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By /s/ Kimberly Claussen
Deputy Clerk

Attorneys for Plaintiff, Ali Malik, an individual on his own behalf
And on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

ALI MALIK, an individual, on behalf of himself
and on behalf of all others similarly situated,

Plaintiff,

v.

WELLS FARGO BANK, N.A., and DOES 1 to
25, inclusive

Defendant.

Case Number: 24-CIV-05603

**CLASS AND REPRESENTATIVE PAGA
ACTION COMPLAINT**

1. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums (Lab. Code § 226.7)
2. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums (Lab. Code § 226.7, 512(a))
3. Failure to Pay All Wages Due Timely during Employment (Lab. Code § 204)
4. Failure to Maintain Accurate Employment Records (Lab. Code § 1174 (d))
5. Failure to Pay Overtime (Lab. Code § 510, 1194)
6. Failure to Furnish Accurate Itemized Wage Statements (Lab. Code § 226(a))
7. Failure to Pay All Wages Earned and Unpaid at Separation (Labor Code § 201-203)
8. Failure to Indemnify All Necessary Business Expenditures (Lab. Code § 2802)
9. Retaliation (Labor Code § 1102.5)
10. Violations of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200 et seq.)

11. Violation of the Private Attorneys General Act of 2004 (Cal. Lab. Code §2698 et seq.)

Demand for Jury Trial

Plaintiff, Ali Malik (“Plaintiff”), on behalf of himself and on behalf of all other similarly situated employees within the State of California, brings this Complaint against WELLS FARGO BANK, N.A., a national bank incorporated under the laws of the United States, (“Defendant”) and DOES 1 to 25, inclusive and states and alleges as follows:

INTRODUCTION

1. Plaintiff files this Complaint as a class action under California Code of Civil Procedure section 382 against Defendant for failure to provide rest periods and pay missed rest period premiums; failure to provide meal periods and pay missed meal period premiums; failure to maintain accurate employment records; failure to pay all overtime wages; failure to pay all wages due timely during employment; failure to furnish accurate itemized wage statements; failure to pay all wages earned and unpaid at separation/termination of employment; failure to indemnify all necessary business expenditures; and for unlawful business practices.

2. Plaintiff brings these claims on behalf of himself and all non-exempt employees currently or formerly employed by Defendant within the State of California from four years prior to the filing of this action from July 3, 2020 through the date of judgment (the “Class Members”).

3. The unlawful acts complained of herein occurred, occur and will occur as a uniform, companywide pattern and practice, at least in part within the time period from the four years preceding the filing of this complaint, up to and through the date of judgment (the “Class Period”).

4. Defendant’s alleged violations of California’s laws as described more fully below have been ongoing throughout the Class Period and upon information and belief, and based thereon, Plaintiff alleges are still ongoing.

5. Plaintiff is informed and believes and based thereon alleges that the California Industrial Welfare Commission (“IWC”) Wage Order applicable to the facts of this case are IWC Wage Orders 4-2001 (“IWC No. 4”) and possibly others that may be applicable. (Cal. Code of Regs., tit. 8, §§ 11040, 11070.) Plaintiff reserves the right to amend or modify the definition of “Applicable Wage Orders”

1 with greater specificity or add additional IWC Wage Orders if additional applicable wage orders are
2 discovered in litigation.

3 **JURISDICTION & VENUE**

4 6. This Court has subject matter jurisdiction over all causes of action asserted herein
5 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
6 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
7 \$75,000, and because each cause of action asserted arises under the laws of the State of California or
8 is subject to adjudication in the courts of the State of California.

9 7. This Court has personal jurisdiction over Defendant because Defendant has caused
10 injuries in the County of San Mateo and the State of California through their acts, and by their violation
11 of the California Labor Code and California common law. Defendant owns, maintains offices, transacts
12 business, has an agent or agents within the County of San Mateo and/or otherwise are found within the
13 County of San Mateo and Defendant is within the jurisdiction of this Court for purposes of service of
14 process.

15 8. Venue as to Defendant is proper in this judicial district, pursuant to section 395 of the
16 Code of Civil Procedure. Defendant operates within California and does business within the City of
17 Hillsdale, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of
18 Defendant's employees identified above within the City of Hillsdale, in San Mateo County and
19 surrounding counties within the State of California where Defendant operates a vast network of banking
20 institutions commonly known as "Wells Fargo Bank."

21 9. This matter is not appropriate for removal under the Class Action Fairness Act (28
22 U.S.C. § 1332) as the amount in controversy for Plaintiff's and the Class and/or Subclass Members'
23 claims, in aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the
24 State of California. As such, even if the amount in controversy did exceed \$5 million this matter would
25 still not be appropriate for removal under the "local controversy" exception to the Class Action Fairness
26 Act. (28 U.S.C. § 1332, subd. (d)(4)(A).)

THE PARTIES

PLAINTIFF

10. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen of California residing and working in the City of Hillsdale in the State of California. Defendant employed and categorized Plaintiff as a non-exempt hourly employee in the city of Hillsdale, California in the County of San Mateo.

11. Plaintiff brings this action on behalf of himself and the following Class and/or Subclass Members pursuant to section 382 of the Code of Civil Procedure as follows: All individuals who are or were employed by Defendant as hourly non-exempt, in California during the Class Period.

12. The Class and/or Subclass Members, at all times pertinent hereto, are currently or were former employees of Defendant during the relevant statutory period.

DEFENDANT

13. Plaintiff is informed and believes and based thereon alleges that at all relevant times, Defendant, Wells Fargo Bank, ("WCPA") was and is a national bank incorporated under the laws of the United States actively conducting business out of multiple branch locations within the State of California, including San Mateo County, in the city of San Francisco, where it employed Plaintiff and other similarly situated employees.

14. During the applicable statutory time periods. Plaintiff and the other Class/Subclass Members were, and are, subject to Defendant's policies and/or practices complained of herein and have been deprived of the rights guaranteed to them by: California Labor Code sections 201, 202, 203, 204, 210, 226 (a), 226.3, 226.7, 510, 512, 1174, 1194, 1198, 2802, 2804 and others that may be applicable; and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11040, 11070).

15. Plaintiff is informed and believes, and based thereon alleges, that during the Class Period, Defendant did (and continue to do) business in the State of California, County of San Mateo.

16. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the Defendants sued herein as Does 1 to 25, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and

1 based thereon alleges, that each of said fictitious Defendant, whether individual, partners, or corporate,
2 were responsible in some manner for the acts and omissions alleged herein, and proximately caused
3 Plaintiff and the other Class / Subclass Members to be subject to the unlawful employment practices,
4 wrongs, injuries, and damages complained of herein.

5 17. Defendant was the former employer of Plaintiff, and upon information and belief and
6 based thereon, Plaintiff also alleges that Defendant formerly was and/or is the current employer of other
7 Class / Subclass Members. At all times herein mentioned, Plaintiff alleges that Defendant and each of
8 the Doe Defendants participated in the doing of the acts hereinafter alleged to have been done by the
9 named Defendant. Furthermore, the Defendant and Doe Defendants, and each of them, were the agents,
10 servants, and employees of each and every one of the other Defendants, as well as the agents of all
11 Defendants, and at all times herein mentioned were acting within the course and scope of said agency
12 and employment. Defendant and said Doe Defendants, and each of them, approved of, condoned, or
13 otherwise ratified every one of the acts or omissions complained of herein and proximately caused the
14 damages herein alleged.

15 18. Plaintiff is informed and believes, and thereon alleges that named Defendant and each
16 of the Doe Defendants in some manner intentionally, negligently or otherwise were and or are,
17 responsible for the acts, omissions, occurrences and transactions alleged herein.

18
19 **COMMON FACTS AND GENERAL ALLEGATIONS**

20 19. Plaintiff and the other Class/Subclass Members (collectively, the putative “Class
21 Members”) are, and were at all relevant times, employed by the Defendant within the State of California
22 in various positions, as hourly, non-exempt employees.

23 20. Plaintiff began working for Defendant on or around May 30, 2023 as a part time hourly,
24 non-exempt banking teller at Defendant’s Hillsdale, California location, with an hourly rate of pay of
25 \$23 per hour.

26 21. The Class/Subclass Members are, and were, at all relevant times, were also employed
27 by Defendant in California and were primarily engaged in performing non-exempt job duties including
28 but not limited to positions such as tellers, cashiers, account services personnel, financial advisors, and

1 in other customer service-related non-exempt positions with Defendant during the Class Period.

2 22. Throughout the duration of his employment, Plaintiff and the similarly situated
3 Class/Subclass Members nearly always missed their lawfully, entitled ten-minute rest breaks due to
4 workload demands paired with inadequate staffing which actively impeded the ability of Plaintiff and
5 others similarly situated to take timely, duty-free breaks because there was no one available to cover
6 for them if they went on a break.

7 23. Plaintiff's manager tightly controlled his schedule and routinely worked Plaintiff and
8 other staff straight through their shifts without any opportunity for a break. She told Plaintiff if he
9 missed his break because they were too busy, he would simply have to skip it, but she would still
10 instruct him to alter his timecards at the end of his shift to make it appear he was getting his breaks.

