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FILED
Superior Court of California
County of Los Angeles

JUL 23 2024

David W. Slayton, Executive Officer/Clerk of Court
By: R. Lozano, Deputy

"BY FAX"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

GILBERTO LARIOS, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

v.

WORLD CLASS MODULAR, a California corporation; WCMOSI, INC., a California corporation; and MODULAR AND DATA SERVICES CORP, a California corporation, and DOES 1-100, inclusive,

Defendants.

RECEIVED
JUL 23 2024
SPRING STREET
COURTHOUSE

Case No. 24STCV15523

PLAINTIFF'S FIRST AMENDED CLASS AND PAGA REPRESENTATIVE ACTION COMPLAINT FOR:

1. **Failure to Provide and Maintain Accurate Itemized Wage Statements, (Labor Code §§ 226(a) & 226.3);**
2. **Failure to Reimburse for Necessary Business Expenses (Labor Code § 2802);**
3. **Failure to Provide Compliant Meal Breaks and Pay Missed Meal Break Premiums, (Labor Code §§ 226.7, 512, and section 11 of the applicable IWC Wage Order);**
4. **Failure to Provide Compliant Rest Breaks and Pay Missed Rest Break Premiums, (Labor Code § 226.7 and section 12 of the applicable IWC Wage Order);**
5. **Unfair Business Practices in Violation of Business & Professions Code (§ 17200 *et seq.*);**
6. **PAGA penalties for Defendant's Willful Misclassification (Labor Code §§ 226.8 and 2698, et seq.); and**
7. **PAGA and other penalties (Labor Code §§ 2698 – 2699.5)**

<u>DEMAND FOR JURY TRIAL</u>

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Attorneys for Plaintiff, the LWDA, the Aggrieved Employees, and all similarly situated individuals

Plaintiff GILBERTO LARIOS ("Plaintiff"), on behalf of himself, the LWDA under the Labor Code Private Attorneys General Act of 2004, section 2699, *et seq*. ("PAGA"), on behalf of all other Aggrieved Employees, and all others similarly situated, hereby complains and alleges as follows:

OVERVIEW OF CLAIMS

1. Plaintiff brings this action as a class and PAGA representative action pursuant to Code of Civil Procedure ("CCP") section 382 and Labor Code section 2699, *et seq.*, and on behalf of the California general public and the LWDA, against Defendants WORLD CLASS MODULAR, WCMOSI, INC., MODULAR AND DATA SERVICES CORP, and DOES 1 through 100 (collectively, "Defendants") for Defendants' (1) failure to provide accurate itemized wage statements; (2) failure to reimburse necessary business expenses; (3) failure to provide timely, complete, duty-free meal breaks and pay missed meal break premiums; (4) failure to provide timely, complete, duty-free rest breaks and missed rest break premiums; (5) willful misclassification of Plaintiff and other Class Members and Aggrieved Employees as independent contractors; and (6) PAGA and other penalties based on the foregoing. Plaintiff also brings a cause of action for violations of California's Unlawful Competition Law, Business and Professions Code section 17200 *et seq*. (the "UCL").

2. The "Class Period" is designated as the period from four years prior to the filing of this action through the present. The "PAGA Period" is designated as the period from May 14, 2023 through the present. Defendants' violations of California's wage and hour laws and unfair competition laws, as described more fully below, have been ongoing throughout the Class Period and PAGA Period.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to CCP section 410.10 because Plaintiff's damages exceed the jurisdictional minimum of this Court. At all relevant times, Defendants employed individuals who lived and/or worked in Los Angeles County. Defendants' headquarters and principal place of business is located at 4441 South Santa Fe Avenue, Vernon, California 90058. Defendants were and are registered and authorized to conduct business, and do conduct business, within the State of California, including in Los Angeles County. Thus, this Court further has jurisdiction over

Defendants because Defendants have obtained the benefits of the laws of the State of California. Moreover, Plaintiff asserts no claims arising under federal law. Rather, Plaintiff brings this action based solely on, and only arising from, California law, including, *inter alia*, California's Labor Code.

4. The claims of the Class Members (as defined below) and Aggrieved Employees (as defined below) are also based solely on California law described herein. Furthermore, the total amount at issue in this case, inclusive of attorneys' fees, is less than $5 million. Therefore, jurisdiction is appropriate in Los Angeles County Superior Court.

5. Venue is proper in this Court, pursuant to CCP section 395.5, because the incidents complained of occurred at the location of Defendants' principal place of business and Defendants' clients, which are located within Los Angeles County. Plaintiff, the Class, and the Aggrieved Employees resided in and/or performed work for Defendants within Los Angeles County during the Class Period and PAGA Period.

