former Aggrieved Employees of System Pavers Inc., a California corporation, and its co-employers, successors in interest, and/or merged entities (“Defendants,”) in connection with his individual and PAGA representative claims for civil penalties, based on, without limitation, Defendant’s:

- (1) Failure to pay minimum wages in violation of Labor Code section 1197 for all hours worked;
- (2) failure to provide timely meal periods within the first five (5) hours and to provide lawful second meal periods for shifts worked in excess of ten (10) hours and/or pay meal period premiums for late meal breaks in violation of Labor Code §§ 226.7 and 512;
- (3) Failure to provide timely, duty-free rest periods for every four hours of work or major fraction thereof in violation of Labor Code § 226.7 and Section 12 of the applicable IWC Wage Order
- (4) Failure to reimburse employees for their expenses incurred in connection with work-related usage of their personal cell phones (since all drivers were required to be in touch with dispatchers using their own cell phone) in violation of Labor Code section 2802;
- (5) Failure to provide accurate itemized wage statements in violation of Labor Code § 226 based upon the absence of all hours worked and the accurate rate of pay;
- (6) Failure to reimburse for business expenses in violation of Labor Code 2802;

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

The “Aggrieved Employees”:

All non-exempt individuals who are or were employed by System Pavers in the State of California and who worked one or more shifts of (5) hours or longer during the PAGA Period.

DEFENDANTS’ MINIMUM WAGE VIOLATIONS

Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order 9-2001 also obligates employers to pay each employee minimum wages *for all hours worked*. These minimum wage standards apply to each hour employees worked for

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

Furthermore, pursuant to Labor Code § 1198, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

During the relevant time period, Plaintiff and the Aggrieved Employees were paid on an hourly basis by the Defendants in the state of California. Plaintiff and the Aggrieved Employees received a salary payment for 80 hours a week at \$28.00 per hour. Plaintiff and the Aggrieved Employees worked overtime every day and did not received overtime payment.

Moreover, there is no records of clocking in and clocking out for every shifts that Plaintiff and the Aggrieved Employees have worked. The records summarily state the total number of hours work, without indicating the beginning and end of every shift. **See Exhibit A.**

Labor Code § 1194 provides, in part, that any employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including interest thereon, reasonable attorney's fees, and costs of suit.

Plaintiff and the Aggrieved Employees suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendants' unlawful acts and Labor Code violations.

DEFENDANT'S MEAL PERIOD VIOLATIONS

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.

Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of duty-free mealtime called for under the law (as specified in the applicable Wage Order), "it has violated the wage order and is liable." As described above, the *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy.

Here, Defendants violated and continue to violate Labor Code § 512 and IWC Wage Order 9-2002 § 11 by, among other things, failing to provide duty-free meal breaks to Aggrieved Employees who could not leave their position and by failing to advise all other Aggrieved Employees of their meal break rights, failing to provide Aggrieved Employees with thirty-minute, uninterrupted meal

periods within the first five (5) hours of their shifts, and failing to pay meal break premiums for on-premises and/or late meal breaks. Instead, Defendants often required employees to take their breaks either on-duty or after five (5) hours from the start time of their shifts.

Plaintiffs and the Aggrieved Employees were under pressure to take their meal breaks within thirty minutes. As a result of Defendants' failure to authorize or permit lawful meal periods, Plaintiff and the other Aggrieved Employees frequently did not receive compliant duty-free meal periods within the first five (5) hours of their work.

DEFENDANTS' REST PERIOD VIOLATIONS

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

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

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

Here, Defendant did not authorize Plaintiff and the Rest Break Aggrieved Employees to take their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their shifts. Plaintiff and the Aggrieved Employees were required and instructed by their supervisors to combine both their meal and rest breaks and only take a 45-minute rest break.

Because of the workload, Plaintiff and other aggrieved employees were precluded from receiving their rest breaks and were required to combine their meal and rest breaks.

Plaintiff's PAGA Penalty Claim Based on Defendant's Violations of Labor Code Sections 204, 210 and 226

Labor Code section 204 expressly requires that "[a]ll wages ... earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as regular paydays". At all times relevant hereto, including within the past year, whenever Plaintiff and other employees paid on a commission basis earned commissions, Defendant only paid them their commissions due once per month, in violation of Labor Code

section 204. This failure to pay twice per month triggers civil penalties under Labor Code Section 210, which can be collected either through PAGA or through a direct class action claim for penalties under Section 210. *See Amaral v. Cintas Corp.* No. 2, 163 Cal.App.4th 1157, 1209 (2008); *see also Peabody v. Time Warner Cable*, 59 Cal. 4th 662 (2014) (commissions must be paid twice every calendar month).