11 24. In addition to the unlawful practices and directives, Defendant never accurately tracked
12 or recorded missed breaks and working on-duty breaks. As a direct consequence, the time that Plaintiff
13 and Class / Subclass Members were working during "purported" breaks translated into overtime hours
14 that were never recorded or compensated.

15 25. Plaintiff complained to human resources ("HR") about missed breaks and the unlawful
16 practices of missed, skipped and interrupted or shortened rest or meal breaks. However, absolutely
17 nothing was done by Defendant to correct or remedy the situation and thus, by all accounts Defendant
18 ratified the unlawful directives of Plaintiff's manager.

19 26. After Plaintiff complained to HR, he was called names, and a "dead rat" by his manager
20 and even some of his co-workers. The "dead rat" reference felt like a threat to Plaintiff, who no longer
21 felt safe at work. As a result of the toxic and hostile work environment, Plaintiff resigned from Wells
22 Fargo on September 8, 2023.

23 27. Due to Defendant's intentional and knowing failure to record all hours he actually
24 worked, he was not provided with the full wages he earned each pay period throughout the duration of
25 his employment, nor was he furnished with complete or accurate wage statements stating with accuracy
26 Plaintiff's respective (1) gross wages earned, (2) total hours worked, (3) net wages earned, and (4) all
27 applicable hourly rates and the corresponding number of hours worked at each.

28 28. As provided by California Labor Code Section 226(e) employees may recover penalties

1 if they suffer an injury as a result of an employer's knowing and intentional failure to comply with the
2 statute. Herein Plaintiff is entitled to recover the greater of actual damages or \$50 for the initial
3 violation or \$100 for each violation in a subsequent pay period, subject to a maximum aggregate penalty
4 of \$4,000, plus an award of his attorney's fees and costs. Here because of Defendants wrongful
5 instructions to Plaintiff regarding timekeeping and alteration of his actual hours worked, Defendant's
6 violation of Section 226(a) was absolutely intentional and knowing.

7 29. In addition, Labor Code 226.3 provides that employers who violate section 226(a) are
8 subject to a civil penalty of \$250 per employee per violation for the initial "citation" and \$1,000 per
9 employee for each subsequent violation."

10 30. Necessary and integral to the performance of his job duties, Plaintiff was required to use
11 his personal cell phone throughout the workday to perform his job duties and to accept and respond to
12 work related phone calls and text messages throughout the day from managers or colleagues.

13 31. Despite Defendant's knowledge of Plaintiff and similarly situated employees' necessary
14 and routine use of their personal cell phones for execution of work-related communications and tasks,
15 they have never provided reimbursement for the expenses their workers incur/ and incurred in using
16 their personal cell phones for work. This constitutes a violation of Labor Code § 2802, which requires
17 employers to "indemnify his or her employee for all necessary expenditures or losses incurred by the
18 employee in direct consequence of the discharge of his or her duties."

19 32. Due to the foregoing-described actions, Defendant has unlawfully failed to timely pay
20 all wages due upon termination of employment to Plaintiff and Class / Subclass Members whose
21 employment relationships with Defendant ceased during the statutory period pursuant to Labor Code
22 § 201 - 203.

23 33. Here, Defendant failed to fully conform their compensation policies and practices to the
24 requirements of California law during the relevant statutory periods. The Class/ Subclass Members
25 were not compensated for all hours worked including, but not limited to all hours they were subject to
26 the control of Defendant and/or suffered or permitted to work under the California Labor Code and the
27 Applicable Wage Orders.

28 34. Labor Code section 510 requires employers to compensate employees who work more

1 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
2 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
3 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
4 employees at no less than twice the regular rate of pay when an employee works more than twelve
5 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
6 subd. (a).) These rules are also reflected in the Applicable Wage Orders.

7 35. In accordance with Labor Code section 1194 and the Applicable Wage Orders, the Class
8 and Subclass Members could not then agree and cannot now agree to work for a lesser wage than the
9 amount provided by Labor Code sections 510 or the Applicable Wage Orders.

10 36. Here, Defendant violated their duty to accurately and completely compensate the Class
11 Members for all overtime worked. The Class/Subclass Members worked hours that entitled them to
12 overtime compensation under the law but were not fully compensated for those hours.

13 37. Upon information and belief, Plaintiff also alleges that Defendant also maintained a
14 policy and practice of denying the Class and Subclass Members labor code compliant meal breaks,
15 that would allowed them to take an uninterrupted meal period of at least thirty (30) minutes, starting
16 no later than the completion of the fifth hour of worked each day, yet nevertheless deducted meal break
17 time from such Class/ Subclass Members' pay, when in fact Plaintiff and those similarly situated were
18 regularly forced to miss and skip their rest breaks and meal breaks because of lack of implementation
19 and enforcement of meal break policies. Shortage of staff, combined with staff members who abused
20 meal break policies by chronically taking extended meal breaks, routinely prohibited Plaintiff and those
21 similarly situated Class/Subclass Members from taking time and duty-free rest breaks.

22 38. Pursuant to Labor Code section 226.7 and the applicable Wage Orders, Defendant was
23 required to provide the Class/Subclass Members with compensated, duty-free rest periods of not less
24 than ten minutes for every major fraction of four hours worked. Under the Applicable Wage Orders,
25 an employer must authorize and permit all employees to take ten-minute duty-free rest periods for
26 every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, §§ 11040, 11070.)

27 39. However, at no time during the entire term of his employment and the Class Period,
28 Plaintiff was rarely if ever provided with a rest break period. Whenever he attempted to take his breaks,

1 he was continuously interrupted and had to tend to his job duties immediately. Plaintiff also alleges on
2 information and belief that Defendant similarly periodically failed to provide or allow the
3 Class/Subclass Members to take an uninterrupted rest break of at least ten (10) minutes for each four
4 (4) hours worked or major fraction thereof.

5 40. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
6 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
7 applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, §
8 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one
9 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery
10 period is not provided.” (Lab. Code, § 226.7, subd. (c).) 204.) Thus, the Wage Orders set when and for
11 how long the rest period must take place and the Labor Code establishes that violations of the IWC
12 Wage Orders are unlawful and sets forth the premium pay employer must pay their employees when
13 employers fail to provide rest periods.

14 41. Despite the foregoing-described rest and meal break violations, during the entire course
15 of his employment with Defendant he was only paid *a total of three hours of the premium pay penalties*.
16 The California Supreme Court has held that, during required rest periods, “employers must relieve their
17 employees of all duties and relinquish any control over how employees spend their break time.”
18 (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing control over
19 employees during rest periods requires that employees be “free to leave the employer’s premises” and
20 be “permitted to attend to personal business.” (Id. at p. 275.) The *Brinker* Court explained in the context
21 of rest breaks that employer liability attaches from adopting an unlawful policy:

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

28 42. Here, during the Class Period, Defendant frequently did not permit the Class/Subclass

1 Members any opportunity to take Labor Code compliant duty-free rest breaks, free from Defendant's
2 control as required by Labor Code section 226.7, the Applicable Wage Orders, and applicable caselaw
3 precedent. (See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that
4 "during rest periods employers must relieve employees of all duties and relinquish control over how
5 employees spend their time."].)

6 43. At all relevant times, the Class / Subclass Members were frequently not provided with
7 legally-compliant and timely rest periods of at least ten minutes after each four hours of labor
8 performed, or major fraction thereof due to Defendant's unlawful rest period policies/practices. The
9 Class/Subclass Members were often expected and required to continue working through and/or during
10 rest break periods to meet the expectations of Defendant in order to complete all tasks assigned in their
11 workday.

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

20 45. In addition to failing to authorize and permit compliant rest break periods, the Plaintiff
21 and Class / Subclass Members were not compensated with one hour's worth of pay at their regular rate
22 of compensation when they were not provided with a compliant rest period in accordance with Labor
23 Code section 226.7, subdivision (c). Thus, Defendant has violated Labor Code section 226.7 and the
24 Applicable Wage Orders.

25 46. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and the putative
26 Class/Subclass Members rest period premiums and penalties for the violations that occurred throughout
27 the Class Period.

28 47. Labor Code section 512 and the Applicable Wage Orders require employers to provide

1 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
2 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
3 more than five hours per day without providing the employee with a meal period of not less than 30
4 minutes”]; Cal. Code of Regs., tit. 8, §§ 11040, 11070 [“No employer shall employ any person
5 for a work period of more than five (5) hours without a meal period of not less than 30 minutes”].)

