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FILED
Superior Court Of California,
Sacramento
10/24/2016
ccullen
By _____, Deputy
Case Number:
34-2016-00202203

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SACRAMENTO**

12 JASON HUDSON, as an individual, on behalf of
himself, and all persons similarly situated,

13 Plaintiff,

14 v.

15
16 PACIFIC BELL TELEPHONE COMPANY, a
California corporation authorized to do
17 business in the state of California, and DOES 1
to 10 inclusive,

18 Defendant.

CASE NO.: _____

CLASS & REPRESENTATIVE ACTION

**COMPLAINT FOR DAMAGES,
RESTITUTION, INJUNCTIVE RELIEF AND
CIVIL PENALTIES:**

- (1) **FAILURE TO PAY MINIMUM WAGES AND OVERTIME COMPENSATION**
(Lab. Code §§ 510, 1194, and 1197);
- (2) **FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**
(Lab. Code §§ 226.7 and 512);
- (3) **FAILURE TO PROVIDE REST PERIODS**
(Lab. Code § 226.7);
- (4) **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**
(Lab. Code § 226);
- (5) **FAILURE TO PAY WAGES OWED**
(Lab. Code §§ 201, 202, and 203);
- (6) **UNFAIR BUSINESS PRACTICES**
(Bus. & Prof. Code § 17200 et seq.); and
- (7) **PENALTIES PURUSANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**
(Lab. Code § 2698 et seq.).

DEMAND FOR JURY TRIAL

Filed by Fax

1 Plaintiff Jason Hudson (hereinafter “Plaintiff”), by and through his attorneys of record,
2 brings this action on behalf of himself and all persons similarly situated, against Defendant
3 Pacific Bell Telephone Company (hereinafter “Defendant”) on the following grounds:

4 **INTRODUCTION**

5 1. This class action is brought on behalf of all current and former employees of
6 Pacific Bell Telephone Company who held a non-exempt hourly position as a technician in the
7 state of California, who were not paid for all hours worked, who were not provided with the
8 opportunity to take legally complaint meal periods or compensation in lieu of noncompliant
9 meal periods; who were not provided with the opportunity to take legally compliant rest
10 periods or compensation in lieu of noncompliant rest periods, who were not provided with
11 accurate wage statements, and who were not paid all wages due upon termination of the
12 employer/employee relationship.

13 2. Plaintiff seeks damages, injunctive relief, and restitutionary disgorgement, as
14 well as reasonable attorneys’ fees and litigation costs, as provided under California law.

15 3. All allegations in this Complaint are based upon information and belief, except
16 those allegations that pertain to Plaintiff named herein and his counsel, which are based upon
17 personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to
18 have evidentiary support after a reasonable opportunity for further investigation and discovery.

19 **JURISDICTION AND VENUE**

20 4. This Court has jurisdiction over this action pursuant to California Code of Civil
21 Procedure (“Code Civ. Proc.”) § 410.10. Pursuant to Code Civ. Proc. § 382 and California
22 Business and Professions Code (“Bus. & Prof. Code”) § 17203, Plaintiff brings this action on
23 behalf of himself, and on behalf of all persons within the Class, as defined below in paragraph
24 8.

25 5. This Court has personal jurisdiction over Defendant because Defendant
26 conducts business in the state of California and has caused injuries in the county of Sacramento
27 through its acts and omissions, and by its violations of the California Labor Code and
28 California Business and Professions Code.

THE PARTIES

A. PLAINTIFF

10. Plaintiff Jason Hudson, at all material times mentioned herein:

- (a) Was and is a resident of Sacramento County;
- (b) Was employed by Pacific Bell Telephone Company as a technician from January 2014 to August 20, 2015;
- (c) Was paid an hourly wage;
- (d) Was required by Defendant to load and unload his service vehicle at the beginning and end of each work day without being compensated for the time it took him, typically 10 to 15 minutes, to complete the task;
- (e) Was not provided with the opportunity to take legally compliant meal periods;
- (f) Was unable to determine from this wage statement whether or not he was adequately compensated for noncompliant meal periods;
- (g) Was not provided with the opportunity to take legally compliant rest periods;
- (h) Was unable to determine from his wage statement whether or not he was properly compensated for noncompliant rest periods;
- (i) Was provided with inaccurate and incomplete wage statements by Defendant;
- (j) Was not paid all wages owed upon termination of the employer/employee relationship.