THE PARTIES

6. At all relevant times, Plaintiff was and is a resident of Lynwood, California, which is located in Los Angeles County, California. Plaintiff was hired by Defendants on or around September 19, 2023 to work as an hourly-paid furniture installer, mover, and warehouse worker during the Class Period and PAGA Period, and his pay was reported by Defendants on an IRS Form 1099 basis.

7. By way of this class action, Plaintiff seeks to represent the following Class and Subclass of individuals:

(a) All individuals who are or were California residents, and who worked for Defendants as installers, movers, warehouse workers, or in any other similar capacity, and whose pay was reported on an IRS Form 1099 basis during the Class Period ("Class Members" or the "Class");

(b) All individuals who are or were California residents, and who worked for

Defendants as installers, movers, warehouse workers, or in any other similar capacity, and whose pay was reported on an IRS Form 1099 basis during the one year prior to the filing of this Complaint through the present ("Wage Statement Subclass").

8. By way of this PAGA representative action, Plaintiff seeks to represent the following group of Aggrieved Employees: All individuals who are or were California residents, and who worked for Defendants as installers, movers, warehouse workers, or in any other similar capacity, and whose pay was reported on an IRS Form 1099 basis during the PAGA Period ("Aggrieved Employees")

9. Plaintiff, the Class, the Wage Statement Subclass, and the Aggrieved Employees consist of identifiable, current and/or formerly similarly situated individuals who worked for Defendants in California during the Class Period and/or PAGA Period as hourly-paid installers, movers, and warehouse workers.

10. Defendants are California corporations which own, manage, and/or operate furniture companies which specialize in moving, warehousing, and installing furniture products. Defendants' principal place of business is located at 4441 South Santa Fe Avenue, Vernon, California 90058, within Los Angeles County, California. At all relevant times, Defendants were and are registered and authorized to conduct business, and did and do conduct business, within the State of California, including in Los Angeles County. To operate their business, Defendants employed and/or employs hourly-paid individuals, including Plaintiff, the Class, and the Aggrieved Employees during the Class Period and PAGA Period.

11. DOES 1 through 100 ("DOES Defendants") are sued herein under fictitious names pursuant to CCP section 474. The identity of the DOES Defendants is unknown to Plaintiff as Plaintiff does not, at this time, know the true names or capacities of the DOES Defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege their true names and capacities once ascertained.

Plaintiff is informed and believes, and thereon alleges, that each DOES Defendant is highly responsible in some manner for the events and happenings referred to herein, and legally caused the injuries and damages alleged in this Complaint.

12. Plaintiff is informed and believes and thereon alleges, that each and every Defendant, including the DOES Defendants, was the authorized agent, principal, partner, joint venturer and/or guarantor, actual or ostensible, of each and every other Defendant; and that each and every Defendant had full authority to do as alleged herein, unless alleged otherwise. Furthermore, each and every Defendant was operating within the course and scope of their agency, or in a principal, partner, joint venturer, and/or guarantor, actual or ostensible, relationship with each and every other Defendant during the course of events described herein, unless alleged otherwise.

FACTUAL ALLEGATIONS

13. Plaintiff was hired by Defendants as an hourly-paid individual on or around September 19, 2023 to work as a furniture installer, mover, and warehouse worker.

14. During the Class Period and PAGA Period, Plaintiff, the Class, and the Aggrieved Employees worked for Defendants as hourly-paid installers, movers, and warehouse workers.

15. During the Class Period and PAGA Period, Defendants reported the pay earned by Plaintiff, the Class, and the Aggrieved Employees on an IRS Form 1099 basis.

16. The California Supreme Court in *Dynamex Operations West, Inc., v. Superior Court* (2018) 4 Cal. 5th 903, 956-57 ("*Dynamex*") set forth the standard for determining whether an individual performing work is an independent contractor or an employee, as follows:

> We find merit in the concerns noted above regarding the disadvantages, particularly in the wage and hour context, inherent in relying upon a multifactor, all the circumstances standard for distinguishing between employees and independent contractors. As a consequence, we conclude it is appropriate, and most consistent with the history and purpose of the suffer or permit to work standard in California's wage orders, to interpret that standard as: (1) placing the burden on the hiring entity to establish that the worker is an independent contractor who was not intended to be included

> within the wage order's coverage; and (2) requiring the hiring entity, in order to meet this burden, to establish *each* of the three factors embodied in the ABC test — namely (A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and* (B) that the worker performs work that is outside the usual course of the hiring entity's business; *and* (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed. (citations omitted).

17. This so-called "ABC test" has since been codified by the Legislature as Labor Code Section 2775. Under the ABC Test, Defendants have the burden of establishing that Plaintiff, the Class, and the Aggrieved Employees are and/or were independent contractors and not intended to be included within the wage order's coverage. Further, Defendants must establish that Plaintiff, the Class, and the Aggrieved Employees meet all three factors of the ABC Test, which as discussed below, they cannot meet.