6 48. Additionally, an employee who works more than ten hours per day is entitled to receive
7 a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An
8 employer shall not employ an employee for a work period of more than 10 hours per day without
9 providing the employee with a second meal period of not less than 30 minutes”].) “An on-duty
10 meal period is permitted only when the nature of the work prevents an employee from being relieved
11 of all duty and the parties agree in writing to an on-duty paid meal break.” (*Lubin v. The Wackenhut*
12 *Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must include a provision allowing the
13 employee to revoke it at any time. (*Ibid.*) Generally, the California Department of Industrial Relations,
14 Division of Labor Standards Enforcement (“DLSE”) and courts have “found that the nature of the work
15 exception applies: (1) where the work has some particular external force that requires the employee to
16 be on duty at all times, and (2) where the employee is the sole employee of a particular employer.” (*Id.*
17 at p. 945, internal quotation marks omitted; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013)
18 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the work
19 prevents an employee from being relieved before requiring an employee to take an on-duty meal
20 period.” (*Lubin v. The Wackenhut Corp., supra*, 5 Cal.App.5th at p. 946.)

21 49. Upon information and belief and based thereon, Plaintiff alleges that here, he nor the
22 Class / Subclass Members were ever asked to sign any enforceable document agreeing to an on-duty
23 meal period. Moreover, nothing in the nature of their work involved the kind of “external force” that
24 might justify on-duty meal breaks. (*Lubin v. The Wackenhut Corp., supra*, 5 Cal.App.5th at p. 945.)
25 Nevertheless, during the Class Period, Defendant more often than not, failed to provide compliant off-
26 duty meal periods within the first five hours of work for the Plaintiff and the Class / Subclass Members.

27 50. As with rest breaks, meal breaks must also be duty-free. (*Brinker Restaurant Corp. v.*
28 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s

1 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal
2 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend
3 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under
4 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit
5 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable
6 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
7 *Court*, *supra*, 53 Cal.4th at p. 1033.)

8 51. As prior stated, during the applicable statutory period, Plaintiff and the Class / Subclass
9 Members were frequently denied legally compliant and timely off-duty meal periods of at least thirty
10 minutes in duration due to Defendant’s unlawful meal period policy and practices. As a result of
11 Defendant’s uniform meal period policies and practices, the Class / Subclass Members were often
12 actively impeded by Defendant in their ability to take Labor Code compliant first meal break periods
13 before the end of the fifth hour of work. Even if and when meal breaks were provided, most if not all
14 of the time any purported meal break periods were not ever duty free, as workers were chronically
15 interrupted with work-related matters or questions that as a matter of policy, had to be tended to
16 immediately.

17 52. The Class and Subclass Members were also periodically not permitted to take second
18 meal break periods for shifts worked in excess of ten hours. Defendant thus violated Labor Code section
19 512 and the Applicable Wage Orders by failing to advise, authorize, or permit the Class and Subclass
20 Members to receive thirty-minute, off-duty meal periods after each fifth hour of labor performed in a
21 single shift.

22 53. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
23 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
24 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
25 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Orders further obligate
26 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
27 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
28 Regs., tit. 8, §§ 11040, 11070 [“If an employer fails to provide an employee a meal period in accordance

1 with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay
2 at the employee's regular rate of compensation for each workday that the meal period is not
3 provided."].)

4 54. Accordingly, for each day that Plaintiff and the Class/Subclass Members did not receive
5 compliant meal break periods, they were and are entitled to receive meal period premiums pursuant to
6 Labor Code section 226.7 and the Applicable Wage Orders. Defendant, however, failed to pay Plaintiff
7 and the Class/Subclass Members applicable meal period premium penalties for many workdays that
8 the employees did not receive a Labor Code compliant meal break period. Thus, Defendant has violated
9 California Labor Code section 226.7 and the applicable Wage Orders.

10 55. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other non-
11 exempt employees, meal period premiums and penalties.

12 56. Labor Code section 204 expressly requires employers who pay employees on a weekly,
13 biweekly, or semimonthly basis to pay all wages "not more than seven calendar days following the
14 close of the payroll period." Labor Code section 210, subdivision (a), makes employers who violate
15 Labor Code section 204 subject to a penalty of:

16 "(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
17 employee.

18 "(2) For each subsequent violation, or any willful or intentional violation, two hundred
19 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
20 withheld." (Lab. Code, § 210, subd. (a).)

21 57. Notably, the penalty provided by Labor Code section 210 is "[i]n addition to, and
22 entirely independent and apart from, any other penalty provided in this article" (Lab. Code, § 210,
23 subd. (a).)

24 58. Due to Defendant's failure to pay the Class/Subclass Members the wages described
25 above, along with rest and meal break premiums, Defendant failed to timely pay such Class Members
26 within seven calendar days following the close of payroll in accordance with Labor Code section 204
27 on a regular and consistent basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No.
28 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure

1 to pay rest period premiums can support claims under Labor Code sections 203 and 204].

2 59. In addition, at all relevant times herein, Defendant was subject to Labor Code section
3 2802, which states that “An employer shall indemnify his or her employee for all necessary
4 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
5 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
6 employee, at the time of obeying the directions, believed them to be unlawful.” The purpose of this
7 section is to “prevent employers from passing along their operating expenses onto their employees.”
8 (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.)

9 60. At all relevant times herein, Defendant was subject to Labor Code section 2804, which
10 states that “any contract or agreement, express or implied, made by any employee to waive the benefits
11 of this article or any part thereof, is null and void, and this article shall not deprive any employee or his
12 personal representative of any right or remedy to which he is entitled under the laws of this State.”

13 61. Thus, the Class and Subclass Members were and are entitled to reimbursement for the
14 expenses they incurred for the mandatory and necessary use of their personal cell phones in order to
15 perform their job duties on a routine and daily basis. The duty to reimburse even extends to the use of
16 equipment the employee may already own and would be required to pay for anyway. (*Cochran v.*
17 *Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold question in this case
18 is this: Does an employer always have to reimburse an employee for the reasonable expense of the
19 mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in
20 which the employee incurred an extra expense that he or he would not have otherwise incurred absent
21 the job? The answer is that reimbursement is *always* required. Otherwise, the employer would receive
22 a windfall because it would be passing its operating expenses on to the employee.”].)

23 62. Here, Defendant failed to fully reimburse the Class and Subclass Members for necessary
24 expenditures incurred as a direct consequence and requirement of performing their job duties, including
25 the costs associated with the utilization of their personal cell phones which they were required use in
26 order to perform their work. Consequently, Defendant failed to comply with Labor Code section 2802.

27 63. Defendant also failed to provide accurate itemized wage statements in accordance with
28 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision

1 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
2 statement in writing showing:

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

16 64. Due to Defendant's failure to pay the Plaintiff and the Class/Subclass Members properly
17 as described above, the wage statements issued by Defendant during the Class Period do not indicate
18 the correct amount of gross wages earned, total hours worked, or the net wages earned, or the applicable
19 hourly rates in effect during the pay period and the corresponding number of hours worked at each
20 correct corresponding hourly rate. Thus, Defendant has violated Labor Code section 226, subdivisions
21 (a)(1), (2), (5), and (9).

22 65. In addition to Labor Code section 226, subdivision (a), Defendant also knowingly and
23 intentionally failed to provide the Class and Subclass Members with complete and accurately itemized
24 wage statements in violation of Labor Code section 226, subdivision (e). Defendant knew that they
25 were not providing the Class and Subclass Members with complete and accurate wage statements
26 required by California law, but nevertheless failed to correct their unlawful practices and policies
27 because Defendant was fully aware of the myriad rest and meal break violations and intentionally failed
28 to record, and track such missed and non-compliant breaks in order to avoid having to pay premium

1 pay penalties.

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

5 67. “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil
6 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
7 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for
8 which the employer fails to provide the employee a wage deduction statement or fails to keep the
9 records required in subdivision (a) of Section 226. The civil penalties provided for in this section are
10 in addition to any other penalty provided by law.” (Lab. Code, § 226.3, *emphasis added*.)

11 68. Likewise, Labor Code section 1174, subdivision (d), requires every employer,
12 including Defendant, to:

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

22 69. As explained in detail above, Defendant failed to provide the Plaintiff and Class/
23 Subclass Members with complete and accurately itemized wage statements. Defendant did so, because
24 they failed to accurately track hours all hours actually worked by the Plaintiff and Class/Subclass
25 Members regardless of the number of hours they actually worked – including hours worked during and
26 through rest and meal break period. Defendant has thus failed to keep accurate records of the “total
27 hours worked by the employee[s]” in violation of Labor Code section 226, subdivision (a), and are
28 therefore subject to the penalties provided by Labor Code section 226.3. These penalties are “in

1 addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

2 70. The failure to accurately track hours worked also resulted in a failure of Defendant to
3 keep a record of all “payroll records showing the hours worked daily by” Defendant’s employees,
4 including Plaintiff and the other Class and Subclass Members, in violation of Labor Code section 1174,
5 subdivision (d).

6 71. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
7 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
8 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result
9 of Defendant’s failure to pay the Class Members for the wages described above, along with rest and
10 meal break premiums, Defendant violated and continue to violate Labor Code section 203.

11 72. Due to Defendant’s derelict operational and payment policies and practices, Plaintiff
12 and those Class and Subclass Members whose employment with Defendant concluded during the Class
13 Period were not compensated for all wages earned and due at the time of their separation of
14 employment. Defendant has failed to pay such formerly-employed Class and Subclass Members
15 whose sums were certain at the time of termination within at least seventy-two hours of their resignation
16 and have failed to pay those sums for thirty days thereafter.