B. DEFENDANT

11. Defendant Pacific Bell Telephone Company (hereinafter "Pacific Bell") is a California corporation that operates as a subsidiary of AT&T, Inc. Pacific Bell serves as a wired and wireless telecommunication network operator, who provides broadband and 4G network services to various communities throughout California.

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1 Class were not compensated for the 10 to 15 minutes they spent loading and unloading their
2 service vehicles at the beginning and end of each workday. Plaintiff believes that Defendant
3 knew or should have known that Plaintiff and members of the putative Class were not being
4 compensated for all hours worked because Defendant required its technicians to load and
5 unload their services vehicles prior to the start of their workday and after the end of the
6 scheduled workday without compensation. Defendant therefore willfully failed to compensate
7 Plaintiff and putative Class Members for all time worked.

8 18. Plaintiff asserts that he and other members of the Class were not provided with
9 the opportunity to take 30 minute off-duty meal periods or 10 minute rest periods due to
10 Defendant's failure to set aside adequate time to take the legally mandated meal and rest
11 periods when preparing the technician schedules. Defendant's efficiency policy and practice,
12 which rewards technicians who efficiently complete their schedules, undermines California
13 labor laws by encouraging employees to work through their meal and rest periods in fear of
14 termination due to low performance.

15 19. Plaintiff alleges that he and other putative Class Members did not have the
16 opportunity to take an off-duty 30 minute meal period because of Defendant's uniform practice
17 of scheduling appointments in a manner that does not set aside an adequate amount of time to
18 take a legally compliant meal period. Defendant's uniform efficiency policy pressures
19 employees to "efficiently" complete their schedule by undermining California labor laws.

20 20. Plaintiff and other members of the putative Class are unable to determine from
21 their wage statement whether or not they were paid a premium as provided for under California
22 law for noncompliant meal periods.

23 21. Plaintiff also alleges that he and other putative Class Members did not have the
24 opportunity to take a 10 minute meal period for every four hours worked because Defendants
25 failed to schedule an adequate amount of time between appointments to permit them to take a
26 legally compliant rest period. Moreover, Defendant's practice of rewarding employees who
27 complete their schedules in an efficient manner pressures employees to work through legally
28 mandated meal and rest periods, as well as undermines California labor laws.

- 1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
2 issues that are raised in this Complaint are common to the Class and will
3 apply uniformly to every member of the Class, and as a practical matter
4 be dispositive of the interests of the other members not party to the
5 adjudication;
- 6 (c) The party opposing the Class has acted or has refused to act on grounds
7 generally applicable to the Class, thereby making final injunctive relief
8 or corresponding declaratory relief appropriate with respect to the Class
9 as a whole; and
- 10 (d) Common questions of law and fact exist as to the members of the Class
11 and Predominate over any questions affecting only individual members,
12 and a class action is superior to other available methods for the fair and
13 efficient adjudication of the controversy, including consideration of:
- 14 i. The interests of Class Members in individually controlling the
15 prosecution or defense of a separate actions;
- 16 ii. The extent and nature of any litigation concerning the controversy
17 already commenced by or against members of the Class;
- 18 iii. The desirability or undesirability of concentrating the litigation of
19 the claims in this particular forum; and
- 20 iv. The difficulties likely to be encountered in the management of a
21 class action.

