UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GEORGE SOUSA, et al.,

Plaintiffs, v. WALMART, INC., et al.,

Defendants.

Case No. 1:20-cv-00500-ADA-EPG FINDINGS AND RECOMMENDATION TO GRANT IN PART AND DENY IN PART

(ECF No. 52) OBJECTIONS, IF ANY, DUE WITHIN FOURTEEN DAYS George Sousa and Martha Castro (collectively, are proceeding with a first amended consolidated complaint ( asserting various putative class and representative claims against Walmart Inc. and Wal- for (ECF No. 51.) dismiss the FAC. (ECF No. 52.) For the reasons described below, the undersigned recommends that Defendant in part and denied in part and that Plaintiffs be granted leave to file a second amended consolidated complaint.

I. SUMMARY OF ALLEGATIONS

The FAC alleges as follows: George Sousa worked at the Hanford Walmart store as a non-exempt employee in various positions, including associate, overnight support manager, and other titles, from 2014 through October 2017. During that time, Plaintiff regularly worked in excess of forty

hours per week. Plaintiff regularly worked more than forty hours per week during the retail

assistant manager and retains that title to the present day.

Martha Castro m Roseville, California from approximately July 8, 2006, until August 10, 2019. During this time, Plaintiff Castro routinely worked more than eight hours per day. Plaintiff Castro was further required to wait in line off-the-clock for security checks each day at the end of each shift.

The proposed Class members are all people who are or who have been employed by Defendants as

hourly non-exempt employees, including but not limited to associates, cashiers, stockers, attendants, pharmacists, custodians, security guards, and other hourly and non-exempt employees throughout the State of California within the four years preceding the filing of the FAC. The proposed Night Shift Manager Subclass are all people who are or who have been employed by Defendants as hourly, non-exempt overnight support managers and/or night managers, or other positions with similar job duties, throughout the State of California within the four years preceding the filing of the FAC.

Pursuant to a uniform policy originated by Defendants facilities throughout California, all hourly employees are subject to daily bag searches for potential contraband when they leave the premises. After Plaintiffs and other similarly situated , , go to the exit where customers leave the store, 1

and wait in line as customers show receipts that are scanned. When employees approach security, they give their name, employee identification number, and then exit the building. Plaintiffs allege that such daily security checks took between two to ten minutes, or sometimes even longer, depending on the number of people in line and persons checking bags and or receipts. Thus, at the discretion and control of Defendants, Plaintiffs and other aggrieved employees were and are required to wait in line for security checks for each day at the end of each shift. The time waiting in the security line was uncompensated by Defendants.

1 Plaintiffs allege that there were no separate security check locations for employees, and all employees had to use the security checkpoints that are open to the public leaving the store.

As a result of Defendants were systematically denied minimum wage for all time worked, as well as required overtime pay. For example, Plaintiff Sousa was regularly scheduled to work eight hours a day, five days per week. Plaintiff Sousa was required to wait in security check lines for five to ten minutes, every shift. As a result, each week Sousa worked for Defendants between 2014 and October of 2017, Sousa (1) typically worked on the clock at least forty hours a week; and (2) worked off-the-clock twenty-five to fifty minutes per week. Because those weekly twenty-five to fifty minutes of time spent in security checks were all in excess of eight hours in a day and forty hours in a week, Sousa was denied twenty-five to fifty minutes of overtime pay each week between the beginning of his employment in 2014 to October 2017.

Similarly, the time Plaintiff Castro spent off-the-clock during mandatory security checks typically resulted in overtime violations. Plaintiff Castro frequently worked eight-hour shifts, on the clock. For each one of these eight-hour shifts, Plaintiff Castro was required to participate in an off-the-clock security check for two to ten minutes. As a result, all time spent off-the-clock during these mandatory security checks necessarily resulted in Plaintiff Castro working in excess of eight hours in a day and entitled her to overtime pay for every shift she worked on the clock eight hours in a day. In sum, every time Castro worked a shift of at least eight hours, Castro incurred at least two to ten minutes of uncompensated overtime.

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From approximately June 2016 to March 2017, Plaintiff Sousa was a non-exempt, hourly- mart store in Hanford, California. Walm timekeeping system throughout all of their stores that hourly workers use to clock in and clock out. When non-exempt, hourly-paid night shift managers take their unpaid thirty-minute meal p period, but instead instruct night shift managers to follow the prompts to notate their meal periods. When night shift managers notate a meal period according thirty minutes for a meal period, plus an additional thirty

practices result in night shift managers losing an extra thirty minutes from their shifts for every shift worked.

As a matter of policy, Defendants also require Plaintiffs and Class members to remain on duty during their scheduled shifts, including during rest breaks. Defendants do not compensate Class members for work performed during rest periods and do not provide Class members

are aware that non-exempt, hourly workers routinely work through rest breaks and are not provided with premium pay for the missed rest breaks.

Because these meal and rest periods were on duty, interrupted, or missed altogether for every shift that Plaintiffs and Class members worked in excess of three and one-half hours, they were denied at least one off-duty, uninterrupted ten-minute rest period. For every shift that Plaintiffs and Class members worked in excess of five hours in a day, they were denied an off- duty, uninterrupted thirty-minute meal period. For every shift that Plaintiffs and Class members worked in excess of six hours, they were denied a second off-duty, uninterrupted ten-minute rest period. Meal and rest break premium pay was improperly withheld, and for uncompensated meal periods, this results in additional thirty minutes of uncompensated work time each shift. Because Plaintiffs and Class members routinely work in excess of eight hours in a day and forty hours in a week, this uncompensated meal time results in both overtime and minimum wage violations.

As just one of countless examples, during the two weeks between January 7, 2017, and January 20, 2017, Plaintiff Sousa worked ten shifts, each of which were in excess of 7 hours sufficient length to entitle him to one meal break and two rest breaks each shift. Because Plaintiff

Sousa was on duty during those breaks and those breaks were subject to interruption at any time, Plaintiff experienced ten meal break violations and twenty rest break violations during those two weeks.