17 **CLASS ACTION ALLEGATIONS**

18 73. As mentioned above, Plaintiff brings this action on behalf of himself and the Class and
19 Subclass Members pursuant to section 382 of the Code of Civil Procedure.

20 74. Numerosity/Ascertainability: The putative Class and Subclass Members are so
21 numerous that joinder of all members would be unfeasible and not practicable. The number of the
22 putative class members is unknown to Plaintiff at this time; however, it is estimated that the number of
23 the Class and Subclass Members is greater than 150 individuals. The identity of such membership is
24 readily ascertainable via inspection of Defendant’s employment records.

25 75. Common Questions of Law and Fact Predominate/Well Defined Community of Interest:
26 There are common questions of law and fact as to Plaintiff and all other similarly situated employees,
27 which predominate over questions affecting only individual class members including, without
28 limitation to:

- a) Whether Defendant's pay policies/practices resulted in a failure to pay the Class and Subclass Members for all required overtime wages at such Class and Subclass Members' regular rate of pay;
- b) Whether Defendant's rest period policies and practices afforded legally compliant rest break periods or compensation in lieu thereof;
- c) Whether Defendant's meal period policies and practices afforded legally compliant meal break periods or compensation in lieu thereof;
- d) Whether Defendant maintained accurate employment records;
- e) Whether Defendant timely paid all wages during employment;
- f) Whether Defendant indemnified their employees for all necessary business expenditures;
- g) Whether Defendant furnished legally compliant wage statements to the Class and Subclass Members pursuant to Labor Code section 226;
- h) Whether Defendant timely paid all wages earned and unpaid at separation;
- i) Whether Defendant's violations of the Labor Code and the Applicable Wage Orders amounted to a violation of California's UCL.

76. Predominance of Common Questions: Common questions of law and fact predominate over questions that affect only individual Class Members. The common questions of law set forth above are numerous and substantial and stem from Defendant's uniform policies and practices applicable to each individual class member, such as Defendant's uniform policy and practice of failing to pay for all hours worked, Defendant's uniform policies and practices which failed to provide compliant rest periods, Defendant's uniform policies and practices which failed to provide compliant meal periods, Defendant's failure to provide accurate itemized wage statements, and others. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

77. Typicality: The claims of Plaintiff are typical of the claims of the Class and Subclass Members because Plaintiff was employed by Defendant, and compensated by Defendant as an hourly, non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein, as a consequence of Defendant's unlawful operational

1 policies and practices, Plaintiff, and the other similarly situated Class and Subclass Members, were
2 deprived of minimum, regular, and overtime wages because of Defendant's unlawful timekeeping
3 policies and practices, were deprived of rest periods and premium wages in lieu thereof, were deprived
4 of meal periods and premium wages in lieu thereof, were subject to Defendant's unlawful uniform rest
5 break policies and practices, were subject to Defendant's unlawful, uniform meal break policies and
6 practices, were not provided complete and accurate itemized wage statements, were not timely paid all
7 wages in full each and every pay period during the Class Period, and were subject to other similar
8 unlawful policies and practices as alleged herein.

9 78. Adequacy of Representation: Plaintiff is fully prepared to take all necessary steps to
10 represent fairly and adequately the interests of the Class and Subclass Members. Moreover, Plaintiff's
11 attorneys are ready, willing, and able to fully and adequately represent the Class and Subclass Members
12 and Plaintiff. Plaintiff's attorneys have successfully prosecuted numerous wage-and-hour class actions
13 in state and federal court in the past and are committed to vigorously prosecuting this action on behalf
14 of Plaintiff and the Class and Subclass Members.

15 79. Superiority: The California Labor Code is broadly remedial in nature and serves an
16 important public interest in establishing minimum working conditions and standards in California.
17 These laws and labor standards protect the average working employee from exploitation by employers
18 who have the responsibility to follow the laws and who may seek to take advantage of superior
19 economic and bargaining power in setting onerous terms and conditions of employment. The nature of
20 this action and the format of laws available to Plaintiff and the Class and Subclass Members make the
21 class action format a particularly efficient and appropriate procedure to redress the violations alleged
22 herein. If each employee were required to file an individual lawsuit, Defendant would necessarily gain
23 an unconscionable advantage since they would be able to exploit and overwhelm the limited resources
24 of each individual plaintiff with their vastly superior financial and legal resources.

25 80. Moreover, requiring each Class and Subclass Member to pursue an individual remedy
26 would also discourage the assertion of lawful claims by employees who would be disinclined to file an
27 action against their former or current employer for real and justifiable fear of retaliation and permanent
28 damages to their careers at subsequent employment. Further, the prosecution of separate actions by the

1 individual Class and Subclass Members, even if possible, would create a substantial risk of inconsistent
2 or varying verdicts or adjudications with respect to the individual Class and Subclass Members against
3 Defendant herein, and which would establish potentially incompatible standards of conduct for
4 Defendant or legal determinations with respect to individual Class and Subclass Members which
5 would, as a practical matter, be dispositive of the interest of the other Class and Subclass Members not
6 parties to adjudications or which would substantially impair or impede the ability of the Class and
7 Subclass Members to protect their interests.

8 81. Further, the claims of the individual Class and Subclass Members are not sufficiently
9 large to warrant vigorous individual prosecution considering the concomitant costs and expenses
10 attending thereto. As such, the Class and Subclass Members identified above are maintainable as a
11 class under section 382 of the Code of Civil Procedure.

12 **PAGA Claim**

13 82. Plaintiff also brings this case as a representative action seeking civil penalties for the
14 State of California in a representative capacity, as provided by the PAGA to the extent permitted by
15 law, as an aggrieved employee who was subject to Defendant's violations of the Labor Code. A true
16 and correct copy of the notice establishing compliance with Labor Code § 2699.3 is attached hereto as
17 **Exhibit A** and demonstrates that Plaintiff is an aggrieved employee and has standing to bring a
18 representative action on behalf of the state of California and Labor and Workforce Development
19 Agency (the "LWDA") as private attorneys general. No notice of cure by Defendants was provided
20 and no notice of investigation was received from the LWDA in the statutorily proscribed 65-day period
21 since the mailing of the notice to the LWDA. Accordingly, Plaintiff also files this Complaint as a
22 "Representative Action" on behalf of the "Aggrieved Employees" as provided by the Code of Civil
23 Procedure and as specifically permitted and authorized by Labor Code § 2699.3(a)(2)(C). Plaintiff has
24 complied with all requirements under Labor Code § 2699.3 for commencing a civil action under the
25 PAGA and seek all recoverable penalties for Labor Code violations as permitted and proscribed by the
26 PAGA, including remedies available under Labor Code §§ 2699, 2699.5, and 2933.3, among others.
27 Specifically, Plaintiff, for himself and all current and former Aggrieved Employees, seeks the penalties
28 provided by Labor Code § 2699(f) for violations of, inter alia, Labor Code §§ 201-204, 210, 226(a),

226.7, 510, 512, 1174(d), 1102.5, 1194, 2802 and sections 5 and 12 of the applicable Wage Order.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Failure to Provide Rest Periods and Pay Missed Rest Period Premiums

(Lab. Code § 226.7)

(As to Defendant and Does 1-25, inclusive)

83. Plaintiff realleges and incorporates by reference all previous paragraphs as though fully set forth herein.

84. Labor Code § 226.7 provides: “(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

85. The premium pay penalties for failure to provide Labor Code compliant rest breaks are set forth in IWC Wage Order No. 4 “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

86. Plaintiff and the Class/Subclass Members were rarely, if ever, provided rest breaks due to Defendant’s demands and understaffing policy that impeded their ability to take a full ten-minute, unrestricted, duty-free rest break after each fourth hour of work performed (or major fraction thereof). On many occasions, Plaintiff and similarly situated employees were pushed to work non-stop through to the end of their working shifts, but were still instructed to adjust their time sheets by their manager to make it appear as though they had been provided with their lawfully entitled breaks.

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1 and 3289. (See Cal. Code of Regs., tit. 8, §§ 11040, 11070.)

2 **THIRD CAUSE OF ACTION**

3 **Failure to Pay All Wages Due Timely during Employment**

4 **(Lab. Code § 204)**

5 *(As to Defendant and Does 1-25, inclusive)*

6 92. Plaintiff realleges all previous paragraphs contained in this Complaint and incorporates
7 the same as though fully set forth in full herein.

8 93. Labor Code § 204 (a) states “All wages, other than those mentioned in §§ 201, 201.3,
9 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each
10 calendar month, on days designated in advance by the employer as the regular paydays.”

11 94. Under Labor Code § 1194 (a) “Notwithstanding any agreement to work for a lesser
12 wage, any employee receiving less than the legal minimum wage or the legal overtime compensation
13 applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount
14 of their minimum wage or overtime compensation, including interest thereon, reasonable attorney’s
15 fees, and costs of suit.”