22 31. The Court should permit this action to be maintained as a class action pursuant
23 to Code Civ. Proc. § 382 and Civ. Code § 1781 because:

- 24 (a) Questions of law and fact common to the Class are substantially similar
25 and predominate over any questions affecting only individual members;
- 26 (b) A class action is superior to any other available method for the fair and
27 efficient adjudication of Class Members' claims;
- 28

- 1 (c) The members of the Class are so numerous that it is impractical to bring
2 all Class Members before the Court;
- 3 (d) Plaintiff’s claims are typical of the claims of the Class;
- 4 (e) Plaintiff and the other members of the Class will not be able to obtain
5 effective and economic legal redress unless the action is maintained as a
6 class action;
- 7 (f) There is a community of interest in obtaining appropriate legal and
8 equitable relief for the common law and statutory violations and other
9 improprieties alleged, and in obtaining adequate compensation for the
10 damages that Defendant’s actions have inflicted upon the Class;
- 11 (g) Plaintiff can, and will, fairly and adequately protect the interest of the
12 Class;
- 13 (h) There is a community of interest in ensuring that the combined assets
14 and available insurance of Defendant is sufficient to adequately
15 compensate the members of the Class for the injuries sustained; and
- 16 (i) Defendant has acted or refused to act on grounds generally applicable to
17 the Class, thereby making final injunctive relief appropriate with respect
18 to the Class as a whole.

19 **CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **(By Plaintiff Individually and on Behalf of the Class against Defendant and Does 1-10)**

22 **FAILURE TO PAY MINIMUM WAGES AND OVERTIME COMPENSATION**

23 **[Lab. Code §§ 510, 1194, and 1197]**

24 32. Plaintiff realleges and incorporates by this reference, as though fully set forth
25 herein, all paragraphs of this Complaint.

26 33. The term “wages” is defined by Lab. Code § 200(a) to include “all amounts for
27 labor performed by employees of every description, whether the amount is fixed or ascertained
28 by the standard of time...or other method of calculation.” Sub§ (b) further defines “labor” to

1 include all “labor, work or service whether rendered or performed under contract, subcontract,
2 partnership...”

3 34. Lab. Code § 204 establishes an employee’s right to be paid wages in a timely
4 fashion.

5 35. Lab. Code § 1197 provides: “The minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a lower wages
7 than the minimum so fixed is unlawful.”

8 36. Pursuant to California law, an employer must pay each employee “not less than
9 the applicable minimum wage for all hours worked in the payroll period, whether the
10 remunerations is measured by time, piece, commission, or otherwise.” (*Gonzalez v. Downtown*
11 *LA Motors, LP* (2013) 215 Cal.App.4th 36, 44.)

12 37. Lab. Code § 510(a) provides:

13 Eight hours of labor constitutes a day’s work. Any work in
14 excess of eight hours in one workday and any work in excess of
15 40 hours in any one work week, and the first eight hours worked
16 on the seventh day of work in any one workweek shall be
17 compensated at the rate of no less than one and one-half times the
18 regular rate of pay for an employee. In addition, any work in
19 excess of eight hours on any seventh day of a workweek shall be
20 compensated at the rate of no less than twice the regular rate of
21 pay. Nothing in this § requires an employer to combine more
22 than one rate of overtime compensation in order to calculate the
23 amount to be paid to an employee for any hour of overtime work.
(Emphasis added.)

24 38. An employee may not waive his or her right to overtime compensation and any
25 agreement by the employee to accept less than the statutorily required rate is unenforceable as
26 a matter of law. (*See Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

27 39. California Labor Code § 1194(a) states:

28 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
this minimum wage or overtime compensation, including interest
thereon, reasonable attorney’s fees, and costs of suit.

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1 An employer may not employ an employee for a work period of
2 more than five hours per day without providing the employee
3 with a meal period of not less than 30 minutes, except that if the
4 total work period per day of the employee is no more than six
5 hours, the meal period may be waived by mutual consent of both
6 the employer and employee. An employer may not employ an
7 employee for a work period of more than 10 hours per day
8 without providing the employee with a second meal period of not
9 less than 30 minutes, except that if the total hours worked is no
10 more than 12 hours, the second meal period may be waived by
11 mutual consent of the employer and the employee only if the first
12 meal period was not waived. (Emphasis added.)