The California Supreme Court in *Peabody v. Time Warner Cable, Inc.*, 59 Cal. 4th 662, 668–69, 328 P.3d 1028, 1032–33 (2014) held that “Specifically, Time Warner argues that Peabody's commissions, which were always paid on the final biweekly payday of each month, should be attributed to the weeks of the *preceding* month. For example, it contends the \$2,041.33 in commission wages it paid on November 26, 2008, should be attributed to the four workweeks of October 2008. Time Warner's ability to satisfy the minimum earnings prong hinges on its ability to attribute commissions in this way. We conclude it may not do so. Whether the minimum earnings prong is satisfied depends on the amount of wages *actually paid* in a pay period. An employer may not attribute wages paid in one pay period to a prior pay period to cure a shortfall.”

The Court further analyzed that “[t]his interpretation narrowly construes the exemption's language against the employer with an eye toward protecting employees. (*Ramirez v. Yosemite Water Co.*, *supra*, 20 Cal.4th at pp. 794–795, 85 Cal.Rptr.2d 844, 978 P.2d 2.) It is also consistent with the purpose of the minimum earnings requirement. Making employers actually pay the required minimum amount of wages in each pay period mitigates the burden imposed by exempting employees from receiving overtime. This purpose would be defeated if an employer could simply pay the minimum wage for all work performed, including excess labor, and then reassign commission wages paid weeks or months later in order to satisfy the exemption's minimum earnings prong.

Additionally, permitting wages paid in one pay period to be attributed to a different pay period would be inconsistent with several Labor Code provisions. Section 204(a), for example, requires that semimonthly paychecks include the wages earned *during that pay period*. Section 226 requires that the paychecks be accompanied by an itemized statement listing the “(1) gross wages earned, ... (5) net wages earned, [and] (6) the inclusive dates of the period for which the employee is paid.” (§ 226, subd. (a).) Reassigning wages in the manner suggested by Time Warner would ignore the obligations imposed by these statutory provisions.” *See Peabody* at 668-69.

Here, the payment made to Plaintiff and the aggrieved employees showed a minimum hourly wage of \$28.00 and was presumed exempt. However, \$28.00 an hour is lower than the double minimum wage in 2022 and 2023. Moreover, the majority of the paystubs issued to Plaintiff and the aggrieved employees do not show any commissions disbursed to Plaintiff and the aggrieved employees.

DEFENDANT’S WAGE STATEMENT VIOLATIONS

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

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

Due to, *inter alia*, Defendant’s failure to include the total hours worked by its non-exempt employees on any wage statements issued to Plaintiff and the Aggrieved Employees (See **Exhibit A**, a sampling of Plaintiff Garica’s wage statements), Defendant violated Labor Code section 226(a) and 226.3. Additionally, Plaintiff asserts claims for wage statement penalties due to Defendant’s failure to pay and record on wage statements all minimum wages and overtime wages owed and payable in violation of Labor Code section 226(a)(1), (5), and (9).

Here, our client worked 9 to 11 hours per day, including many overtime hours each day and each week, but they were paid flat amounts (based on a certain maximum amount of hours and a flat amount per hour), regardless of whether or not they worked overtime. As a result, the wage statements were not timely issued and also lacked accurate hours and rates, including proper overtime rates.

Notably, for PAGA penalty claims predicated on an underlying Labor Code section 226(a) violation, a plaintiff need not show “injury” or a “knowing and intentional” violation to recover PAGA penalties. *See Lopez v. Friant & Associates, LLC*, 15 Cal.App. 773, 788 (Cal. App. 2017) (“Consistent with the PAGA statutory framework and the plain language and legislative history of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)”; *see also Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

Although these elements are required for Section 226(e) penalties to be awarded courts have found that the instructors could show injury and an intentional violation as a result of Defendant's failure to issue wage statements that include actual hours worked and hourly rates on earnings statements. See *Gola v. University of San Francisco*, San Francisco County Superior Court, Case No. CGC-18-565018. As in *Gola*, there is certainly good reason here why instructors would want to know how many hours they work each pay period and what their hourly rate was per pay period, including their desire to know if they were entitled to overtime.

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

Further and in addition to the penalties outlined above, Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

As explained in detail above, Defendant failed to provide Plaintiff and the other Wage Statement Aggrieved Employees with accurate and timely itemized wage statements.

DEFENDANT'S FAILURE TO PAY ALL WAGES DUE UPON TERMINATION

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

Due to Defendant's faulty policies described above, including its failure to pay wages for all hours worked and for meal period premiums, Defendant violated Labor Code § 203, for those employees whose employment ended within the last one year and ongoing (i.e., the Waiting Time Aggrieved Employees) by willfully failing to pay them all wages due upon the termination of their employment.