18. **Prong A: The Class and Aggrieved Employees Were Subject to Defendants' Direction and Control**: Defendants cannot demonstrate that Plaintiff, the Class, and the Aggrieved Employees were free from the direction and control of the Defendants. At all relevant times, Defendants retained and retain the right to control the method and manner of how Plaintiff, the Class, and the Aggrieved Employees perform their job duties and retained and retain all necessary control over them during their employment. Among other things, Plaintiff, the Class, and the Aggrieved Employees are required to follow detailed requirements imposed on them by Defendants governing their interaction with managers and customers. Defendants retained all necessary control over Plaintiff, the Class, and the Aggrieved Employees; Defendants controlled the schedules of the Plaintiff, the Class, and the Aggrieved Employees; Plaintiff, the Class, and the Aggrieved Employees did not operate distinct businesses, but were integrated into Defendants' business and were required to dedicate all of their working time to Defendants' business; Defendants closely monitored the work of Plaintiff, the Class, and the Aggrieved Employees; their jobs did not require substantial skill; Defendants' payment plan resembled a pay

arrangement similar to an employee's pay arrangement (as Defendants maintained regular paydays); and Plaintiff, the Class, and the Aggrieved Employees often stayed on and worked for Defendants for years.

19. In sum, Defendants retained and retain the right to control the method and manner of how Plaintiff, the Class, and the Aggrieved Employees performed their job duties, and retained and retain all necessary control over Plaintiff, the Class, and the Aggrieved Employees during their employment. Therefore, under prong A of the ABC test, Plaintiff, the Class, and the Aggrieved Employees were and are employees of Defendants, and were misclassified as independent contractors. *See, e.g.* Labor Code sections 2775.

20. **Prong B: The Class and Aggrieved Employees Performed Work Within the Usual Course of Defendants' Business**: As described by the Court in *Dynamex,* the work performed within the course of Defendants business is described thusly, "Workers whose roles are most clearly comparable to those of employees include individuals whose services are provided within the usual course of the business of the entity for which the work is performed and thus who would ordinarily be viewed by others as working in the hiring entity's business and not as working, instead, in the worker's own independent business." *Dynamex Operations W., Inc., supra,* 4 Cal. 5th at 959. By way of example, the Supreme Court held that:

> Thus, on the one hand, when a retail store hires an outside plumber to repair a leak in a bathroom on its premises or hires an outside electrician to install a new electrical line, the services of the plumber or electrician are not part of the store's usual course of business and the store would not reasonably be seen as having suffered or permitted the plumber or electrician to provide services to it as an employee. [citations] On the other hand, when a clothing manufacturing company hires work-at-home seamstresses to make dresses from cloth and patterns supplied by the company that will thereafter be sold by the company [citations], or when a bakery hires cake decorators to work on a regular basis on its custom-designed cakes (*cf., e.g., Dole v. Snell* (10th Cir. 1989) 875 F.2d 802, 811), the workers are part of the hiring entity's usual business operation and the hiring business can reasonably be viewed as having suffered or permitted the workers to provide services as employees. In the latter settings, the workers' role within the hiring entity's usual business operations is more like that of an employee than that of an independent contractor.

Id. at 959-960.

21. Here, Defendants cannot establish that Plaintiff, the Class, and the Aggrieved Employees perform work outside Defendants' normal course of business. To the contrary, Plaintiff, the Class, and the Aggrieved Employees were performing work completely within Defendants' normal course of business, since Defendants are in the business of providing furniture installation, moving, and warehouse services and Plaintiff, Class Members, and the Aggrieved Employees are Defendants' furniture installers, movers, and warehouse workers.

22. For this additional reason, under prong B of the ABC test, Plaintiff, the Class, and the Aggrieved Employees were misclassified erroneously as independent contractors. Based upon the case law cited above and section 2775 of the Labor Code, Plaintiff, the Class, and the Aggrieved Employees were working within Defendants' business and were thus employees.

23. **Prong C: The Class and Aggrieved Employees Were Not Customarily Engaged in an Independently Established Trade, Occupation, Or Business of the Same Nature as the Work Performed**: As with prongs A and B of the ABC Test, Defendants cannot establish that Plaintiff, the Class, and the Aggrieved Employees are or were customarily engaged in an independent occupation or business. As the Supreme Court in *Dynamex* held:

> As a matter of common usage, the term "independent contractor," when applied to an individual worker, ordinarily has been understood to refer to an individual who *independently* has made the decision to go into business for himself or herself. [citations] Such an individual generally takes the usual steps to establish and promote his or her independent business—for example, through incorporation, licensure, advertisements, routine offerings to provide the services of the independent business to the public or to a number of potential customers, and the like. When a worker has not independently decided to engage in an independently established business but instead is simply designated an independent contractor by the unilateral action of a hiring entity, there is a substantial risk that the hiring business is attempting to evade the demands of an applicable wage order through misclassification. A company that labels as independent contractors a class of workers who are not engaged in an independently established business in order to enable the company to obtain the economic advantages that flow from avoiding the financial obligations that a wage order imposes

> on employers unquestionably violates the fundamental purposes of the wage order. The fact that a company has not prohibited or prevented a worker from engaging in such a business is not sufficient to establish that the worker has independently made the decision to go into business for himself or herself.