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18 48. In pertinent part, Labor Code § 226.7 provides:

19 (b) An employer shall not require an employee to work during a
20 meal or rest or recovery period mandated pursuant to an
21 applicable statute or applicable regulation, standard, or order of
22 the Industrial Welfare Commission, the Occupational Safety and
23 Health Standards Board, or the Division of Occupational Safety
24 and Health.

25 (c) If an employer fails to provide an employee a meal or rest or
26 recovery period in accordance with a state law, including but not
27 limited to, an applicable statute or applicable regulation, standard,
28 or order of the Industrial Welfare Commission, the Occupational
Safety and Health Standards Board, or the Divisor of
Occupational Safety and Health, the employer shall pay the
employee one additional hour of pay at the employee's regular
rate of compensation for workday that the meal or rest or
recovery period is not provided.

49. IWC Order No. 7-2001, item 11 states:

(A) No employer shall employ any person for a work period of
more than five (5) hours without a meal period of not less than 30
minutes, except that when a work period of not more than six (6)
hours will complete the day's work the meal period may be
waived by mutual consent of the employer and the employee.

...

(D) If an employer fails to provide an employee a meal 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 meal period is not provided. (Emphasis added.)

50. Under California law, the meal period requirement is generally satisfied if the
employee: (1) has at least 30 minutes uninterrupted; (2) is free to leave the premises; and (3) is

1 relieved of all duty for the entire period. (*See Brinker Restaurant Corp. v. Superior Court*
2 (2012) 53 Cal.4th 1004, 1036 [citing DSLE Opn. Letter No. 1996.07.12 (July 12, 1996) p.1].)

3 51. “An employer may not undermine a formal policy of providing meal breaks by
4 pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at 1040 [citations
5 omitted].)

6 52. At all relevant times, Plaintiff and the putative Class typically worked at least
7 eight hours a day, and were thus entitled to one 30-minute meal period.

8 53. Plaintiff and other member of the putative Class typically did not receive
9 compliant meal periods due to Defendant’s uniform policy of creating schedules for
10 technicians that did not set aside an adequate amount of time to provide Plaintiff and other
11 putative Class Members with the opportunity to take a legally compliant meal period.

12 54. Defendant also has a practice which encourages technicians to complete their
13 schedule in a timely and efficient manner. This practice, however, undermines California law,
14 by encouraging technicians to omit meal periods so that they can maintain their employment by
15 being recognized by Defendant as “efficient.”

16 55. Plaintiff believes that Defendant knew or should have known that Plaintiff and
17 other putative Class Members were not receiving legally compliant meal periods.

18 56. Plaintiff and other Class Members are unable to determine from their wage
19 statements whether they were paid the required premium wage for noncompliant meal periods,
20 as provided under California law.

21 57. As a result of Defendant’s unlawful conduct, Plaintiff and other members of the
22 putative Class have suffered, and will continue to suffer, damages in an amount, which is
23 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
24 ascertained according to proof at trial.

25 58. Pursuant to Lab. Code § 226.7(c) and IWC Order No. 4-2001, item 11(D)
26 Plaintiff and other Class Members are entitled, and seek, to recover the full amount of unpaid
27 premium wages for noncompliant meal periods.

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1 middle of each work period. The authorized rest period time shall
2 be based on the total hours worked daily at the rate of ten (10)
3 minutes of net rest time per four (4) hours or major fraction
4 thereof. However, as rest period need not be authorized for
5 employees whose total daily work time is less than three and one-
6 half (3 ½) hours. Authorized rest period item shall be counted as
7 hours worked for which there shall be no deduction from wages.

(B) 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. (Emphasis added.)

8 66. At all relevant times, Plaintiff and the putative Class typically worked at least
9 eight hours a day.

10 67. Plaintiff alleges that he and other putative members of the Class were not
11 provided with the opportunity to take a legally compliant rest break because Defendant failed
12 to set aside adequate time in the schedule for the break. Moreover, Defendant's policy, which
13 required its technicians to complete its schedule in an efficient manner, undermines California
14 law since by pressuring employees to omit legally mandated rest breaks.