Failure to Reimburse Business Expenses Claim

Pursuant to Labor Code § 2802(a) "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...." The purpose of this statute is "to prevent employers from passing their operating expenses on to their

employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting legislative history from the 2000 amendment to the statute). Labor Code Section 2802(c) also clarifies that “the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

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

Under Labor Code § 2802, if an employer requires its employees to use their cell phone for work, then the employer must reimburse its employees for a reasonable portion of their monthly cell phone bills. Here, Plaintiff and the Aggrieved Employees were expected to use their cell phones on a daily basis and their work-related cell phone usage was not reimbursed by Defendants. Moreover, the aggrieved employees were required to use their uniform and wash them

Accordingly, Defendants violated Labor Code § 2802 and continue to do so by failing to reimburse Plaintiff and Aggrieved Employees for all work-related cell phone charges they incurred in the performance of their job duties.

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

Based on the foregoing, we write to inform Defendant and the LWDA, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action (and a class action) against Defendant seeking, *inter alia*, PAGA penalties under Labor Code section 2699, to be brought by Plaintiff individually, on a class basis, and on behalf of the Aggrieved Employees as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the putative class and the Aggrieved Employees. If Defendant is interested in attempting to resolve this matter, please have counsel contact us by **November 15, 2023**, so that we may discuss an informal discovery plan and the possibility of early resolution through mediation.

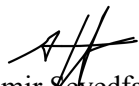

Amir Seyedfarshi
Kevin Mahoney
Beyonca Alem

EXHIBIT A

SYSTEMS PAVERS, LLC 1570 BROOKHOLLOW DRIVE SANTA ANA, CA 92705 (949)263-8300
EMPLOYEE GARCIAANT ANTHONY L. GARCIA ***-**-6728 Check 6029669 08/12/22
Dates: 07/25/22-08/07/22

Hrs/Earnings	Current	YTD Deduction	Current	Ytd Deduction	Current	YTD
Reg Hrs	80.00	1269.90 FIT	159.93	7516.17		
		FICA	171.36	4811.77		
SICK		40.00 CA	34.04	2608.10		
VAC		49.28 SDI-NO LOC	24.64	691.88		
REG	2240.00	33824.00 401K	67.20	1886.99		
ACCRUED CO		6036.42				
CONSTRUCTI		12245.65				
COMMISSION		5913.66				
HOLIDAY		672.00				
INACTIVE J		361.02				
OTHER		3846.32				
	Current	YTD		TOT DED	457.17	17514.91
GROSS \$	2240.00	62899.07		NET PAY	1782.83	45384.16
CURRENT PAY	2240.00					

6029669

Copy of Check - VOID VOID

08/12/22 V O I D

ANTHONY L. GARCIA
17216 SEVEN SPRINGS WAY
RIVERSIDE, CA 92504

SYSTEMS PAVERS, LLC 1570 BROOKHOLLOW DRIVE SANTA ANA, CA 92705 (949)263-8300
GARCIAANT - ANTHONY L. GARCIA

	<----- Regular ----->			<----- Overtime ----->		
	Hours	Rate	Earnings	Hours	Rate	Earnings
Hourly Wage	80.00	28.00	2240.00	0.00	42.00	

SYSTEMS PAVERS, LLC 1570 BROOKHOLLOW DRIVE SANTA ANA, CA 92705 (949)263-8300
EMPLOYEE GARCIAANT ANTHONY L. GARCIA ***-**-6728 Check 6031199 11/04/22
Dates: 10/17/22-10/30/22

Hrs/Earnings	Current	YTD Deduction	Current	Ytd Deduction	Current	YTD
Reg Hrs	80.00	1749.90 FIT	601.80	10820.46		
		FICA	353.46	6777.84		
SICK		40.00 CA	221.64	3802.34		
VAC		67.76 SDI-NO LOC	50.82	974.57		
REG	2240.00	47040.00 401K	138.61	2657.99		
CONSTRUCTI	1677.00	15782.65				
COMMISSION	703.45	10201.44				
ACCRUED CO		9526.43				
HOLIDAY		896.00				
INACTIVE J		1306.58				
OTHER		3846.32				
	Current	YTD		TOT DED	1366.33	25033.20
GROSS \$	4620.45	88599.42		NET PAY	3254.12	63566.22
CURRENT PAY	4620.45					

6031199

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11/04/22 V O I D

ANTHONY L. GARCIA
17216 SEVEN SPRINGS WAY
RIVERSIDE, CA 92504

SYSTEMS PAVERS, LLC 1570 BROOKHOLLOW DRIVE SANTA ANA, CA 92705 (949)263-8300
GARCIAANT - ANTHONY L. GARCIA
<----- Regular -----> <----- Overtime ----->
Hours Rate Earnings Hours Rate Earnings
Hourly Wage 80.00 28.00 2240.00 0.00 42.00
CONSTRUCTI 1677.00
COMMISSION 703.45
80.00 4620.45