Plaintiffs allege that Defendants employ, or employed, thousands of people similarly situated to Plaintiffs during the four-year period prior to the filing of the FAC method of paying Plaintiffs and Class members was willful and not based on a good faith and reasonable belief that its conduct complied with California law. Defendants routinely failed to

maintain true and accurate records of the hours worked by Class members. In particular, Defendants failed to record hours that Plaintiffs and Class members work while off the clock. s carried out in bad faith, and causes significant damages to non- exempt hourly employees.

The FAC raises the following causes of action: (1) failure to pay overtime wages pursuant to California Labor Code section 510; (2) failure to pay minimum wages pursuant to California Labor Code sections 1182.11, 1182,12, 1194, 1197, and 1197.1; (3) failure to authorize and permit and/or make available rest periods pursuant to California Labor Code sections 226 and 512; (4) waiting time penalties pursuant to California Labor Code sections 201 203; (5) violation of California Business and Professions Code section 17200 et seq.; (6)

statutory penalties pursuant to California Labor Code section 2698 et seq. (ECF No. 51.)

II. PROCEDURAL HISTORY

On March 24, 2020, Plaintiff Castro filed her initial complaint in Placer County Superior Court. (Complaint, Castro v. Walmart Inc., No. 2:20-cv-00928 (E.D. Cal. May 6, 2020) Castro , ECF No. 1-2.) On May 6, 2020, Walmart removed the matter to the Sacramento Division of the United States District Court for the Eastern District of California. (Castro, ECF No. 1.) On May 22, 2020, Plaintiff Castro filed a first amended class action complaint. (Id., ECF No. 8.) On June 5, 2020, Walmart filed a motion to dis statements under California Labor Code section 226 on the ground that it was derivative of her

claims for off-the-clock work and thus sought an improper double recovery. (Id., ECF No. 9.) On August 17, 2020, the Court Plaintiff Castro failure to provide accurate wage statements claim with prejudice. (Id., ECF No. 15.)

Meanwhile, on April 7, 2020, Plaintiff Sousa filed his initial complaint against Defendants in this Court. (ECF No. 1.) On June 15, 2020, Defendants filed an answer. (ECF No. 7.) On April 29, 2021, Plaintiff Sousa and Defendants filed a stipulation to consolidate his action with Castro. (ECF No. 27.) On May 7, 2021, the parties in Castro stated they agreed to consolidation. (Castro, ECF No. 26.) On May 11, 2021, the Court consolidated the cases and Plaintiffs were granted leave to file a consolidated complaint. (ECF No. 28.)

On May 12, 2021, Plaintiffs filed a consolidated complaint. (ECF No. 29.) On June 9, 2021, Defendants filed a motion to partially dismiss the consolidated complaint. (ECF No. 37.) On August 12, 2021, the parties filed a stipulation for Defendants to withdraw the motion to dismiss and for Plaintiffs to file an amended consolidated complaint. (ECF No. 49.)

On August 20, 2021, Plaintiffs filed a first amended consolidated complaint. (ECF No. 51.) On September 3, 2021, Defendants filed the instant motion to dismiss. (ECF No. 52.) Plaintiffs have filed

an opposition, and Defendants have filed a reply. (ECF Nos. 54, 55.) On September 12, 2022, the motion to dismiss was referred to the undersigned. (ECF No. 59.)

III. LEGAL STANDARDS

A. Motion to Dismiss In considering a motion to dismiss, the Court must accept all allegations of material fact in the complaint as true. Erickson v. Pardus, 551 U.S. 89, 93 94 (2007); Hosp. Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976). The Court must also construe the alleged facts in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), abrogated on other grounds by Harlow v. Fitzgerald, 457 U.S. 800 (1982); Barnett v. Centoni, 31 F.3d 813,

favor. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). In addition, pro se be held to less stringent standards than forma Hebbe v. Pliler,

627 F.3d 338, 342 (9th Cir. 2010).

A motion to dismiss pursuant to Rule 12(b)(1) jurisdiction. See 12(b)(1) jurisdictional attack may be facial or Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004) (citing White v. Lee asserts that the

Safe Air, 373 F.3d at 1039. the allegations that, by themselves, Id.

A motion to dismiss pursuant to Rule 12(b)(6) operates to test the sufficiency of the complaint. See Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009).

Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41,

Scheuer, 416 U.S. at 236.

The first step in testing the sufficiency of the complaint is to identify any conclusory allegations. Iqbal, 556 U.S. at 679. Id. at 678 (citing Twombly, 550 U.S. s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action Twombly, 550 U.S. at 555 (citations and quotation marks omitted).

After assuming the veracity of all well-pleaded factual allegations, the second step is for the court to determine whether the complaint pleads a claim to relief that is plausible on its face. Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 556) (rejecting the traditional 12(b)(6) standard set forth in Conley, 355 U.S. at 45 46). A claim is facially plausible when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 556).

Iqbal, 556 U.S. at 678.

B. Leave to Amend 15(a)(2). Waldrip v. Hall, 548 F.3d

729, 732 (9th Cir. 2008) (quoting Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001)). Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1058 (9th Cir. 2011) (quoting Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989)). A leave to amend

dilatory motive on part of the movant, repeated failure to cure deficiencies by amendments

Carvalho v. Equifax Info. Servs., LLC, 629 F.3d 876, 892 93 (9th Cir. 2010) (alterations in original) (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)).

Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003). of amendment can, by itself, justify the denial of a motion for leave to Bonin v. Calderon, 59 F.3d 815, 845 (9th Cir. 1995), but [u]ndue delay by itself is insufficient to justify denying leave to amend United States v. United Healthcare Ins. Co., 848 F.3d 1161, 1167 (9th Cir. 2016). is the consideration of prejudice to the opposing party that carries the greatest Eminence Capital, 316 F.3d at 1052. exists a presumption under Rule 15(a) Id.

IV. DISCUSSION

A. UCL Claim Unfair Competition Law & Prof. Code § 17200. (ECF No. 51 at 18.) 2

because Plaintiffs: (1) fail to allege an inadequate remedy at law, (2) lack standing for injunctive relief, and (3) cannot recover penalties under the UCL. (ECF No. 52 at 13 16.)

1. Allegation of Inadequate Remedy at Law the traditional principles governing equitable remedies in federal courts, including the requisite inadequacy of legal remedies, apply when a party requests Sonner v. Premier Nutrition Corp., 971 F.3d 834, 844 (9th Cir. 2020). Thus, a plaintiff must establish that she lacks an adequate remedy at Sonner, the Ninth s inter aliaoperative complaint does Id. (citing v. 2 Citations refer to the pagination assigned by the CM/ECF system.