15 68. Plaintiff believes Defendant knew or should have known that Plaintiff and other
16 members of the Class were not receiving rest periods due to the busy nature of the work and
17 scheduling.

18 69. Plaintiff and other members of the putative Class are unable to determine from
19 their wage statements whether they were paid premiums as required by California law for
20 noncompliant rest periods.

21 70. Due to Defendant's unlawful conduct, Plaintiff and other putative Class
22 Members suffered, and will continue to suffer, damages in an amount, which is presently
23 unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained
24 according to proof at trial.

25 71. Pursuant to Lab. Code § 226.7(c) and IWC Order No. 4-2001, item 12(B),
26 Plaintiff and other Class Members are entitled, and seek, to recover the full amount of unpaid
27 premium wages for noncompliant rest periods.

1 79. Lab. Code § 226(h) states “an employee may also bring an injunctive
2 relief to ensure compliance with this section, and is entitled to an award of costs and
3 reasonable attorneys’ fees.”

4 80. An injury occurs where the employer fails to provide accurate information and
5 the employee cannot “promptly and easily determine” the total number of hours worked or the
6 “applicable hourly rates in effect during the pay period and the corresponding number of hours
7 worked at each hourly rate.” (Lab. Code § 226(a)(9)-(e)(2)(B)(i).)

8 81. Lab. Code § 226(e)(2)(c) explains that the phrase “promptly and easily
9 determine” means that “a reasonable person would be able to readily ascertain the information
10 without reference to documents or information.”

11 82. Plaintiff and other members of the putative Class received wage statements that
12 did not properly reflect all hours worked. Additionally, Plaintiff and other putative Class
13 Members were unable to determine whether or not they were paid any premium payments for
14 noncompliant meal or rest periods. As a result, Plaintiff and other members of the putative
15 Class were unable to readily ascertain from their wage statements whether they were properly
16 compensated.

17 83. Pursuant to Lab. Code § 226(e), Plaintiff and Class Members are entitled to, and
18 seek to recover liquidated damages in the amount of \$50 for the initial violation and \$100 for
19 each subsequent violation per employee, not to exceed \$4,000.

20 84. Additionally, under Lab. Code § 226(h), Plaintiff and putative Class Members
21 are entitled to, and seek, injunctive relief to ensure that Defendant complies with Lab. Code §
22 226.

23 85. Plaintiff and the putative Class are entitled to, and seek, attorneys’ fees and
24 costs as provided under Lab. Code § 266(h).

25 86. Plaintiff, on behalf of himself and Class Members, also requests further relief as
26 described in the below prayer.

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1 **FIFTH CAUSE OF ACTION**

2 **(By Plaintiff Individually and on Behalf of the Class against Defendant and Does 1-10)**

3 **FAILURE TO PAY WAGES OWED**

4 **[Lab. Code §§ 201, 202, and 203]**

5 87. Plaintiff realleges and incorporates by this reference, as though fully set forth
6 herein, all paragraphs of this Complaint.

7 88. The term “wages” is defined by Lab. Code § 200(a) to include “all amounts for
8 labor performed by employees of every description, whether the amount is fixed or ascertained
9 by the standard of time...or other method of calculation.” Subsection (b) further defines
10 “labor” to include all “labor, work or service whether rendered or performed under contract,
11 subcontract, partnership...”

12 89. Labor Code § 201(a) provides: “If an employer discharges an employee, the
13 wages earned and unpaid at the time of discharge are due and payable immediately.”

14 90. According to Labor Code § 202(a):

15 If an employee not having a written contract for a definite period
16 quits his or her employment, his or her wages shall become due
17 and payable not later than 72 hours thereafter, unless the
18 employee has given 72 hours previous notice of his or her
19 intention to quit, in which case the employee is entitled to his or
20 her wages at the time of quitting. Notwithstanding any other
21 provision of law, an employee who quits without providing a 72-
hour notice shall be entitled to receive payment by mail if he or
she so requests and designates a mailing address. The date of
mailing shall constitute the date of payment for purposes of the
requirement to provide payment with 72 hours of the notice of
quitting.