16 95. Defendant failed to pay Plaintiff and the Class/Subclass Members for the time they were
17 working while off the clock, during “purported” rest breaks or during meal breaks, during each and
18 every pay period they worked twice each calendar month during the statutory period. Defendant failed
19 to fully and accurately compensate Plaintiff and Class / Subclass Members for all of the hours they
20 actually worked, in violation of Labor Code §204.

21 96. Defendant, as a matter of established company policy and procedure in the State of
22 California, falsely deny they owe Plaintiff and the other Class/Subclass Members these wages, with
23 the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder,
24 delay, and/or defraud Plaintiff and the other Class/Subclass Members.

25 97. Defendant’s pattern, practice, and uniform administration of its business policies and
26 practices of illegally denying employees their proper compensation, as described herein, is unlawful
27 and entitles Plaintiff and the other Class/Subclass Members to recover, pursuant to Labor Code section
28 218, the unpaid balance of the compensation owed to them in a civil action and any applicable penalties,

1 attorney fees, and interest owed to them pursuant to Labor Code sections 210 and 218.5.

2 **FOURTH CAUSE OF ACTION**

3 **Failure to Maintain Accurate Employment Records**

4 **(Lab. Code § 1174 (d))**

5 *(As to Defendant and Does 1-25, inclusive)*

6 98. Plaintiff realleges all previous paragraphs contained in this Complaint and incorporates
7 the same as though fully set forth in full herein.

8 99. Labor Code § 1174(d) provides, “Every person employing labor in this state shall:... (d)
9 Keep, at a central location in the state or at the plants or establishments at which employees are
10 employed, payroll records showing the hours worked daily by and the wages paid to, and the number
11 of piece-rate units earned by and any applicable piece rate paid to, employees employed at the
12 respective plants or establishments...shall be kept on file for not less than three years. An employer
13 shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a
14 piece-rate basis, piece-rate units earned.”

15 100. As indicated above, due to Defendant’s operational policies, procedures and practices,
16 time worked during “purported rest breaks and meal breaks” and overtime worked was not and is not
17 tracked or recorded by the Defendant in violation of Labor Code § 1174(d).

18 101. Defendant has intentionally and willfully failed to keep accurate and complete records
19 showing the hours worked daily and wages paid to Plaintiff and the other Class/Subclass Members.
20 Thus, Plaintiff and the other Class/ Subclass Members have been denied their legal right and protected
21 interest in having available at a central location at the plant or establishment where they are employed,
22 accurate and complete payroll records showing the hours worked daily by, and the wages paid to,
23 employees at those respective locations pursuant to Labor Code § 1174.

24 **FIFTH CAUSE OF ACTION**

25 **Failure to Pay All Overtime Wages**

26 **(Lab. Code § 510, 1194)**

27 *(As to Defendant and Does 1-25, inclusive)*

28 102. Plaintiff realleges all previous paragraphs contained in this Complaint and incorporates

1 the same as though fully set forth in full herein.

2 103. Labor Code § 510 (a) provides, “Eight hours of labor constitutes a day’s work. Any
3 work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek
4 and the first eight hours worked on the seventh day of work in any one workweek shall be compensated
5 at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in
6 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of
7 pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek
8 shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

9 104. California employers are required to compensate their non-exempt employees’ no less
10 than the legal minimum and overtime wages due for all hours worked, including overtime wages for
11 all hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to
12 the mandates of Labor Code §§ 510, 1194, and 1198.

13 105. As alleged, Defendant did not record time that and the Class/Subclass Members worked
14 during purported rest or meal breaks and for consequential overtime hours they worked throughout the
15 statutory period. Thus, they were not ever compensated the requisite legal amount of 1.5 times their
16 respective hourly rates of pay for time worked in excess of eight hours in a single shifts or for more
17 than forty hours in a work week.

18 106. Defendant failed to fully conform their pay practices to the requirements of California
19 law. This unlawful conduct includes but is not limited to Defendant’s’ uniform and unlawful pay
20 policies and practices of failing to accurately record all the time that non-exempt employees were under
21 the supervision and control of Defendant. The foregoing policies and practices are unlawful and allow
22 Plaintiff and the other Class / Subclass Members to recover in a civil action the unpaid amount of
23 overtime premiums owing, including interest thereon, statutory penalties, attorney's fees, and costs of
24 suit according to Labor Code section 510, 1194, and 1198, the Applicable Wage Orders, and Code of
25 Civil Procedure section 1021.5.

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1 **SIXTH CAUSE OF ACTION**

2 **Failure to Furnish Accurate Itemized Wage Statements**

3 **(Lab. Code § 226(a))**

4 *(As to Defendant and Does 1-25, inclusive)*

5 107. Plaintiff realleges all previous paragraphs contained in this Complaint and incorporates
6 the same as though fully set forth in full herein.

7 108. At all times relevant, Labor Code § 226 requires Defendant to provide an accurate wage
8 statement in writing each and every pay period that includes nine categories of information specified
9 by law. The following information to be listed on employees' pay stubs: 1. Gross wages earned; 2.
10 Total hours worked (not required for salaried exempt employees); 3. The number of piece-rate units
11 earned and any applicable piece rate if the employee is paid on a piece rate basis; 4. All deductions (all
12 deductions made on written orders of the employee may be aggregated and shown as one item); 5. Net
13 wages earned; 6. The inclusive dates of the period for which the employee is paid; 7. The name of the
14 employee and the last four digits of her or her social security number or an employee identification
15 number other than a social security number; 8. The name and address of the legal entity that is the
16 employer, and if the employer is a farm labor contractor, the name and address of the legal entity that
17 secured the services of the employer; and 9. All applicable hourly rates in effect during the pay period,
18 and the corresponding number of hours worked at each hourly rate by the employee.

19 109. As stated above, Plaintiff and the other Class / Subclass Members actual total working
20 hours, including the time they were working during breaks and while off the clock, were never in any
21 manner tracked or recorded by Defendant and thus such time was never compensated. Consequently,
22 the pay stubs that were issued by Defendant were never complete or accurately itemized because they
23 did not accurately reflect the number of hours actually hours worked each pay period, nor did the pay
24 stubs reflect payment of premium pay penalties for the myriad missed and noncompliant rest breaks
25 and meal breaks. These glaring deficiencies in Plaintiff and the other Class / Subclass Members wage
26 statements were not one-off, inadvertent, clerical mistakes or omissions. Defendant's failure to record
27 the hours they actually worked and to accurately compensate its employees for such time was the result
28 of knowing and intentional operational policies and business practices, which were perpetuated

1 throughout the entirety of the statutory period on a fully systemic basis. Defendant was fully aware that
2 the wage statements they furnished to Plaintiff and the other Class / Subclass Members were not
3 complete and were not accurate.

4 110. As provided by California Labor Code Section 226(e) employees may recover penalties
5 if they suffer an injury because of an employer's knowing and intentional failure to comply with the
6 statute. Plaintiff and the other Class / Subclass Members are entitled to recover the greater of actual
7 damages or \$50 for the initial violation or \$100 for each violation in a subsequent pay period, subject
8 to a maximum aggregate penalty of \$4,000, plus an award of his attorney's fees and costs.

9 111. In addition, Labor Code 226.3 provides that "employers who violate section 226(a) are
10 subject to a civil penalty of \$250 per employee per violation for the initial "citation" and \$1,000 per
11 employee for each subsequent violation."

12 112. As set forth above, Defendant issued and continue to issue wage statements to its non-
13 exempt employees including Plaintiff and the other Class/ Subclass Members that are inadequate and
14 non-compliant with Labor Code section 226, subdivision (a). By failing to pay Plaintiff and the other
15 Class/Subclass Members properly as described above, Defendant failed to include required information
16 on their wage statements, including, but not limited to, the gross wages earned, the net wages earned
17 in violation of Labor Code section 226, subdivision (a).

18 113. Defendant's failure to comply with Labor Code section 226, subdivision (a), of the
19 Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

20 114. As a result of Defendant's issuance of inaccurate itemized wage statements to Plaintiff
21 and the other Class/Subclass Members in violation of Labor Code section 226, subdivision (a), Plaintiff
22 and the other Class and Subclass Members are each entitled to recover an initial penalty of \$50, and
23 subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per
24 Plaintiff and per each Class or Subclass Member from Defendant pursuant to Labor Code section 226,
25 subdivision (e), along with costs and reasonable attorneys' fees.

1 **SEVENTH CAUSE OF ACTION**

2 **Failure to Pay All Wages Earned and Unpaid at Separation**

3 **(Labor Code §201-203)**

4 *(As to Defendant and Does 1-25, inclusive)*

5 115. Plaintiff realleges all previous paragraphs contained in this Complaint and incorporates
6 the same as though fully set forth in full herein.

7 116. Labor Code § 201 provides, in pertinent part, that if an employer discharges an
8 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

9 117. At all times relevant, Labor Code § 203 provides that an employer who willfully fails
10 to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee
11 who is discharged or who quits, the wages of the employee shall continue as a penalty from the due
12 date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall
13 not continue for more than 30 days.