Littleton, 414 U.S. 488, 502 (1974) (holding that a complaint seeking equitable relief failed

Defendants rely on Sonner in arguing that Plaintiffs fail to state a claim for equitable at acknowledge that recovering damages through an equitable claim for relief, a plaintiff must show an inadequate

matter, plaintiffs are entitled to seek remedies under the UCL and Labor Code as alternative tations. (Id.) Plaintiffs do not address Sonner in the opposition, and all but one of the cases cited in support of their argument were decided before Sonner.

hether a UCL claim is pleaded as the sole or an alternative remedy, it must be pleaded adequately. Therefore, in order to adequately assert a claim for equitable restitution under the UCL in federal court, the complaint must allege that [plaintiff] lacks an adequate legal remedy. Taylor v. Sams W., Inc., No. CV 20-5380 DSF (JCX), 2020 WL 12947974, at *4 (C.D. Cal. Oct. 7, 2020). Here, the FAC does not allege that Plaintiffs lack an adequate legal motion to dismiss be granted on this ground and with leave to amend. See - letter law that a district court must give plaintiffs at least one chance to amend a deficient Taylor, 2020 WL 12947974, at *4 (dismissing UCL claim for failing to allege lack of adequate legal remedy with leave to amend).

2. Injunctive Relief In the FAC, Plaintiffs seek injunctive relief under the UCL. (ECF No. 51 at 19, ¶ 98.) Defendants assert that Plaintiffs lack standing to pursue injunctive relief under the UCL, arguing

that: (1) Plaintiff Castro is a former employee of Walmart and that past employees generally lack standing to pursue injunctive relief against their former employers; and (2) reasonable threat that Plaintiff Sousa an exempt salaried employee will suffer future

minimum wage, overtime, or rest break violations that can potentially pertain only to non- (ECF No. 52 at 15 16; ECF No. 55 at 10.) In the opposition, Plaintiffs a typical

A plaintiff must demonstrate constitutional standing separately for each form of relief requested. Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC) Inc., 528 U.S. 167, 185, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000). For injunctive relief, which is a prospective Summers v. Earth Island Inst., 555 U.S. 488, 493, 129 S.Ct. 1142, 173 L.Ed.2d 1 (2009). In other certainly impending to possible future injury Clapper v. Amnesty Int'l USA, 568 U.S. 398, 409, 133 S.Ct. 1138, 185 L.Ed.2d 264 (2013) (internal quotation marks and alteration omitted). Davidson v. Kimberly-Clark Corp., 889 F.3d 956, 967 (9th Cir. 2018) A plaintiff who cannot reasonably be expected to benefit from prospective relief ordered against the defendant has no claim for an injunction. Bayer v. Neiman Marcus Grp., Inc., 861 F.3d 853, 864 (9th Cir. 2017). Unless the named plaintiffs are themselves entitled to seek injunctive relief, they may not represent a class seeking that relief. Any injury unnamed members of [a] proposed class may have suffered is simply irrelevant to the question whether the named plaintiffs are entitled to the Hodgers-Durgin v. de la Vina, 199 F.3d 1037, 1045 (9th Cir. 1999). Plaintiff Castro is a former employee of Walmart. The Ninth Circuit has held that a employee has no claim for injunctive relief addressing the employment practices of a former employer absent a reasonably certain basis for concluding he or she has some personal Bayer, 861 F.3d at 865 (citing Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 364 65 (2011); Walsh v. Nevada of Human Res., 471 F.3d 1033, 1036 37 (9th Cir. 2006)). Plaintiffs have not provided a reasonably certain basis for concluding that Plaintiff

Castro has some personal need for prospective relief, and moreover, several district courts . . . have concluded that a former employee lacks standing to seek prospective injunctive relief on Ramirez v. Manpower, Inc., No. 5:13-CV-2880-EJD, 2014 WL 116531, at *7 (N.D. Cal. Jan. 13, 2014) (listing cases). Since 2017, Plaintiff Sousa has been an exempt salaried employee who is not subject to minimum

wage, overtime, or rest break regulations. (ECF No. 55 at 9 10.) The Ninth Circuit has plaintiff who cannot reasonably be expected to benefit from prospective relief ordered against the def Bayer, 861 F.3d at 864. Plaintiffs have not demonstrated how Plaintiff Sousa will personally benefit from prospective relief ordered against Defendants regarding minimum wage, overtime, or rest break violations.

Unless the named plaintiffs are themselves entitled to seek injunctive relief, they may not represent a class seeking that relief. Any injury unnamed members of this proposed class may have suffered is simply irrelevant to the question whether the named plaintiffs are entitled to Hodgers-Durgin, 199 F.3d at 1045. Thus, to the extent Plaintiff attempts to rely on the unnamed putative class . . . injunctive Wolf v. Hewlett Packard Co., No. CV 15-01221-BRO (GJSx), 2016 WL 8931307, at *9 (C.D. Cal. Apr. 18, 2016) (internal citation omitted) (citing Hodgers-Durgin, 199 F.3d at 1045). See also Hoffman v. Ford Motor Co., No. 8:20-cv-0846- JLS-KES, 2021 WL 3265010, at *10 11 (C.D. Cal. Mar. 31, 2021) (granting motion to dismiss ial class members, not the named plaintiffs; Plaintiffs have failed to allege that they are at risk of In re Nexus 6P Prod. Liab. Litig., 293 F. Supp. 3d 888, 954 (N.D. Cal. 2018) However, a plaintiff cannot seek injunctive relief on behalf of the public unless he is individually entitled to such relief. Because the Court has presently determined that the California Plaintiffs have not adequately pled standing to seek injunctive relief, their prayer for injunctive relief on behalf of the entire class must also fail. (internal citations omitted)); Freeman v. ABC Legal Servs., Inc., 877 F. Supp. 2d 919, 927 (N.D. Cal. 2012) (holding that plaintiffs lacked standing to seek injunctive relief because

establish only that [the defendant] will (allegedly) harm many people, but not necessarily that it will harm Plaintiffs ; Sanchez v. U.S. Off. of Border Patrol, No. 12- In order to receive injunctive relief, a plaintiff must make an additional showing that they have standing. The equitable remedy is unavailable absent a showing of irreparable injury[.] . . . Further, the alleged injuries must be to the named class members because injunctive relief is not available based on alleged injuries to unnamed members of a proposed class. (some internal quotation marks and citations omitted) (quoting Hodgers-Durgin, 199 F.3d at 1045)).