Dynamex Operations W., Inc., supra, 4 Cal. 5th at 962.

24. Here, Defendants' installers, movers, and warehouse workers, including Plaintiff, the Class, and the Aggrieved Employees, are not and were not customarily considered part of an independently established business. Few, if any of the Class Members and Aggrieved Employees held themselves out to the world as independent furniture installers, furniture movers, and/or furniture warehouse workers.

25. Thus, under the three prongs of the ABC test, Plaintiff, the Class, and the Aggrieved Employees are clearly "employees" and not "independent contractors." Since Defendants cannot meet any part of the ABC test, it is clear that Defendants intentionally and willfully misclassified Plaintiff, the Class, and the Aggrieved Employees as independent contractors in violation of Labor Code sections 226.8(a) and 2775.

26. The result of Defendants' misclassification scheme is that Plaintiff, the Class, and the Aggrieved Employees were, and are, routinely denied payment of all premium wages earned for each day they were deprived of uninterrupted, duty-free meal and/or rest breaks, as mandated by California law and as described in further detail below.

27. Instead, Defendants have taken such premiums owed to Plaintiff, the Class, and the Aggrieved Employees and unlawfully converted the funds for Defendants' own use and benefit, in order to maximize profits and gain an unfair business advantage over their competitors at the expense of Defendants' own workers.

28. Due to Defendant's misclassification of Plaintiff, the Class, and the Aggrieved Employees as independent contractors, during the Class Period and PAGA Period, Defendants failed to provide

accurate itemized wage statements to Plaintiff, the Wage Statement Subclass, and the Aggrieved Employees in accordance with Labor Code section 226(a). Here, Defendants failed to issue any wage statements to Plaintiff, Wage Statement Subclass Members, and the Aggrieved Employees whatsoever.

29. Due to Defendant's misclassification of Plaintiff, the Class, and the Aggrieved Employees as independent contractors, during the Class Period and PAGA Period, Plaintiff, the Class, and the Aggrieved Employees regularly incurred, during the course of their employment, work-related business expenses including personal cell phone and vehicle mileage expenses without reimbursement by Defendants.

30. Due to Defendant's misclassification of Plaintiff, the Class, and the Aggrieved Employees as independent contractors, during the Class Period and PAGA Period, Plaintiff, the Class, and the Aggrieved Employees were continuously denied the opportunity to take uninterrupted, duty-free, 30-minute meal breaks when they worked shifts of five hours or more.

31. Due to Defendant's misclassification of Plaintiff, the Class, and the Aggrieved Employees as independent contractors, during the Class Period and PAGA Period, Plaintiff, the Class, and the Aggrieved Employees were also continuously denied the opportunity to take uninterrupted, duty free, 10-minute rest breaks every four hours of work or major fraction thereof.

32. Despite not receiving legally-compliant meal or rest breaks, Defendants did not pay Plaintiff, the Class, and the Aggrieved Employees any meal or rest break premium wages for every day that they did not receive timely, uninterrupted, and/or complete meal or rest breaks.

33. The administrative prerequisites of PAGA were satisfied after 66 days elapsed from May 14, 2024 (i.e., 66 days have lapsed since Plaintiff's mailing of the PAGA notice with no further communication from the LWDA to Plaintiff's counsel). Plaintiff has paid the $75.00 fee and has otherwise satisfied the administrative prerequisites of PAGA. Plaintiff has fulfilled all administrative prerequisites to the filing and pursuit of the PAGA penalty claims on behalf of the Aggrieved Employees.

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

CLASS ACTION ALLEGATIONS

35. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a class action pursuant to CCP section 382. Plaintiff seeks to represent a Class composed of and defined as: All individuals who are or were California residents, and who worked for Defendants as installers, movers, warehouse workers, or in any other similar capacity, and whose pay was reported on an IRS Form 10999 basis during the Class Period. All such Class Members were subject to Defendants' unlawful policies including Defendants' failure to issue compliant wage statements; Defendants' failure to reimburse business expenses, and Defendants' failure to provide compliant meal and/or rest breaks, or premium pay in lieu thereof.

36. This action has been brought and may properly be maintained as a class action under CCP section 382 because there is a well-defined community of interest in the litigation, the proposed Class is easily ascertainable, and Plaintiff is a proper representative of the Class:

(a) Numerosity: The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that Defendants have on average, at any one time during the Class Period, employed over 100 Class Members as hourly-paid workers who were subject to Defendants' unlawful policies. Due to turnover, the total number of Class Members is estimated to be more than 300. The Class Members are dispersed throughout California. Joinder of all members of the proposed classes is therefore not practicable.