14 118. As set forth above, Defendant failed to pay Plaintiff and the other Class / Subclass
15 Members all earned wages that they were owed within the required time during their employment
16 which constituted a violation of Labor Code Section 204. As a result, at the time that Plaintiff and other
17 such Class / Subclass Members who separated from Defendant's employment during the relevant
18 statutory period, Defendant failed to pay them all of their earned and owed wages at the time of
19 termination as set forth in sections 201-203.

20 119. Defendant has willfully failed to pay those formerly employed Class/ Subclass
21 Members whose sums were certain at the time of termination within seventy-two hours of their
22 resignation and have failed to pay those sums for thirty days thereafter as required by Labor Code
23 sections 201 through 203. As a result, Defendant is liable to the formerly employed Class and Subclass
24 Members for waiting time penalties amounting to thirty days wages for the formerly employed Class
25 and Subclass Members pursuant to Labor Code section 203. (See, e.g., *DLSE Manual*, -§ 4.3.4 [failure
26 to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties].)
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1 **EIGHTH CAUSE OF ACTION**

2 **Failure to Indemnify All Necessary Business Expenditures**

3 **(Lab. Code § 2802)**

4 *(As to Defendant and Does 1-25, inclusive)*

5 120. Plaintiff realleges all previous paragraphs contained in this Complaint and incorporates
6 the same as though fully set forth in full herein.

7 121. Pursuant to Labor Code §2802, “An employer shall indemnify his or her employee for
8 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
9 of his or her duties.”

10 122. As mentioned above, and the other Class / Subclass Members were utilizing their own
11 personal cell phones on a routine daily basis in the execution of job duties and for facilitation of work-
12 related communications via phone calls and text messages. At no time has Defendant ever reimbursed
13 Plaintiff or the other Class / Subclass Members for the expenses they incurred for the use of their
14 personal cell phones for work purposes. Failure to reimburse its employees for work related expenses
15 during the relevant statutory period constitutes a violation of Labor Code § 2802, which prohibits
16 employers from offloading operational expenses onto the shoulders of their employees.

17 123. . Thus, Plaintiff and the other Class and Subclass Members are entitled to recover the
18 cost of such necessary business expenses, plus interest from the date each incurred such business
19 expenses, plus fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

20 **NINTH CAUSE OF ACTION**

21 **Retaliation**

22 **(Labor Code § 1102.5(b))**

23 *(As to Defendant and Does 1-25, Inclusive)*

24 124. Plaintiff realleges and incorporates by reference all previous paragraphs as though fully
25 set forth herein.

26 125. Labor Code § 1102.5(b) prohibits an employer, or any person acting on behalf of the
27 employer, from retaliating against an employee for disclosing information, or because the employer
28 believes that the employee disclosed or may disclose information, to a government or law enforcement

1 agency, to a person with authority over the employee or another employee who has the authority to
2 investigate, discover, or correct the violation or noncompliance, or for providing information to, or
3 testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has
4 reasonable cause to believe that the information discloses a violation of state or federal statute, or a
5 violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether
6 disclosing the information is part of the employee's job duties.

7 126. Plaintiff complained to human resources about the chronic missed rest breaks. After he
8 complained to HR, he was called a "dead rat" by his manager in retaliation. The "dead rat" reference
9 was made in retaliation for Plaintiff's legitimate complaints to HR about what he believed to be
10 Defendant's unlawful violations of California's labor laws.

11 127. The veiled threat was intended to silence Plaintiff because Defendant fear he might
12 escalate his complaints to the Labor Commission or other legal agency to further investigate. Such
13 retaliatory threats were in violation of the provisions of Labor Code Section 1102.5

14 128. Plaintiff is entitled to recover and seeks to recover the maximum civil penalty in the
15 amount of Ten Thousand Dollars (\$10,000) for Defendant's unlawful retaliatory threats pursuant to
16 §1102.5 (f)(1).

17 **TENTH CAUSE OF ACTION**

18 **Violations of California's Unfair Competition Law**

19 **(Bus. & Prof. Code, §§ 17200 et seq.(As to Defendant and Does 1-25, Inclusive)**

20 129. Plaintiff realleges and incorporates by reference all previous paragraphs as though fully
21 set forth herein.

22 130. Defendants have engaged and continue to engage in unfair and/or unlawful business
23 practices in California in violation of California Business and Professions Code section 17200 et seq.
24 by committing the unlawful acts described above. Defendants' utilization of these unfair and unlawful
25 business practices deprived and continue to deprive Plaintiff and the other Class and Subclass Members
26 of compensation to which they are legally entitled. These practices constitute unfair and unlawful
27 competition and provide an unfair advantage over Defendants' competitors who have been and/or are
28 currently employing workers and attempting to do so in honest compliance with applicable wage and

1 hour laws.

2 131. Because Plaintiff was subjected to Defendant's' unfair and unlawful conduct alleged
3 herein, Plaintiff for himself and on behalf of the Class/ Subclass Members, seeks full restitution of
4 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
5 converted by Defendants pursuant to Business and Professions Code sections 17203 and 17208.

6 132. The acts complained of herein occurred within the four years prior to the initiation of
7 this action and are continuing into the present and ongoing.

8 133. Plaintiff was compelled to retain the services of counsel to file this Court action to
9 protect his interests and those of the Class and Subclass Members, to obtain restitution and injunctive
10 relief on behalf of Defendants' current non-exempt employees and to enforce important rights affecting
11 the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
12 Plaintiff is entitled to recover under Code of Civil Procedure section 1021.5.

13 **ELEVENTH CAUSE OF ACTION**

14 **Violation of the Private Attorneys General Act of 2004**

15 **(Cal. Lab. Code §2698 et seq.)**

16 *(Plaintiff on behalf of himself and Aggrieved Employees*

17 *As to Defendant and Does 1-25, Inclusive)*

18 134. Plaintiff (the "PAGA Representative Plaintiff") incorporates by reference and re-alleges
19 each and every one of the allegations contained in the preceding and foregoing paragraphs of this
20 Complaint as if fully set forth herein.

21 135. PAGA Representative Plaintiff, by his employment with Defendants and Defendants'
22 violations of the Labor Code as alleged herein, is an aggrieved employee with standing to bring an
23 action under the PAGA.

24 136. PAGA Representative Plaintiff, by virtue of **Exhibit A**, has satisfied all prerequisites to
25 serve as representative of the Aggrieved Employees to enforce California's labor laws including,
26 without limitation, the penalty provisions identified in Cal. Lab. Code §2699.5. Since the LWDA took
27 no steps within the time period required to intervene and because Defendants took no corrective action
28 to remedy the allegations set forth above, the PAGA Representative Plaintiff, as a representative of the

1 people of the State of California, will seek any and all penalties otherwise capable of being collected
2 by the Labor Commission, LWDA and/or the DLSE. Specifically, PAGA Representative Plaintiff
3 seeks, on behalf of himself and all current and former Aggrieved Employees, penalties provided by
4 Cal. Lab. Code § 2699(f) for violations of, inter alia, Labor Code §§ 201-204, 210, 226(a), 226.7, 510,
5 558, 1174, 1194, and sections 5 and 12 of the applicable Wage Order (unless said Labor Code or Wage
6 Order already provides a civil penalty). In addition, PAGA Representative Plaintiff will seek penalties
7 for any other Labor Code violations as set forth in Labor Code § 2699.5 which states:

8 **“The provisions of subdivision (a) of Section 2699.3 apply to any alleged**
9 **violation of the following provisions: subdivision (k) of Section 96, Sections**
10 **98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1,**
11 **204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213,**
12 **Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections**
13 **226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231,**
14 **subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233,**
15 **234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5,**
16 **432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800,**
17 **850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101,**
18 **1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194,**
19 **1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199,**
20 **1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301,**
21 **1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695,**
22 **subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8,**
23 **1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32,**
24 **1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and**
25 **subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections**
26 **1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and**
27 **2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806,**
28 **and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and**
6399.7”

137. Representative Plaintiff is informed and believes and based thereon alleges that
Defendant has violated and continues to violate provisions of the Labor Code and applicable Wage
Order as alleged herein. Despite mailing of **Exhibit A** at least 65-days prior to the filing of this
Complaint, the LWDA has not notified Plaintiff that it intends to investigate the allege Labor Code
violations identified in **Exhibit A**, such that, by operation of law, Plaintiff is entitled to commence this
cause of action as a representative action under the PAGA.

138. Representative Plaintiff, as the personal representative of the Aggrieved employees, will
and does seek to recover any and all penalties for each and every violation shown to exist or to have

1 occurred during the relevant liability period, in an amount according to proof, as to those penalties that
2 are otherwise only available to public agencies. Said funds recovered will be distributed in accordance
3 with the PAGA, with at least 75% of said PAGA penalty recovery being reimbursed to the State of
4 California and the LWDA.

5 139. Representative Plaintiff will also seek an award of attorneys' fees and costs pursuant to
6 Cal. Lab. Code § 2699(g)(1).