Accordingly, the undersigned on this ground See Warth v. Seldin, 422 U.S. 490, 501 for want of s

supply, by amendment to the complaint or by affidavits, further particularized allegations of fact Greenpeace, Inc. v. Walmart Inc., No. 21-CV- 00754- allege facts to support Article III standing, the complaint ordinarily is subject to dismissal, albeit with leave to

3. Recoverability Under the UCL

s

52 at 16.) In the opposition, Plaintiffs argue that meal and rest period premium wages are wages, not

penalties, and thus are recoverable under the UCL. (ECF No. 54 at 12 14.) Plaintiffs did not

address this issue in their reply. /// ///

a. Rest Periods Plaintiffs allege that Defendants committed acts of unfair competition as defined by the UCL by engaging in violations of California Labor Code sections 226.7 and 512 regarding rest periods. (ECF No. 51 at 18, ¶ 95.) employer who fails to provide legally compliant meal and rest breaks must pay the employee one additional hour of pay at the employee Yeomans v. World Fin. Grp. Ins. Agency, Inc., No. 19-cv-00792-EMC, 2022 WL 844152, at *8 (N.D. Cal. Mar. 22, 2022). Korea Supply Co. v. Lockheed Martin Corp., 29 Cal. 4th 1134, 1144 (2003) (first alteration added) (quoting Cel-Tech Comms., Inc. v. Los Angeles Cellular Tel., 20 Cal. 4th 163, 179 (1999)). [O]rders for payment of wages unlawfully withheld from an employee are . . . a Cortez v. Purolator Air Filtration Prods. Co., 23 Cal. 4th 163, 177 (2000). Therefore, the issue is whether the additional hour of pay mandated by section 226.7 is a wage and thus, restitutionary and recoverable under the UCL.

Section 226.7 pay is recoverable under t Yeomans, 2022 WL 844152, at *8, but the two pertinent California Supreme Court cases are Murphy v. Kenneth Cole Productions, Inc., 40 Cal. 4th 1094 (2002), and Kirby v. Immoos Fire Protection, Inc., 53 Cal. 4th 1244 (2012). In Murphy, after considering the language, legislative history, and purpose of section 226.7, the California Supreme Court held a penalty, s period. 40 Cal. 4th at 1114. In

Kirby, the California Supreme Court held that a section 226.7 claim is not an action brought for nonpayment of wages; it is an action brought for non-provision of mea 53 Cal. 4th at 1257.

Murphy and Kirby], district courts have diverged on whether premium

furthermore, whether they are wages recoverable as restitution for purposes of the UCL. Harper , No. 2:19-cv-00902-WBS-DMC, 2020 WL 916877, at *4 (E.D. Cal.

Feb. 26, 2020) (listing cases). The California Supreme Court specifically stated that Kirby not at odds with our decision in Murphy is not to say that the legal violation Kirby, 53

Cal. 4th at 1257 (emphasis in original). Accordingly, the Court relies on Murphy 40 Cal. 4th at 1115.

Having found that section 226.7 rest period premiums are wages, the Court now turns to whether they are recoverable under the UCL. wages unlawfully withheld from an employee are . . . a restitutionary remedy authorized by [the UCL] Cortez, 23 Cal. 4th at 177 Id. at 178. wages that are due and payable pursuant to section 200 et seq. of the Labor Code are as much the property of the employee who has given his or her labor to the employer in exchange for that property as is property a person surrenders through an unfair business Id. performed while working through a statutorily required rest break; and are therefore Calleros v. Rural Metro of San Diego, Inc., No.

17-cv-00686-CAB-BLM, 2017 WL 3252551, at *4 (S.D. Cal. July 31, 2017). See Murphy paid rest periods in an eight-hour work day, an employee essentially performs 20 minutes of Accordingly, the Court finds that the rest period premium wages are recoverable under the UCL. See McGhee v. Tesoro Ref. & Mktg. Co. LLC, 440 F. Supp. 3d 1062, 1073 (N.D. Cal. 2020) employees for working without breaks, which is properly recoverable as restitution because it is triggered in part by the employee ); Bates v. Leprino Foods Co., No. 2:20-cv-00700- AWI- [T]o the extent Batess claim is based on § 226.7 premiums for meal and rest break violations, these amounts are recoverable under the UCL as restitution for unpaid wages. . . . Leprinos motion must be denied on this

Based on the foregoing, the undersigned recommends that Defend be denied on this ground.

b. Wage Statements In the FAC, Plaintiffs allege that Defendants committed acts of unfair competition as defined by the UCL by engaging in violations of California Labor Code section 226 regarding accurate and timely itemized wage statements. (ECF No. 51 at 18 19, ¶ 95.) California Labor Code section accurate information about their wages in their pay statements. An employer violates the provide accurate § 226(a) promptly and easily determine [that information] from the wage statement Magadia v. Wal-Mart Associates, Inc., 999 F.3d 668, 679 (9th Cir. 2021) (quoting Cal. Lab. Code § 226(e)(2)(B)). t is well recognized that penalties for wage statement violations are not recoverable under the UCL Bates, 2020 WL 6392562, at *8 (citing Gomez v. J. Jacobo Farm Labor Contractor, Inc., 334 F.R.D. 234, 267 68 (E.D. Cal. 2019) (collecting cases)). Accord Monaghan v. Telecom Italia Sparkle of N. Am., Inc., 647 F. Appx 763, 766 (9th Cir. 2016) (holding that Cal as a matter of law provide the basis for a § 17200 [UCL] claim because § 226 does not provide for Gomez, 334 F.R.D. at 267available penalties and damages under Labor Code § 226 for wage statement violations are not restitutionary and, therefore, not recoverable .