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

i. Whether Defendants violated Section 226.8 of the Labor Code by willfully misclassifying Plaintiff and Class Members as independent contractors, and whether Defendants engaged in a pattern and practice of such wrongful misclassification;

ii. Whether Defendants violated Labor Code Sections 226(a) and 226.3 by failing to provide the Wage Statement Subclass with accurate, itemized wage statements during the Class Period;

iii. Whether Defendants violated Labor Code section 2802 by failing to reimburse Plaintiff and the Class for all necessary business expenses in California during the Class Period;

iv. Whether Defendants violated Labor Code sections 226.7 and 512 and section 11 of the applicable Industrial Welfare Commission ("IWC") wage order by failing to provide timely, complete, and duty-free meal periods to Plaintiff and the Class during the Class Period;

v. Whether Defendants violated Labor Code section 226.7 by failing to provide one hour of premium pay to each member of the Class for each day that a timely, complete, and duty-free meal period was not provided during the Class Period;

vi. Whether Defendants violated Labor Code section 226.7 and section 12 of the applicable IWC wage order by failing to provide timely, complete, and duty-free rest periods to Plaintiff and the Class during the Class Period;

vii. Whether Defendants violated Labor Code section 226.7 by failing to provide one hour of premium pay to the Class for each day that a timely, complete, and duty-free rest period was not provided in California during the Class Period; and

viii. The nature and extent of class-wide damages.

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

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

(e) Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over 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 Defendants' 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 Defendants have enjoyed by maintaining their unlawful break and compensation policies and will thereby effectuate California's strong public policy of protecting employees from deprivation or offsetting of compensation earned during 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 Defendants, due to the relatively small amounts of such individual recoveries relative to the costs and burdens of litigation.

FIRST CAUSE OF ACTION
Failure to Provide Accurate Itemized Wage Statements
in Violation of Labor Code §§ 226(a) and 226.3
On Behalf of Plaintiff and the Wage Statement Subclass Against Defendants

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

38. Although misclassified as independent contractors by Defendants, Plaintiff and the Wage Statement Subclass Members were and are, in fact, employees of Defendants who have not received proper protections and benefits of the laws governing wage statements.

39. Pursuant to Labor Code section 226(a), employers are obligated to furnish an itemized wage statement.

40. Labor Code section 226(e) provides that an employee suffering injury as a result of a knowing and intentional failure by the employer to comply with section 226(a) is entitled to recover $50 for initial pay period in which a violation of section 226(a) 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.

41. In addition to violating Labor Code section 226(a), Defendants also knowingly and intentionally failed to provide wage statements and Defendants undeniably knew that they were not providing Plaintiff and the other Wage Statement Subclass Members with wage statements required by California law. *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 section 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.").

42. Here, during the Class Period, Defendants intentionally and willfully failed to provide Plaintiff and the Wage Statement Subclass with any wage statements at all, due to the fact that they were misclassified as independent contractors. This failure constitutes a violation of Labor Code section

226(a).

43. Plaintiff need not establish any "injury" other than showing that the paystubs lacked the information required by Labor Code section 226(a). See *McKenzie v. Fed. Express Corp.*, 765 F. Supp.2 d 1222 (C.D. 2011) Here, Defendants failed to issue any wage statements whatsoever.

44. Labor Code section 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."

45. Since Defendants did not provide any wage statements at all, the heightened penalties in section 226.3 may apply here. *See, e.g., Raines v. Coastal Pac. Food. Distribs*. (2018) 23 Cal. App. 5th 667; *see also, Gunther v. Alaska Airlines, Inc*. (2021) 72 Cal. App. 5th 334.

46. As a result of Defendant's failure to issue compliant wage statements to Plaintiff and Wage Statement Subclass Members in violation of Section 226(a) of the California Labor Code, Plaintiff and the Wage Statement Subclass Members are each entitled to recover an initial penalty of $50, and subsequent penalties of $100, up to an amount not exceeding an aggregate penalty of $4,000 for Plaintiff and for every member of the Wage Statement Subclass from Defendants pursuant to section 226(e) of the Labor Code, in addition to costs and reasonable attorneys' fees.

SECOND CAUSE OF ACTION
Failure to Reimburse for Necessary Business Expenses
in Violation of Labor Code Section 2802
On Behalf of Plaintiff and the Class Against Defendants

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

48. Although misclassified as independent contractors by Defendants, Plaintiff and Class Members were and are, in fact, employees of Defendants who have not received proper protections and

benefits of the laws governing reimbursements.