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of himself and all members of the Class prays for relief as
9 follows:

- 10 1.) For an order certifying the proposed class/subclasses and that notice of the
11 pendency of this action be provided to member of the Class;
- 12 2.) For an order appointing Plaintiff as representative of the putative Class/Subclass
13 Members;
- 14 3.) For an order appointing Plaintiff's counsel as counsel for the Class/Subclasses:
- 15 a.) For the failure to pay all overtime wages, compensatory, consequential,
16 general, and special damages according to proof pursuant to Labor Code
17 sections 204, 510, 1194, 1198, and others as may be applicable, including;
- 18 b.) For the failure to provide rest periods and pay missed rest period premiums,
19 compensatory, consequential, general, and special damages according to proof
20 pursuant to Labor Code section 226.7;
- 21 c.) For the failure to provide meal periods and pay missed meal period premiums,
22 compensatory, consequential, general, and special damages according to proof
23 pursuant to Labor Code sections 226.7 and 512 and the applicable Wage Order
24 No. 4;
- 25 d.) For the failure to maintain accurate employment records, penalties pursuant to
26 Labor Code sections 226.3, 1174.5, and others that may be applicable;
- 27 e.) For the failure to pay wages timely during employment, the unpaid balance of
28 the compensation owed to Plaintiff and the other Class and Subclass Members

1 and any applicable penalties owed to them pursuant to Labor Code sections
2 204 and 210;

3 f.) For the failure to pay all wages earned and unpaid at separation, statutory
4 waiting time penalties pursuant to Labor Code sections 201 through 203, for
5 Plaintiff and the Class and Subclass Members who quit or were fired during
6 the Class Period, in an amount equal to their respective daily wages multiplied
7 by thirty days, according to proof;

8 g.) For the failure to indemnify all necessary business expenditures, all
9 unreimbursed business expenses, and interest thereon, that are owed, pursuant
10 to Labor Code section 2802, and attorney fees, pursuant to Labor Code section
11 2802, subdivision (c);

12 4.) For an order awarding Plaintiff and Class Members statutory penalties pursuant to
13 Cal. Lab. Code §§ 203, 226.3, 1174.5, according to proof at trial and interest on
14 those amounts;

15 5.) For the violations of California's Unfair Competition Law, restitution to Plaintiff
16 and the other Class and Subclass Members of all money and/or property
17 unlawfully acquired by Defendants by means of any acts or practices declared by
18 this Court to be in violation of Business and Professions Code sections 17200
19 through 17210;

20 6.) For Prejudgment interest on all due and unpaid wages pursuant to Labor Code
21 section 218.6 and Civil Code sections 3287 and 3289;

22 7.) On all causes of action for which attorneys' fees may be available, for attorneys'
23 fees and costs as provided by Labor Code sections 218.5, 226, 1194, Code of Civil
24 Procedure section 1021.5, and others as may be applicable;

25 8.) For an order enjoining Defendant, and each of them, and their agents, servants, and
26 employees, and all persons acting under, in concert with, or for them, from acting
27 in derogation of any rights or duties enumerated in this complaint;

28 9.) For civil penalties as provided, per violation under the PAGA, Cal. Labor Code
§2699, et seq. and distributed in accordance with the PAGA; and

10.) For such other and further relief, this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury of Plaintiff's and the Class and Subclass Members' causes of action and claims to which they have a state and/or federal constitutional right to a jury trial against Defendant.

Dated: September 6, 2024

W EMPLOYMENT LAW, APC



Jacob N. Whitehead, Esq.
Attorney for Plaintiff, Ali Malik
and the Putative Class/Subclasses

EXHIBIT A

July 2, 2024

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor.
San Francisco, CA 94102

Via USPS First-Class Mail

Wells Fargo Bank, NA
150 East 42nd Street
New York, NY 10017

Via Email

Christopher.Jison@wellsfargo.com
Wells Fargo Legal Department
Wells Fargo Center
90 S 7th St, 9th Floor
Minneapolis, MN 55402

Via Certified Return Receipt Mail

CSC - Lawyers Incorporating Service
Registered Agent for Wells Fargo Bank, N.A.
2710 Gateway Oaks Drive, Ste 150
Sacramento, CA 95833

Via USPS First-Class Mail

Wells Fargo Bank, NA
101 N. Phillips Avenue
Sioux Falls, South Dakota 57104

Re: Notice Pursuant to the Private Attorneys General Act, California Labor
Code § 2699.3 (the “PAGA”)
LWDA CM-994445-23

Dear Sir(s) and/or Madam(s):

Please be advised that representative plaintiff, Ali Malik (hereinafter, “Plaintiff”) brings notice under the Private Attorneys General Act of 2004 (the “PAGA”) concerning him and other similarly situated current and former employees (collectively, the “Aggrieved Employees”) of Wells Fargo Bank, N.A., a national bank (“Defendant”) regarding claims of multiple violations of the California Labor Code as further set forth below.

Defendant is a national banking and financial services company, organized under the laws of the United States and doing business throughout the Continental U.S., including the State of California. During the relevant statutory period, Defendant formerly employed Plaintiff and currently employs or formerly employed other Aggrieved Employees, who work or have worked as nonexempt employees in various capacities for Defendant as tellers, cashiers, account services personnel, financial advisors, and in other customer service related nonexempt positions. This notice formally serves to inform Defendant of Plaintiff’s intent to file a PAGA representative action against Defendant and bring causes of action for violations of the California Labor Code

and will seek recovery of civil penalties under the Private Attorney Generals Act of 2004 (the “PAGA”) and for injunctive relief for alleged violations that occurred during the relevant statutory period, including, but not limited to claims for: Defendant’s failure to provide labor code compliant rest break periods and to pay missed Rest Break premiums; failure to provide meal break periods and to pay missed Meal Break premiums; failure to pay wages when due each pay period for every hour worked; failure to pay overtime wages; failure to maintain accurate records of all hours worked; failure to furnish accurately itemized wage statements; failure to reimburse work - related expenses; and failure to pay wages due upon separation of employment.

Based upon these violations, as further detailed below, Defendant violated numerous provisions of California’s Labor Code including, but not limited to, violations of **Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512, 1174 (d), 1102.5, 1194, 2802, and the Industrial Welfare Commission Wage Order No. 4-2001 (IWC No. 4)** as further detailed herein below.

Facts and Legal Theories Supporting the Alleged Labor Code Violations

Plaintiff, Ali Malik began working for Defendant on or around May 30, 2023 as a part time hourly, nonexempt banking teller at Defendant’s Hillsdale, California location, with an hourly rate of pay of \$23 per hour.

During the course of his employment, Plaintiff and many of the Aggrieved Employees, nearly always missed their lawfully, entitled ten-minute rest breaks due to workload demands paired with inadequate staffing which actively impeded the ability of Plaintiff and others similarly situated to take timely, duty free breaks because there was no one available to cover for them if they went on a break. Plaintiff’s manager tightly controlled his schedule and routinely worked Plaintiff and other staff straight through their shifts without any opportunity for a break. She told Plaintiff if he missed his break because they were too busy, he would simply have to skip it, but she would still instruct him to alter his timecards at the end of his shift to make it appear he was getting his breaks.

In addition to the unlawful practices and directive, Defendant never accurately tracked or recorded missed breaks and working on-duty breaks. As a direct consequence, the time that Plaintiff and Aggrieved Employees were working during “purported” breaks translated into overtime hours that were never recorded or compensated.

Plaintiff complained to human resources (“HR”) about missed breaks and the unlawful practices of missed, skipped and interrupted or shortened rest or meal breaks. However, absolutely nothing was done by Defendant to correct or remedy the situation and thus, by all accounts Defendant ratified the unlawful directives of Plaintiff’s manager. After Plaintiff complained to HR, he was called names, and a “dead rat” by his manager and even some of his co-workers. The “dead rat” reference felt like a threat to Plaintiff, who no longer felt safe at work. As a result of the toxic and hostile work environment, Plaintiff resigned from Wells Fargo on September 8, 2023.

Due to Defendant’s intentional and knowing failure to record all hours he actually worked, he was not provided with the full wages he earned each pay period throughout the duration of his employment, nor was he furnished with complete or accurate wage statements stating with accuracy Plaintiff’s respective (1) gross wages earned, (2) total hours worked, (3) net wages earned, and (4) all applicable hourly rates and the corresponding number of hours worked at each

legally corresponding correct rate of pay. Thus, Defendant violated the wage statement requirements of Labor Code § 226 (a).

As provided by California Labor Code Section 226(e) employees may recover penalties if they suffer an injury as a result of an employer's *knowing and intentional* failure to comply with the statute. Herein Plaintiff is entitled to recover the greater of actual damages or \$50 for the initial violation or \$100 for each violation in a subsequent pay period, subject to a maximum aggregate penalty of \$4,000, plus an award of his attorney's fees and costs.

In addition, Labor Code 226.3 provides that employers who violate section 226(a) are subject to a civil penalty of \$250 per employee per violation for the initial "citation" and \$1,000 per employee for each subsequent violation."