Accordingly, without leave to amend insofar as it seeks recovery for wage statement violations. See Bonin, 59 F.3d at 845 of amendment can . . . justify the denial of . . . leave to

B. Allegations

not have standing to represent employees of that company. All allegations in the FAC pertaining

.) Accordingly, the undersigned

motion to dismiss be granted on this ground and that all allegations in the FAC pertaining to be dismissed without leave to amend.

C. Night Manager Subclass Defendants assert that Plaintiffs do not have standing to represent the night manager subclass. (ECF No. 52 at 17.) Defendants argue that because the UCL claim should be dismissed -year statute of limitations does not apply, Plaintiffs had until March 2020 to file a lawsuit for any wage claims on behalf of night managers but Plaintiff Sousa did not file his initial complaint

until April 7, 2020. (Id. at 18.) ecause Plaintiff Sousa did not experience an injury during the limitations period, he lacks standing to In the opposition, Plaintiffs contend that even if the UCL claim was to fail, Plaintiff Sousa still has standing to represent the Night there is no dispute Plaintiff Sousa has alleged cognizable wage and hour injuries relating to his work experiences with Defendant, and otherwise has a direct and substantial interest in th (ECF No. 54 at 16.) Plaintiffs state that Defendants have

party is before the court to tender the issues for litigation, ... [t]hey spring from different sources and serve different functions. Melendres v. Arpaio, 784 F.3d 1254, 1261 (9th Cir. 2015) (first alteration added) (quoting 1 William B. Rubenstein, Newberg on Class Actions § 2:6 (5th ed.)). Standing is meant to ensure that the injury a plaintiff suffers defines the scope of the controversy he or she is entitled to litigate. Class certification, on the other hand, is meant to ensure that named plaintiffs are adequate representatives of the unnamed class. Melendres, 784

once the named plaintiff demonstrates her individual standing to bring a claim, the standing

inquiry is concluded, and the court proceeds to consider whether the Rule 23(a) prerequisites for Id. at 1262 (quoting Newberg on Class Actions § 2:6).

Defendants contend that ecause Plaintiff Sousa did not experience an injury during the limitations period, he lacks standing to bring claims on behalf of this [night manager] the named Melendres, 784 F.3d at 1262. Here, although Defendants contend that Plaintiff Sousa cannot bring claims on behalf of the night manager subclass, they do not assert that Plaintiff Sousa lacks standing to pursue his at the pleading stage that [plaintiff] lacked standing to assert claims on behalf of putative class Nunez v. Saks Inc., 771 F. Appx 401, 402 (9th Cir. 2019) (emphasis added). The Ninth Circuit concluded Id. Accordingly, the

nied on this ground.

D. PAGA Claim Sixth Cause of Action is for civil penalties under Private Attorneys General A , California Labor Code § 2698 et seq., for: (a) violations of California Labor Code sections 200, 201, 202, 226.7, 1198, and 2802; (b) violations of California Labor Code section 1197; (c) violations of California Labor Code section 510 and applicable wage order; and (d) violations of California Labor Code section 226. (ECF No. 51 at 20 22.) settlement of two actions approved in the Los Angeles Superior Court; (2) Plaintiffs failed to exhaust administrative remedies regarding their PAGA claim for rest break, overtime, and expense

with respect to the PAGA claim for wage statement and expense reimbursement violations; and (4) the PAGA claim for wage statement violations is precluded by law-of-the-case doctrine. (ECF No. 52 at 18.)

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1. Standing Defendants assert that the doctrine of claim preclusion bars Plaintiffs from pursuing their PAGA claim in light of the Los Angeles County Superior Court approving the settlement of two actions, Johnny Cruz v. Wal-Mart Associates, Inc. et al., No. 18STCV03128, and Brittney Johnson v. Wal-Mart Associates, Inc. et al., No. CIVDS1602699, (collectively, Cruz/Johnson 3

which sought civil penalties under PAGA for the same alleged Labor Code

-exempt positions at any time during the period from December 28, 2014 to the earlier of June 14, 2021 or the Date of In the opposition, Plaintiffs contend that the Cruz/Johnson settlement does not preclude their PAGA

taking place outside the [Cruz/Johnson that Plaintiffs lack standing to pursue a PAGA claim for violations occurring after July 8, 2021,

July 8, 2021, and she has therefore not experienced a minimum wage, overtime, or wage

Cruz/Johnson settlement has resolved the

3 Defendants request the Court take judicial notice of the Joint Stipulation Re PAGA Penalty Settlement (dated May May 28, 2021) filed in Los Angeles County Superior Court in Cruz v. Wal-Mart Associates, Inc., No. 18STCV03128. (ECF No. 52-2.) In deciding a Rule 12(b)(6) motion, the Court generally may not consider materials outside the complaint and pleadings. , 236 F.3d 1077, 1083 (9th Cir. 2001) (citing Cooper v. Pickett, 137 F.3d 616, 622 (9th Cir. 1998)). materials documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice without converting the motion to dismiss U.S. v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003). because it: (1) is may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (internal quotation marks and citation omitted)). See also Reyns Pasta Bella, LLC v. Visa USA, Inc., judicial notice of court filings and other matters of public . Accordingly, the Court takes judicial notice of the joint stipulation, order, and judgment filed in Los Angeles County Superior Court in Johnny Cruz v. Wal-Mart Associates, Inc., No. 18STCV03128.

the Court will bypass the issue of claim preclusion and address whether Plaintiffs may pursue a PAGA claim for violations occurring after the Cruz/Johnson release period.