22 91. Labor Code § 203 further provides:

23 If an employer willfully fails to pay, without abatement or
24 reduction, in accordance with §§ 201, 201.3, 201.5, 202, and
25 205.5, any wages of an employee who is discharged or who quits,
26 the wages of the employee shall continue as a penalty from the
27 due date thereof at the same rate until paid or until an action
28 thereof is commenced; but the wages shall not continue for more
than 30 days.

1 99. A business act or practice is deemed “fraudulent” under Bus. & Prof. Code §
2 17200 where “members of the public are likely to be deceived.” (*Blakemore v. Superior Court*,
3 (2005) 129 Cal.App.4th 36, 49.) A showing of actual deception, reasonable reliance, or
4 damages is not required. (*Id.*) The fraudulent prong may be used to attack the deceptive manner
5 in which otherwise lawful contract terms are presented to an individual. (*See Boschma v.*
6 *Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th 230, 253.) As such, even a true statement may
7 be unlawful under § 17200 if it is “couched in such a manner that is likely to mislead or
8 deceive..., such as by failing to disclose other relevant information.” (*Id.*)

9 100. As discussed in the preceding paragraphs, Defendant’s business practices
10 violate all three prongs of California’s UCL.

11 Unlawful:

12 101. As described herein, Defendant violated the California Labor Code by refusing
13 to compensate putative Class Members for time spent loading and unloading their service
14 vehicles at the beginning and end of each work day. Failing to compensate employees for all
15 time worked is a clear violation of California law, and thus a per se violation of the UCL. (*See*
16 *Cel-Tech Comm’cns, Inc. v. Los Angeles Cellular Tel. Co., supra*, 20 Cal.4th at 180.)
17 Additionally, Defendant failed to provide Plaintiff and other employees with the opportunity to
18 take legally compliant meal and rest periods as provided under California law. Defendant also
19 failed to furnish accurate wage statements to members of the putative Class; and failed to pay
20 Class Members prompt wages owed upon termination. Defendant has therefore engaged in
21 unlawful business practices pursuant to Bus. & Prof. Code § 17200.

22 Unfair:

23 102. It is inherently unfair for Defendant to require technicians to load and unload
24 their service vehicles prior to their scheduled start time and after their scheduled end time
25 without compensation. It is also unfair for Defendant to set up a scheme where they create a
26 schedule, which prohibits the opportunity to take a legally compliant meal or rest period, and to
27 impose a policy and practice where technicians who do not complete their schedules in a timely
28 fashion are labeled as inefficient, thus undermining the rights provided to employees under

1 California law. Defendant also violates the unfair prong of the UCL by failing to pay Plaintiff
2 and members of the putative Class timely premiums for meal and rest period violations, as well
3 as failing to adequately identify payment of premiums on the employee's wage statement.

4 Fraudulent:

5 103. Defendant's practice of providing Plaintiff and putative Class Members with
6 inaccurate and incomplete wage statements is not only unlawful, but constitutes a fraudulent
7 business practice under the UCL. This is particularly true as Plaintiff and other members of the
8 putative Class are likely to be, and actually are deceived, as to their earned wages because they
9 are unable to determine from their wage statements whether or not they were paid for all work
10 performed and whether they received premium wages for noncompliant meal and rest periods.

11 104. As a direct and proximate result of Defendant's unlawful, unfair, and fraudulent
12 business practices, Plaintiff and members of the putative Class have suffered injury-in-fact and
13 have lost wages rightfully owed to them.

14 105. Through their unlawful, unfair, and fraudulent conduct, Defendant has been
15 unjustly enriched by receiving and continuing to receive benefits and profits at the expense of
16 Plaintiff and putative Class Members. Therefore, pursuant to Bus. & Prof. Code § 17200,
17 Defendant should be enjoined from this activity and made to disgorge all ill-gotten gains and
18 restore Plaintiff and other members of the putative Class the wages wrongfully withheld from
19 them.