Necessary and integral to the performance of his job duties, Plaintiff was required to use his personal cell phone throughout the workday to perform his job duties and to accept and respond to work related phone calls and text messages throughout the day from managers or colleagues. Despite Wells Fargo's knowledge of Plaintiff and similarly situated employees necessary and routine use of their personal cell phones for execution of work related communications and tasks, they have never provided reimbursement for the expenses their workers incur/ and incurred in using their personal cell phones for work. This constitutes a violation of Labor Code § 2802, which requires employers to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

Due to the foregoing-described actions, Defendant has unlawfully failed to timely pay all wages due upon termination of employment to Plaintiff and those Aggrieved Employees whose employment relationships with Defendant ceased during the statutory period pursuant to Labor Code § 201 - 203.

Plaintiff is informed and believes, and thereon alleges that the above-described violations are ongoing, systematic, and uniform. If Defendant fails to cure these alleged violations, as stated above, Plaintiff will bring an action against Defendant under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7.

Failure to Provide Labor Code Compliant Rest/M meal Breaks:

Labor Code § 226.7 provides:

“(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

“(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

The premium pay penalties for failure to provide Labor Code compliant rest breaks are set forth in IWC Wage Order No. 4 *“Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”*

Plaintiff and Aggrieved Employees were rarely, if ever, provided rest breaks due to Defendant’s demands and understaffing policy that impeded their ability to take a full ten minute, unrestricted, duty free rest break after each fourth hour of work performed (or major fraction thereof). On many occasions, Plaintiff and similarly situated employees were pushed to work non-stop through to the end of their working shifts, but were still instructed to adjust their time sheets by their manager to make it appear as though they had been provided with their lawfully entitled breaks.

Meal Break Violations

Furthermore, governing the timing, length, duration and frequency of meal break periods, Labor Code § 512 (a) states that, *“An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”*

As stated, Defendant actively failed to fully relinquish control to permit Plaintiff and Aggrieved Employees an opportunity for meal breaks after each fifth hour of labor performed, for a duration of 30 minutes, uninterrupted and duty free, by actively fostering an environment of impediments that forced them to skip breaks.

Despite these known and intentional rest and meal break violations, Defendant has never paid Plaintiff and Aggrieved Employees the premium pay penalties equal to one hour at their

respective rates of pay for each day that rest break and meal break violations occurred during the relevant statutory period. Defendant's systemic conduct constituted and constitutes a violation of Labor Code § 226.7, 512, and the IWC No. 4 which mandate California employers' affirmative obligation to provide timely, duty-free rest break periods, and timely duty-free meal break periods and for the payment of premium pay penalties in lieu thereof.

Plaintiff intends to bring an action against Defendant under the PAGA to recover the applicable civil penalties as provided by law.

Failure to Compensate Employees for Every Hour Worked

Labor Code § 204 (a) states *"All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, 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."*

Under Labor Code §1194 (a) *"Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of their minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."*

Defendant failed to pay Plaintiff and Aggrieved Employees for the time they were working while off the clock, during "purported" rest breaks or during meal breaks, during each and every pay period they worked twice each calendar month during the statutory period. Defendant failed to fully and accurately compensate Plaintiff and Aggrieved Employees for all of the hours they actually worked, in violation of Labor Code §204.

Accordingly, Plaintiff intends to bring an action against Defendant under the PAGA to recover civil penalties as provided by California law.

Failure To Maintain Accurate Records of Hours Worked

Labor Code § 1174(d) provides, *"Every person employing labor in this state shall:... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."*

As indicated above, due to Defendant's operational policies, procedures and practices, time worked during "purported rest breaks and meal breaks" and overtime worked was not and is not tracked or recorded by the Defendant in violation of Labor Code § 1174(d).

Plaintiff thus, also intends to bring an action against Defendant under the PAGA to recover civil penalties for violation of Labor Code Section 1174 (d).

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, “*Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.*”

California employers are required to compensate their non-exempt employees’ no less than the legal minimum and overtime wages due for all hours worked, including overtime wages for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the mandates of Labor Code §§ 510, 1194, and 1198. As alleged, Defendant did not record time that Plaintiff and the Aggrieved Employees worked during purported rest or meal breaks and for consequential overtime hours they worked throughout the statutory period. Thus they were not ever compensated the requisite legal amount of 1.5 times their respective hourly rates of pay for time worked in excess of eight hours in a single shifts or for more than forty hours in a work week

Thus, Plaintiff intends to bring an action against Defendant under the PAGA to recover civil penalties for Defendant’s violation of Labor Code Section 510, as provided by California law.

Failure to Furnish Accurate Wage Statements

At all times relevant, Labor Code § 226 required Defendant to provide its nonexempt employees with accurate wage statements in writing each and every pay period that includes nine categories of information specified by law. The following information is required by law to be itemized on employees’ pay stubs:

1. Gross wages earned;
2. Total hours worked (not required for salaried exempt employees);
3. The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate basis;
4. All deductions (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 the last four digits of her 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 if the employer is a farm labor contractor, the name and address of the legal entity that secured the services of 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.

As stated above, Plaintiff and the Aggrieved Employees actual total working hours, including the time they were working during breaks and while off the clock, were never in any manner tracked or recorded by Defendant and thus such time was never compensated. Consequently, the pay stubs that were issued by Defendant were never complete or accurately itemized because they did not accurately reflect the number of hours actually hours worked each pay period, nor did the pay stubs reflect payment of premium pay penalties for the myriad missed and noncompliant rest breaks and meal breaks. These glaring deficiencies in Plaintiff and Aggrieved employees' wage statements were not one-off, inadvertent, clerical mistakes or omissions. Defendant's failure to record the hours they actually worked and to accurately compensate its employees for such time was the result of knowing and intentional operational policies and business practices, which were perpetuated throughout the entirety of the statutory period on a fully systemic basis. Defendant was fully aware that the wage statements they furnished to Plaintiff and the Aggrieved Employees were not complete and were not accurate.

As provided by California Labor Code Section 226(e) employees may recover penalties if they suffer an injury because of an employer's knowing and intentional failure to comply with the statute. Plaintiff and Aggrieved Employees are entitled to recover the greater of actual damages or \$50 for the initial violation or \$100 for each violation in a subsequent pay period, subject to a maximum aggregate penalty of \$4,000, plus an award of his attorney's fees and costs.

In addition, Labor Code 226.3 provides that "employers who violate section 226(a) are subject to a civil penalty of \$250 per employee per violation for the initial "citation" and \$1,000 per employee for each subsequent violation."

Plaintiff intends to bring an action under the PAGA for Defendant' repeated violations of Labor Code 226(a) during the statutory period and will seek to recovery of the applicable civil penalties for each such violation that occurred as to Plaintiff and each of the Aggrieved Employees.

Reimbursement of Work-related Expenses

Pursuant to Labor Code §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."

As mentioned above, Plaintiff and Aggrieved Employees were utilizing their own personal cell phones on a routine daily basis in the execution of job duties and for facilitation of work related communications via phone calls and text messages. At no time has Defendant ever reimbursed Plaintiff or the Aggrieved Employees for the expenses they incurred for the use of their personal cell phones for work purposes. Failure to reimburse its employees for work related expenses during the relevant statutory period constitutes a violation of Labor Code § 2802, which prohibits employers from offloading operational expenses onto the shoulders of their employees.

Plaintiff intends to bring a claim for the recovery of civil penalties under the PAGA for Defendant's violation of Labor Code Section 2802.

Retaliation

Labor Code § 1102.5(b) prohibits an employer, or any person acting on behalf of the employer, from retaliating against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or

law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

Plaintiff complained to human resources about the chronic missed rest breaks. After he complained to HR, he was called a "dead rat" by his manager in retaliation. The "dead rat" reference felt like a threat to Plaintiff, who no longer felt safe at work. Because of the retaliatory behavior and stress that was visited on him by his manager after he made a formal complaint to HR regarding Defendant's policies, practices and workplace conditions that Plaintiff reasonably believed to be in violation of the law, Plaintiff felt he had no choice but to resign on September 8, 2023.

Plaintiff intends to bring an action against Defendant for its violation of Labor Code § 1102.5 under the PAGA to recover civil penalties as provided by California law.

Conclusion

In sum, as has been factually alleged, Defendant violated among other statutes and regulations **Labor Code §§ 201-203, 204, 226(a), 510, 512, 1174 (d), 1194 (a), 1102.5(b), 2802, and the Industrial Welfare Commission Wage Order No. 4001 (IWC No. 4).**). Plaintiff on his own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory penalties, interest, and attorneys' fees and civil penalties as provided under Labor Code 2699.3 (f).

Plaintiff requests that the LWDA investigate the above claims and to provide notice of the investigation under PAGA's provisions. Alternatively, Plaintiff requests the agency inform him if it does not intend to investigate these violations so that he may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Very truly yours,

W EMPLOYMENT LAW GROUP



Jacob N. Whitehead, Esq.

JNW/dlp