In support of their argument that Plaintiffs have not experienced any Labor Code violations since July 8, 2021, and thus do not have standing to pursue their PAGA claim, Defendants cite to Magadia v. Wal-Mart Associates, Inc., 999 F.3d 668 (9th Cir. 2021), and Robinson v. Southern Counties Oil Co., 53 Cal. App. 5th 476 (2020). 4

(ECF No. 52 at 23 24; ECF No. 54 at 12 15.) In Magadia, the Ninth Circuit held that the plaintiff

lacked Article III standing to bring a PAGA claim for meal-break violations because he himself in fact suffered no meal-break violation. 999 F.3d at 674 78. meal-break Id. at 678.

of [the Cruz/Johnson] release period, because Castro did not personally experience Labor Code

violations after the release period . . . cannot be squared with the majority of California authority Kim v. Reins International California, Inc., 9 Cal. 5th 73 (2020), 5

Huff v. Securitas Security Services, USA, Inc., 23 Cal. App. 5th 745 (2018), 6

and Johnson v. Maxim Healthcare Services, Inc., 66 Cal. App. 5th 924 (2021). 7 4 In Robinson, the plaintiff had worked for Southern Counties from 2015 to 2017, and in 2018, he filed a PAGA action alleging that Southern Counties denied him and other aggrieved employees meal and rest breaks. In February 2019, a settlement was approved for a class athat sought individual damages as well as civil penalties under PAGA for the same alleged Labor Code violations covered all persons employed by Southern Counties in certain job classifications between March 17, 2013, and January 26, 2018. Robinson, 53 Cal. App. 5th at 480. Robinson opted out of the class settlement and subsequently amended his complaint to represent employees who were employed by Southern Counties from January 27, 2018, to the present. Id. The California Court of Appeal found id. at 481 83 the preclusion of Robinsons claims for the period during which he was employed by Southern Counties deprives him of standing to assert claims arising exclusively after he was so employed id. at 484. 5 In Kim employees lose standing to pursue a claim under [PAGA] if they settle and dismiss their individual claims for Labor Code violations 9 Cal. 5th at 80. Kim filed a putative class action against Reins that sought, inter alia, civil penalties under PAGA. Id. at 82. In light of an s class claims, ordered gr Id. at 82 83. The California Supreme Court reversed, finding that both requirements for PAGA standing [t]he plaintiff must be an aggrieved employee, that is, someone who was employed by the alleged violator and against one or more of the alleged violations was committed Kim became an aggrieved employee, and had PAGA standing, when one or more Labor Code violations were committed against him ettlement did not nullify these violations. Id. at 83 84 (quoting Cal. Lab. Code § 2699(c)). 6 In Huff seek penalties not only for the Labor Code violation that affected him or her, but also for different violations that

Robinson should not be followed, as it cannot be squared with the California Kim, Huff and Johnson

Robinson and Johnson does not address Magadia Magadia, the Ninth Circuit stated:

[T] confer Article III standing on private parties with no injury of their Hollingsworth, 570 U.S. at 710, 133 S.Ct. 2652. After all, Fiedler v. Clark, 714 F.2d 77, 80 (9th Cir. 1983) (per curiam) (simp question of federal law, not Hollingsworth, 570 U.S. at 715, 133 S.Ct. 2652. Magadia, 999 F.3d at 674 75. T No. 54 at 17.) However, Plaintiff Castro only worked for Walmart until August 10, 2019, and

was not employed by Defendants on July 8, 2021, or thereafter. Plaintiff Castro herself suffered no labor violations by Defendants on July 8, 2021, or thereafter. Based on Magadia, Plaintiff Castro lacks Article III standing to bring the PAGA claim, 8

and as 23 Cal. App. 5th at 750. Huff conclude[d] that PAGA allows an aggrieved

employee a person affected by at least one Labor Code violation committed by an employer to pursue penalties for all the Labor Code violations committed by that employer Id. 7 In Johnson, the plaintiff had signed an agreement with Maxim that she claimed included a noncompetition clause, which is prohibited under California law. Johnson filed a complaint consisting of a single cause of action for representative claims for penalties [T]he main issue posed by the parties on appeal is whether an employee, whose individual claim is time-barred, may still pursue a representative claim under PAGA. 66 Cal. App. 5th at 929. Applying Kim, the California Court of Appeal answered ohnson alleged she is employed by Maxim and that she personally suffered at least one Labor Code violation on which the PAGA claim is based he fact that Johnsons individual claim may be time-barred does not nullify the alleged Labor Code violations nor strip Johnson of her standing to pursue PAGA remedies. Id. at 929, 930. Johnson distinguished Robinson involving the same PAGA claims Johnson advances in this case unlike the plaintiff in Robinson, Johnson remains an employee of Maxim and continues to be governed by the terms of the Agreement. Moreover, she alleged that Maxim persists in requiring employees to sign agreements that contain the prohibited terms. Id. at 932. 8 at 17 23). Additionally, the Court notes that Plaintiff Sousa did not assert a PAGA claim before the cases were consolidated. (ECF No. 1.)

question of federal law, not Hollingsworth v. Perry, 570 U.S. 693, 715 (2013), Kim, Huff, and Johnson do not dictate a different result. See Gau v. Hillstone Rest. Grp., Inc., No. 20- CV-08250-SVK, 2022 WL 2833977, at *7 (N.D. Cal. July 20, 2022) (noting that a plaintiff does not have standing to pursue PAGA penalties if he did not suffer an injury as a result of the challenged conduct period during which he was employed by the defendant is precluded, he does not have standing to assert Magadia, 999 F.3d at 678, and quoting Robinson, 53 Cal. App. 5th at 484)); Nasiri v. T.A.G. Sec. Protective Servs. Inc., No. 18-CV-01170-NC, 2021 WL 4221624, at *3 (N.D. Cal. Sept. 16, 2021) (holding that dates of employment claims on behalf of other employees who worked during a time period arising exclusively after

[plaintiff] Johnson opinion calls into question whether , resolving any tension s precedent in Magadia d on this ground and the Sixth Cause of Action be dismissed for lack of Article III standing with leave to amend. See Warth, 422 U.S. at 501 o allow or to require the plaintiff to supply, by

amendment to the complaint or by affidavits, further particularized allegations of fact deemed Greenpeace fails to allege facts to support Article III standing, the complaint ordinarily is subject to

dismissal, albeit with leave to

failure -of-the- case doctrine, the Court will address these issues in an abundance of caution.