20 106. Moreover, the unlawful, unfair, and fraudulent conduct alleged herein has
21 continued, and there is no indication that Defendant will refrain from such activity in the
22 future. Plaintiff believes and alleges that if Defendant is not enjoined from the conduct
23 described herein, Defendant will continue to violate California law at the expense of its
24 employees. Accordingly, Plaintiff requests that that the Court issue a preliminary and
25 permanent injunction.

26 107. Plaintiff, on behalf of himself and Class Members, requests further relief as
27 described in the below prayer.

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SEVENTH CAUSE OF ACTION

(By Plaintiff Individually and on Behalf of the Class against Defendant and Does 1-10)

PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

[Lab. Code § 2698 et seq.]

108. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all paragraphs of this Complaint.

109. California Labor Code § 2698 et seq., also known as the Private Attorneys General Act of 2004 (“PAGA”), expressly provides that any provision of the California Labor Code allowing for a civil penalty to be assessed and collected by the Labor and Workforce Development (“LWDA”), or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees. These penalties are in addition to any other relief available under the Labor Code, and pursuant to § 2699(i), must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees.

110. Plaintiff is an “aggrieved employee” under PAGA, as he is was employed by Pacific Bell Telephone Company from January 2014 to August 20, 2015 and suffered one or more violations of the California Labor Code as set forth above.

111. Plaintiff has complied with the procedures specified in Lab. Code § 2699.3, since a letter was sent to the LWDA by email on August 19, 2016 giving notice of Plaintiff’s PAGA claims and a copy was simultaneously sent by certified mail to Defendant’s agent for service of process.

112. The LWDA had until October 24, 2016, to provide notice of whether it intended to investigate the alleged violations. As of the date of this Complaint, the LWDA has not provided notice of whether it intends to investigate the alleged violations. Therefore, pursuant to Lab. Code § 2699.3, Plaintiff has the right to pursue his claims under PAGA in a representative capacity.

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1 113. Plaintiff seeks to recover for its PAGA claim through a representative action as
2 permitted by California law. Pursuant to *Arias v. Superior Court* (2009) 46 Cal.4th 969,
3 PAGA claims do not require class certification.

4 114. Plaintiff basis his claim on the following violations committed by Defendant, as
5 set forth above, of the California Labor Code as permitted by Lab. Code § 2699.5:

- 6 (a) Failure to pay minimum wages and overtime compensation in violation
7 of Lab. Code §§ 510, 1194, and 1197;
- 8 (b) Failure to provide compliant meal periods in violation of Lab. Code §§
9 226.7 and 512;
- 10 (c) Failure to provide complaint rest periods in violation of Lab. Code §
11 226.7;
- 12 (d) Failure to provide accurate wage statements in violation of Lab. Code §
13 226(a);
- 14 (e) Failure to pay wages owed in violation of Lab. Code §§ 201, 202, and
15 203.

16 115. Lab. Code § 2699(f) provides in pertinent part:

17 For all provisions of this code except those for which a civil
18 penalty is specifically provided, there is established a civil
19 penalty for a violation of these provisions as follows:

20 ...

21 (2) If, at the time of the alleged violation, the person employs one
22 or more employees, the civil penalty is one hundred (\$100) for
23 each aggrieved employee per pay period for the initial violation
24 and two hundred dollars (\$200) for each aggrieved employee per
25 pay period for each subsequent violation.

26 116. As described herein, Defendant failed to compensate Plaintiff and other
27 aggrieved employees for all of their time spent loading and unloading their service vehicles in
28 violation of California law. Plaintiff is entitled to, and seeks, the applicable penalty outlined in
PAGA in addition to the full unpaid balance of minimum wages and/or overtime compensation,
including interest thereon as provided by Lab. Code §§ 558 and 1194.

1 117. As described herein, Defendant failed to provide Plaintiff and other aggrieved
2 employees with the opportunity to take legally compliant meal periods. Plaintiff and other
3 aggrieved employees are unable to determine from their wage statements whether they were
4 paid the applicable premium for noncompliant meal periods. Plaintiff is entitled to, and seeks,
5 the applicable penalty outlined in PAGA, in addition to the full unpaid balance of meal period
6 premiums provided by Lab. Code § 226.7, including interest thereon.