49. Under Labor Code section 2802, "An 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

50. The purpose of Labor Code section 2802 is to "prevent employers from passing along their operating expenses onto their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.*, (2007) 42 Cal. 4th 554, 562.

51. This indemnification requirement applies when employees must use their personal cell phones for work-related purposes. *Cochran v. Schwan's Home Service, Inc*. (2014) 228 Cal.App.4th 1137, 1140. "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." *Id*.

52. Here, during the Class Period, Defendants required that the Class use their personal cell phones for work-related purposes, including receiving work orders and important information about jobs scheduled for the day. Additionally, they received work-related phone calls on their personal cell phones from Defendants' supervisors. Defendants did not provide the Class with company-issued cell phones, nor offer them any reasonable reimbursement for their data usage, wear and tear, and other expenses associated with maintaining their personal devices. As a result, Plaintiff and the Class incurred necessary work-related personal cell phone expenses.

53. Defendants also required that the Class incur other expenses in furtherance of their job duties, including gas mileage expenses and parking expenses incurred in connection with fueling their personal vehicles to commute to various job sites. Despite incurring these expenses, Defendants never reimbursed the Class for these necessary business expenses.

54. As a result of the Defendants' policies and practices, the Class is entitled to recover

damages and penalties pursuant to Labor Code section 2802 in an amount according to proof at trial.

<u>THIRD CAUSE OF ACTION</u>

Failure to Provide Compliant Meal Breaks and Pay Premiums
in Violation of Labor Code §§ 226.7, 512(a)
and Section 11 of the Applicable Wage Order
On Behalf of Plaintiff and the Class Against Defendants

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

56. Although misclassified as independent contractors by Defendants, Plaintiff and Class Members were and are, in fact, employees of Defendants who have not received proper protections and benefits of the laws governing statutory meal periods.

57. Labor Code section 512 and Section 11 of the Wage Order 5-2001 require employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work. 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. *Brinker Rest. Corp. v. Superior Court*, (2012) 53 Cal. 4th 1004, 1042 ("Accordingly, first meal periods must start after no more than five hours."); *See also Munoz v. Guimarra Vineyards Corp.*, 2015WL 5350563 at *3 (E.D. Cal. Sept. 11, 2015) (holding that meal periods must be taken within the first five hours of work).

58. IWC Wage Order 5-2001, Section 11, further obligates employers to provide an employee to "pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided." Labor Code section 226.7 provides "an employer shall not require an employee to work during meal or rest or recovery periods mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC"). IWC Wage Order 5-2001 prohibits an employer form "employ[ing] and person for a work period of more than five (5) hours without a meal period of not less than 30 minutes." Accordingly, for each day that Plaintiff and the Class did not receive complaint meal periods, they are entitled to receive

meal period premiums pursuant to Labor Code section 226.7 and Wage Order 5-2001.

59. Here, Defendants did not provide meal periods in compliance with Labor Code sections 512, 226.7, and Wage Order 5-2001. As a result of Defendants' failure to provide code compliant meal periods, Plaintiff is informed and believes, and based thereon alleges that Defendants violated Labor Code section 512, entitling Plaintiff and other Class Members to premium payments under Labor Code section 226.7. Accordingly, for each day that Plaintiff and the other Class Members did not receive compliant meal periods, they are entitled to receive meal period premiums equal to one (1) hour of wages pursuant to Labor Code section 226.7 and Wage Order 5-2001, in a sum to be proven at trial.

FOURTH CAUSE OF ACTION

Failure to Provide Compliant Rest Breaks and Pay Premiums in Violation of Labor Code §§ 226.7 and Section 12 of the Applicable Wage Order On Behalf of Plaintiff and the Class Against Defendants

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

61. Although misclassified as independent contractors by Defendants, Plaintiff and Class Members were and are, in fact, employees of Defendants who have not received proper protections and benefits of the laws governing statutory rest periods.

62. Plaintiff is informed and believes, and based thereon alleges that Defendants maintain a policy or practice of failing to provide Plaintiff and Class Members timely paid rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failing to provide compensation for such unprovided rest periods.

63. Section 12 of the applicable IWC Wage Order requires California employers to provide a 10- minute duty-free and uninterrupted rest break to employees for each 4 hours of work, or major fraction thereof. Insofar as practicable, the rest period shall be in the middle of each work period. *See* IWC Wage Order 5-2001, § 12. Labor Code section 226.7 imposes a premium payment of one hour of pay at the

employee's regular rate of pay for each workday where a compliant rest break is not provided to an employee on a timely basis.

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

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

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

65. Here, Plaintiff and the Class were not authorized or permitted to take rest breaks and did not take their rest breaks during their shifts. Plaintiff and the Class were thus not able to receive their first, second, and/or third rest breaks (for shifts that were longer than 8 hours and 12 hours respectively, or major fractions thereof). As a result of Defendants' failure to provide code compliant rest breaks, Plaintiff is informed and believe, and based thereon allege that he and the Class are entitled to relief under, without limitation, Labor Code section 226.7.