2. Exhaustion should be dismissed because Plaintiffs did not exhaust administrative remedies as to the overtime, rest break, and expense

reimbursement violations. (ECF No. 52 at 24.) In the opposition, she has not exhausted her administrative remedies for rest break violations or unreimbursed

mail to the Labor and Workforce Development Agency and the employer of the specific provisions of [the California Labor Code] alleged to have been violated, including the facts and Alcantar v. Hobart Serv., 800 F.3d 1047, 1056 (9th Cir. 2015) (alteration in original) (quoting Cal. Lab. Code § 2699.3(a)(1)). Here, the FAC alleges gave written notice to the LWDA [Labor and Workforce Development Agency] via online upload (at https://dir.tfaforms.net/308) and to Defendants via certified mail of the specific provisions of the California Labor Code alleged to (ECF No. 51 at 21, ¶ 110.) 9

The March 16, 2020 letter states in pertinent part:

Notice is hereby provided that, pursuant to California Labor

provisions of the California Labor Code and wage orders promulgated by the Industrial W 201- 203, 226, 1194, 1194.2, 1197, 1197.1, 2698.

. . .

Employee and other aggrieved employees seek penalties and other compensation from Walmart for the relevant time period because Walmart improperly failed to compensate employees for termination; and failed to furnish accurate, itemized wage statements. 9 Defendants have filed a request that the Court take judicial notice of the March 16, 2020 letter to the LWDA. (ECF No. 52-2.) P but is not required to complaint Davis v. HSBC Bank Nevada, N.A., 691 F.3d 1152, 1159 60 (9th Cir. 2012) (quoting Knieval v. ESPN, 393 F.3d 1068, 1076 (9th Cir. 2005)). Courts have taken judicial notice of PAGA notice letters at the motion to dismiss stage. See, e.g., Perez v. DXC Tech. Servs. LLC, No. 17-CV-06066-BLF, 2020 WL 5517276, at *2 (N.D. Cal. Sept. 14, 2020); Ogogo v. JayKay, Inc., No. 2:18-CV-03203-JAM-DB, 2019 WL 2267193, at *3 (E.D. Cal. May 28, 2019); Ovieda v. Sodexo Operations, LLC, No. CV 12-1750-GHK SSX, 2013 WL 3887873, at *2 (C.D. Cal. July 3, 2013).

. . .

Below please find the relevant facts and legal theories to support the aforementioned violations. In addition, a copy of the Complaint which further details the facts and theories of liability is attached hereto and incorporated by reference.

Walmart did not compensate their hourly non-exempt employees for all the minutes that they worked as described above, including but not limited to the time that the employees were subject to the control and direction of Walmart; and/or the time that the employees were suffered or permitted to work. Security Checks

Pursuant to a uniform policy originated by Walmart, all hourly employees are subject to bag searches. Hourly employees were and are required to wait in line with the rest of the general public and be searched for potential or possible contraband. Thus, at the discretion and control of Walmart, Employee and other aggrieved employees were and are required to wait in line for security checks for each day at the end of each shift.

Employee alleges that af aggrieved employees would get their belongings from their lockers, then would go to the exit where customers leave the store and wait in line with the general public to have their bags searched.

Employee alleges that the process can take approximately two (2) to ten (10) minutes depending on the number of people in line.

This daily uncompensated waiting time during security checks was done in order to undergo searches for possible contraband. Because such screening is designed to prevent and deter employee contraband, a concern that stems from the nature of the employees work, the security checks and consequential wait time are necessary to the employees primary work without compensation.

Employee alleges that there were no separate security check locations for employees, and all employees had to use the security checkpoints that are open to the public leaving the store. This created lengthy lines, and the time waiting in the security line was uncompensated by the Walmart. (ECF No. 52-2 at 5 6.)

25.) Plaintiffs contend that the letter put the Case 1:20-cv-00500-ADA-EPG Document 62 Filed 12/20/22 Page 23 of 30 security checks resulted in uncompensated work time, including the amount of uncompensated

ortive of minimum wage claims, whereas Labor Code § 510 is specific to overtime and it is not cited in

supportive of an overtime claim because the PAGA letter does not allege that Plaintiff Castro ever worked more than an eight-

The Court finds instructive Amey v. Cinemark USA Inc., No. 13-CV-05669-WHO, 2015 WL 2251504 (N.D. Cal. May 13, 2015), and remanded sub nom. Brown v. Cinemark USA, Inc., 705 F. App'x 644 (9th Cir. 2017). In Amey notice letters contain[ing] the allegation that Cinemark failed to record, state, or

pay for hours worked by employees off-the-clock . . . does not adequa section 226 . . . that the overtime rate was listed as the same Amey, 2015 WL 2251504, at *15. On appeal, the Ninth Circuit reversed, finding:

put Defendants and the California Labor and Workforce Development Agency on notice for potential investigation, which satisfies the policy goal of California Labor Code § 2699.3(a). rnia public policy favors the effective vindication of consumer protections . . . . Hurdles that impede the effective prosecution of representative PAGA actions undermine the Legislature Williams, 3 Cal. 5th at 548. As the California Supreme Court further noted in Williams in Labor Code section 2699.3, subdivision (a)(1)(A), indicates the must satisfy a particular threshold of weightiness, beyond the requirements of nonfrivolousness generally applicable to any civil Id. at 545. Brown, 705 F. Appx at 645.

Here, the March 16, 2020 letter stated has violated, and continues to violate, provisions of the California Labor Code . . . including, but not limited to, California Labor Code §§ 201- -2 at 5.)

California Labor Code section 1194, in turn, provides: 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 Code § 1194 (emphasis added). The letter also described the security check policy, which to have their bags checked for contraband. The letter alleged that this process could take approximately

-2 at 6 7.)

The Court finds that March 16, 2020 letter is significantly more robust than the letter the Ninth Circuit found was sufficient to satisfy California Labor Code § 2699.3(a) in Brown, 705 F. Appx 644. Defendants contend that letter is insufficient Labor Code § 510 is specific to overtime and it is not cited in the PAGA letter the

because the PAGA letter does not allege that Plaintiff Castro ever worked more than an eight- hour shift. ). What Defendants contend is sufficient goes far beyond what is , as stated by the California Supreme Court in Williams v. Superior Court, 3 Cal.5th 531, 545 (2017) Labor Code section 2699.3,

violations must satisfy a particular threshold of weightiness, beyond the requirements of nonfriv and interpreted by the Ninth Circuit in Brown

be granted in part and denied in part on this ground without leave to amend insofar as it seeks recovery for rest break and unreimbursed expenses to the ov PAGA claim for overtime violations is

subject to dismissal given the determination that the Sixth Cause of Action should be dismissed for lack of Article III standing.