7 118. As described herein, Defendant failed to provide Plaintiff and other aggrieved
8 employees with the opportunity to take legally compliant rest periods. Plaintiff and other
9 aggrieved employees are unable to determine from their wage statements whether they were
10 paid the applicable premium for noncompliant rest periods. Plaintiff is entitled to, and seeks,
11 the applicable penalty outlined by PAGA, in addition to the full unpaid balance of rest period
12 premiums provided by Lab. Code § 226.7, including interest thereon.

13 119. As described herein, Defendant failed to provide Plaintiff and other aggrieved
14 employees with accurate wage statements because the statements provided to employees did
15 not accurately reflect all time worked. Moreover, Plaintiff and other aggrieved employees are
16 unable to determine if they were paid the appropriate premium for noncompliant meal and rest
17 periods. As such, Plaintiff is entitled to, and seeks, the applicable penalty outlined by PAGA,
18 in addition to an award of costs and reasonable attorneys' fees as provided by Lab. Code §
19 226(e)(1).

20 120. As described herein, Defendant failed to pay all wages owed upon termination
21 of the employer/employee relationship in violation of California law. Therefore, Plaintiff is
22 entitled to, and seeks, the applicable penalty outlined by PAGA, in addition to a maximum 30
23 days' wages at the daily rate of pay as a waiting time penalty pursuant to Lab. Code § 203.

24 121. Plaintiff, on behalf of himself and Class Members, requests further relief as
25 described in the below prayer.

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1 **PRAYER FOR RELIEF**

2 Plaintiff prays for judgment against Defendant and in favor of the Class Action as
3 follows:

- 4 (a) For an order determining that this action may be maintained as a class
5 action with the named Plaintiff as the class representative;
- 6 (b) For the attorneys appearing on the above caption to be appointed as class
7 counsel;
- 8 (c) For an order determining that the PAGA cause of action may be
9 maintained as a representative action;
- 10 (d) For Plaintiff to serve as the PAGA representative for all aggrieved
11 employees and for the state of California;
- 12 (e) For an order determining that this action may be maintained as a
13 representative action with the named Plaintiff as the representative;
- 14 (f) For damages pursuant to Lab. Code § 226;
- 15 (g) For all minimum wages and overtime compensation owed pursuant to
16 Lab. Code §§ 510, 1194 and 1197.1;
- 17 (h) For premium wages pursuant to Lab. Code § 226.7;
- 18 (i) For waiting time penalties pursuant to Lab. Code § 203;
- 19 (j) For all liquidated damages pursuant to Lab. Code §§ 226(e), 1194.4(a),
20 and 1197.1;
- 21 (k) For civil penalties pursuant to Lab. Code §§ 558 and 1197;
- 22 (l) For PAGA penalties pursuant to Lab. Code § 2699(f);
- 23 (m) For injunctive relief pursuant to Lab. Code § 226(h) and Bus. & Prof.
24 Code § 17203;
- 25 (n) For disgorged profits from Defendant’s unfair, unlawful, and fraudulent
26 business practices;
- 27 (o) For reasonable attorneys’ fees and costs of suit pursuant to Lab. Code
28 §§226(e)(1), 2699(g), 1194, and/or other applicable law;

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- (p) For pre-judgment and post-judgment interest as provided by law;
- (q) For appropriate equitable relief;
- (r) For all such other and further relief, the Court may deem just and proper.

Dated: October 24, 2016

CLARK LAW GROUP

By: 
R. Craig Clark
Dawn M. Berry
Attorneys for Plaintiff and Putative Class

DEMAND FOR JURY TRIAL

Plaintiff and the putative Class hereby demand a jury trial on all issues so triable.

Dated: October 24, 2016

CLARK LAW GROUP

By: 
R. Craig Clark
Dawn M. Berry
Attorneys for Plaintiff and Putative Class