SYSTEMS PAVERS, LLC 1570 BROOKHOLLOW DRIVE SANTA ANA, CA 92705 (949)263-8300
EMPLOYEE GARCIAANT ANTHONY L. GARCIA ***-**-6728 Check 6031731 12/02/22
Dates: 11/14/22-11/27/22

Hrs/Earnings	Current	YTD Deduction	Current	Ytd Deduction	Current	YTD
Reg Hrs	80.00	1909.90 FIT	159.93	11472.36		
		FICA	171.36	7265.52		
SICK		40.00 CA	34.04	4009.84		
VAC		73.92 SDI-NO LOC	24.64	1044.69		
HOLIDAY	448.00	1344.00 401K	67.20	2849.24		
REG	1792.00	51072.00				
ACCRUED CO		10106.01				
CONSTRUCTI		15782.65				
COMMISSION		11516.77				
INACTIVE J		1306.58				
OTHER		3846.32				
	Current	YTD		TOT DED	457.17	26641.65
GROSS \$	2240.00	94974.33		NET PAY	1782.83	68332.68
CURRENT PAY	2240.00					

6031731

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12/02/22

V O I D

ANTHONY L. GARCIA
17216 SEVEN SPRINGS WAY
RIVERSIDE, CA 92504

SYSTEMS PAVERS, LLC 1570 BROOKHOLLOW DRIVE SANTA ANA, CA 92705 (949)263-8300
GARCIAANT - ANTHONY L. GARCIA

	<----- Regular ----->			<----- Overtime ----->		
	Hours	Rate	Earnings	Hours	Rate	Earnings
Hourly Wage	80.00	28.00	2240.00	0.00	42.00	

SYSTEMS PAVERS, LLC 1570 BROOKHOLLOW DRIVE SANTA ANA, CA 92705 (949)263-8300
EMPLOYEE GARCIAANT ANTHONY L. GARCIA ***-**-6728 Check 6033594 03/10/23
Dates: 02/20/23-03/05/23

Hrs/Earnings	Current	YTD Deduction	Current	Ytd Deduction	Current	YTD
Reg Hrs	80.00	400.00 FIT	152.66	2220.62		
		FICA	171.36	1419.81		
SICK		40.00 CA	30.45	756.73		
VAC		31.48 SDI-NO LOC	20.16	167.04		
REG	2240.00	9856.00 401K	67.20	556.79		
ACCRUED CO		101.66				
CONSTRUCTI		3517.00				
COMMISSION		3455.25				
HOLIDAY		448.00				
INACTIVE J		285.73				
OTHER		896.00				
	Current	YTD		TOT DED	441.83	5120.99
GROSS \$	2240.00	18559.64		NET PAY	1798.17	13438.65
CURRENT PAY	2240.00					

6033594

Copy of Check - VOID VOID

03/10/23 V O I D

ANTHONY L. GARCIA
17216 SEVEN SPRINGS WAY
RIVERSIDE, CA 92504

SYSTEMS PAVERS, LLC 1570 BROOKHOLLOW DRIVE SANTA ANA, CA 92705 (949)263-8300
GARCIAANT - ANTHONY L. GARCIA

	<----- Regular ----->			<----- Overtime ----->		
	Hours	Rate	Earnings	Hours	Rate	Earnings
Hourly Wage	80.00	28.00	2240.00	0.00	42.00	

PROOF OF SERVICE

Code of Civ. Proc. § 1013a, subd. (3)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 249 East Ocean Boulevard, Suite 814, Long Beach, California, 90802.

On **January 4, 2024**, I served [X] true copies [] originals of the following document(s): **FIRST AMENDED COMPLAINT FOR DAMAGES**. I served the document(s) on the person(s) below as follows:

Julie Trotter, Esq.
Jacqueline Beaumont, Esq.
D. Eric Lystrup, Esq.
CALL & JENSEN, APC
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660

Attorneys for Defendant SYSTEM PAVERS LLC

Telephone: (949) 717-3000
Email: jtrotter@calljensen.com
dreigel@calljensen.com
elystrup@calljensen.com
nberry@calljensen.com
jbeaumont@calljensen.com
cdaly@calljensen.com

The document(s) were served by the following means:

☒ **By e-mail:** Based upon court order or an agreement of the parties to accept service by e-mail, I caused the document(s) to be sent to the persons at the electronic service addresses listed above from the email address dwilliams@mahoney-law.net. Within a reasonable time after the transmission, no error, electronic message or any other indication that the transmission was unsuccessful was received.

☒ **(State):** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **January 4, 2024**, at Long Beach, California.



Darryl Williams