FIFTH CAUSE OF ACTION
Unfair Business Practices
in Violation of Bus. & Prof. Code § 17200 *et seq*.
On Behalf of Plaintiff and the Class Against Defendants

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

67. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Business & Professions Code section 17204 allows "any person who has suffered injury in fact and has lost money or property" to prosecute a civil action for violation of the UCL. Such a person may bring such an action

on behalf of himself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

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

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

70. As a direct and proximate result of Defendants' unlawful business practices, Plaintiff and the Class Members have suffered economic injuries. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and practices.

71. Plaintiff and similarly situated Class Members are entitled to monetary relief pursuant to Business & Professions Code sections 17203 and 17208 for all unpaid meal and rest premiums, Defendants' failure to reimburse business expenses, and interest thereon from at least four years prior to the filing of this Complaint through to the date of such restitution, at rates specified by law. Defendants should be required to disgorge all the profits and gains they have reaped and restore such profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

72. Through the actions alleged herein, Defendants have engaged in unfair competition within the meaning of the UCL, because Defendants' conduct, as herein alleged, has damaged Plaintiff and the Class Members by wrongfully denying them wage and hour rights under the Labor Code, and therefore was substantially injurious to Plaintiff and the Class Members.

73. Defendants' course of conduct, act, and practice in violation of the California laws mentioned above constitute independent violations of the UCL.

74. Plaintiff and similarly situated Class Members are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to the UCL.

75. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of himself and other similarly situated Class Members previously or presently employed by Defendants in California. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure section 1021.5.

SIXTH CAUSE OF ACTION
PAGA Penalties for Willful Misclassification
in Violation of Labor Code §§ 2698 *et seq.* 2775 and 226.8(a)(1) and 226.8(b) or 226.8(c)
On Behalf of Plaintiff, the LWDA and the Aggrieved Employees Against Defendants

76. Plaintiff on behalf of the LWDA, and all other Aggrieved Employees, re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

77. The Aggrieved Employees are and were employed by Defendants during the applicable statutory period and suffered the Labor Code violation alleged herein. At all times relevant hereto, Aggrieved Employees were employees for purposes of the California Labor Code, although they were willfully misclassified as independent contractors.

78. In violation of the Labor Code provisions cited herein and in willful violation of California law and public policy, Defendants intentionally misclassified the Aggrieved Employees as independent contractors in violation of Labor Code § 226.8(a). This was part of a pattern as practice of willful misclassification of all, or virtually all, of Defendants' workers thereby triggering heightened penalties under sections 226.8(b) and (c).

79. The administrative prerequisites of PAGA will be satisfied after 66 days have elapsed from May 14, 2024 (i.e., 65 days elapsed Plaintiff's mailing of the PAGA notice with no further

communication from the LWDA to Plaintiff's counsel). The actionable period is one year prior to the sending of the May 14, 2024 LWDA letter through the present. Plaintiff has paid the $75.00 fee and have otherwise satisfied the administrative prerequisites of PAGA, as amended.

80. Plaintiff by this action seeks to recover, on behalf of the LWDA and all other current and former Aggrieved Employees of Defendants, the civil penalties provided by PAGA, as specified in Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969(2009).

SEVENTH CAUSE OF ACTION
Labor Code Private Attorney General Act
PAGA Penalties for Labor Code Violations other than Misclassification
Labor Code §§ 2698-2699.5
On Behalf of Plaintiff, the LWDA and the Aggrieved Employees Against Defendants

81. Plaintiff, on behalf of the LWDA and all other Aggrieved Employees, re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

82. Those individuals who were employed by Defendants within the last year are, "aggrieved employees" under PAGA as they were employed by Defendants during the applicable statutory period and suffered the Labor Code violations alleged herein; specifically, violations of §§ 226(a) and (e), 226.3, 226.7, 226.8, 512, 2775, and 2802 as well as sections 11 and 12 of the applicable IWC Wage Order. Plaintiff was employed by Defendants during the one year preceding the submission of a PAGA letter to the LWDA on or around May 14, 2024. As such, he seeks to recover, on behalf of the LWDA and all other current and former aggrieved employees of Defendants, the civil penalties provided by PAGA.

83. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, other than the misclassification penalties in section 226.6 in the first cause of action , and the section 226.3 penalties, the aggrieved employees and the LWDA are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

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

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

These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the Aggrieved Employees. See Labor Code section 2699(i).

84. In addition, as set forth above, Defendants failed to provide Plaintiff and all aggrieved employees with accurate itemized wage statements in compliance with Labor Code § 226(a). 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."

85. Pursuant to Labor Code § 226.3, for PAGA penalties associated with the Section 226 claim, the Aggrieved Employees for the Section 226 claim are entitled to $250 for each initial pay period with a violation and $1,000 for each subsequent pay period with a violation. See *Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) 2015 WL 1137151, at *7 ["the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim."]; *Pedroza v. PetSmart, Inc.*, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) ("Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties."). Since Defendants arguably did not provide any wage statements, the penalties in section 226.3 may apply here. *See, e.g., Raines v. Coastal Pac. Food. Distribs.*, 23 Cal. App. 5th 667 (2018); *see also, Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334 (2021).

86. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that Defendants' conduct in refusing to provide accurate and itemized wage statements was knowing, intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above; *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) ("Plaintiff do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.").

87. Plaintiff seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46 Cal.4th 969.

88. Pursuant to Labor Code § 2699.3 (a), on May 14, 2024, Plaintiff gave written notice by certified mail to Defendants, and to the Labor and Workforce Development Agency ("LWDA") of his claims, including the facts and theories supporting all claims outlined in this Complaint. Accordingly, Plaintiff fulfilled all administrative prerequisites to the pursuit of their PAGA claim on behalf of the LWDA and all other current and former aggrieved employees of Defendant

JURY DEMAND

89. Plaintiff hereby demands trial by jury of his claims against Defendants except for his UCL and PAGA claims which shall be tried to the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, the LWDA, the Aggrieved Employees, and the Class, prays for judgment against Defendants 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 Defendants violated Labor Code section 226 by failing to issue compliant wage statements to Plaintiff and the Wage Statement Subclass.

(b) An award to Plaintiff and Wage Statement Subclass of $50 for each initial pay period in which a violation of Labor Code section 226 occurred and $100 for each subsequent pay period in which a violation of occurred, not to exceed $4,000 for each member of the Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code section 226(e).

3. On the Second Cause of Action:

(a) A declaratory judgement that Defendants violated Labor Code section 2802 as to Plaintiff and the Class;

(b) Pursuant to Labor Code section 2802 (a)-(c), reimbursement for all at the unreimbursed business expenses incurred by Plaintiff and the Class, plus interest and attorney's fees.

4. On the Third Cause of Action:

(a) A declaratory judgment that Defendants have violated Labor Code sections 226.7, 512 and Section 11 of the IWC Wage Order 5-2001;

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

5. On the Fourth Cause of Action:

(a) A declaratory judgment that Defendants have violated Labor Code section 226.7 and Section 12 of the IWC Wage Order 5-2001;

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

6. On the Fifth Cause of Action:

(a) That the Court find and declare that Defendants have violated the UCL and committed unfair and unlawful business practices by failing to pay meal and rest period premiums and reimbursements owed to Plaintiff and the Class;

(b) Restitution, including, but not limited to, the relief permitted by sections 226.7 and 2802 of the Labor Code.

7. On the Sixth Cause of Action:

(a) That the Court find that Defendants violated California Labor Code §§ 226.8(a)(1) by willfully misclassifying Plaintiff and Aggrieved Employees as independent contractors;

(b) That Plaintiff and other Aggrieved Employees be awarded penalties, at a minimum, as specified in Labor Code §226.8(b);

(c) That the Court find, additionally, the Defendants engaged in a pattern or practice of willful misclassification of Plaintiff and the Aggrieved Employees;

(d) That Plaintiff and other Aggrieved Employees be awarded penalties, upon a finding of a pattern or practice, as specified in Labor Code § 226.8(c) in lieu of the penalties in 226.8(b);

(e) That the Court award attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

8. On the Seventh Cause of Action:

(a) A civil penalty against Defendants in the amount of $100 for the initial violation and $200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code for the LWDA and for Aggrieved Employees during all of the pay periods in the one year preceding the filing of this Complaint through the present and on-going until the violations are corrected or this subclass is certified;

(b) Pursuant to Labor Code § 226.3, for PAGA penalties associated with the Section 226 claim, the LWDA and the Aggrieved Employees are entitled to $250 for each initial pay period with a violation and $1,000 for each subsequent pay period with a violation. See *Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) 2015 WL 1137151, at *7 ["the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim."]; *Pedroza v. PetSmart, Inc.*, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) ("Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties."). Since Defendants arguably did not provide any wage statements, the penalties in section 226.3 may apply here. *See, e.g.*, *Raines v. Coastal Pac. Food. Distribs.*, 23 Cal. App. 5th 667 (2018); *see also*, *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334 (2021);

(c) An award of reasonable attorney's fees against Defendants as specified in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA claims;

(d) An award of all costs incurred by the undersigned counsel for Plaintiff in connection with the LWDA's and Aggrieved Employees' PAGA claim against Defendants, as provided for in Labor Code § 2699(g)(1).

9. All other relief as this Court deems proper.

Respectfully submitted,

Dated: July 19, 2024

ACKERMANN & TILAJEF, P.C.
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