3. Rule 8 Defendants also move to dismiss, pursuant to Federal Rule of Civil Procedure 8, for alleged violations of Labor Code sections 226 (wage statement) and 2802 (expense reimbursement) because the FAC does not provide any allegations that support these claims. (ECF No. 52 at 25.)

Benavidez v. Cnty. of San Diego, 993 F.3d 1134, 1144 (9th Cir. 2021) (quoting Fed. R. Civ. P. 8(a)(2)). Here, 10

(ECF No. 54 at 23.) Accordingly, the undersigned , the Sixth Cause of Action be dismissed for failure to satisfy Federal Rule of Civil Procedure 8 with respect to the wage statement violations, and Plaintiffs be granted leave to amend. See , 800 -letter law that a district court must give plaintiffs at least one chance to amend

4. Law of the Case As set forth in section II, supra r inaccurate wage statements under California Labor Code section 226 was dismissed with prejudice.

California Labor Code Section 226 itemizes nine categories of information that must be included in a wage statement. See Cal. knowing and intentional failure to provide such information, she is entitled to recover damages as prescribed in the statute and reaso Id. Plaintiff alleges that Defendants:

[F]ailed to include accurate hours and gross wages earned due 10 As set forth in section IV(D)(2), supra, Plaintiffs concede they have not exhausted administrative remedies for the PAGA claim for unreimbursed expenses, (ECF No. 54 at 21 n.6), and thus, it should be dismissed as unexhausted. Accordingly, only the PAGA claim for alleged violations of Labor Code section 226 (wage statement) is at issue with respect to Rule 8 argument.

Plaintiff and members of the Plaintiff Class for all time

her off-the-clock claim 2. The Court agrees. As Walmart points out, this Court decided this exact issue in Krauss v. Wal-Mart, Inc., No. 19-cv-00838, 2019 WL 6170770l, at *4 (E.D. Cal, Nov. 20, 2019). Reply, ECF No. 13, at 2. In Krauss, the plaintiff brought a Section 226 claim alleging she and other putative class members were required to work off the clock and through meal breaks. Id. at *4. In its analysis, the Court relied on Maldonado v. Epsilon Plastics, which held that an inaccurate wage

impermissible double recovery. 22 Cal. App. 5th 1308, 1336 (2018). Maldonado hours worked since the absence of wages earned will be remedied by a wage and hour claim. Id. to the proposition that failure to pay for time worked off-the-clock

Section 226 claim in Krauss. 2019 WL 6170770l, at *4. s claim here, like the claim in Krauss, is entirely derivative of her off-the-clock claim and impermissibly seeks a double recovery. Plaintiff argues Walmart violated accurate wage statement law by failing to compensate her and putative class members for t

since her allegation for failure to compensate off-the-clock work will be remedied by her wage and hour claim. Maldonado, 22 Cal. App. 5th at 1337. This interpretation is supported by the purpose of employee is fully informed regarding the calculation of those Id. (quoting Soto v. Motel 6 Operating, L.P. 4 Cal. App. 5th 385, 392 (2016)). Here, it is undisputed that the wage statements accurately reflected the calculation of the wages that were actually paid to Plaintiff. And although those wages do not for that violation under Section 226. The Court further finds that any attempt to amend this claim would be futile and therefore Plaint PREJUDICE.

(Order at 4 5, Castro, ECF No. 15.) 11

11 The Court may take judicial notice of its own records in other cases. United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

the law-of-the- tatement claim was previously dismissed with prejudice. (ECF No. 52 at 26 while Plaintiff Castro must live with that decision for her individual claims, this has nothing to do with whether a PAGA penalty can b

-of-the-case doctrine generally provides that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same Musacchio v. United States, 577 U.S. 237, 244 45 (2016) (emphasis added) (internal quotation marks omitted) (quoting Pepper v. United States, The Musacchio, 577 U.S. at 245 (alteration in original)

(quoting Messenger v. Anderson, 225 U.S. 436, 444 (1912)).

Defendants contend that the PAGA claim is derivative of the failed section 226 claim and thus it must also fail, citing to Byrd v. Masonite Corp., No. EDCV 16-35 JGB (KKx), 2016 WL 756523 (C.D. Cal. Feb. 25, 2016), Sherman v. Schneider National Carriers, Inc., No. CV 18008609-AB (JCx), 2019 WL 3220585 (C.D. Cal. March 6, 2019), and Price v. Starbucks Corp., 192 Cal. App. 4th 1136, 1147 (2011). (ECF No. 55 at 16.) However, these cases are distinguishable because in Byrd and Sherman, the underlying individual claims failed to state a claim for relief under Rule 12(b)(6) and in Price, the PAGA claim was based on the alleged failure to timely pay Price upon discharge but the court had found that the complaint alleged Price received his final paycheck on the day he was discharged and therefore there was no un dismissed due to impermissible double recovery. (Order at 4 5, Castro, ECF No. 15.)

pect of PAGA claim is legally and conceptually

Kim, 9 Cal. 5th at

state

Id. (quoting Iskanian v. CLS Transportation Los Angeles, LLC, 59 Cal. 4th 348, 386 (2014)). Given suit and damages or penalties for individual violations, Kim, 9 Cal. 5th at 81, the Court finds that

a PAGA claim for wage statement violations would not be barred by the law-of-the-case doctrine in this instance.

PAGA claim for wage statement violations is subject to dismissal given the determination that the Sixth Cause of Action claim should be dismissed for lack of Article III standing.

V. CONCLUSION

Accordingly, the undersigned HEREBY RECOMMENDS that: 1. Defendant GRANTED IN PART and DENIED

IN PART; 2. , the Fifth Cause of Action (UCL claim) with

respect to wage statement violations, and the Sixth Cause of Action (PAGA claim) with respect to expense reimbursement and rest break violations be DISMISSED WITHOUT LEAVE TO AMEND; 3. Save and except as noted above, the Fifth Cause of Action (UCL claim) and the Sixth

Cause of Action (PAGA claim) be DISMISSED WITH LEAVE TO AMEND; and 4. Plaintiffs be granted leave to file a second amended consolidated complaint. These Findings and Recommendations will be submitted to the United States District Court Judge assigned to this action pursuant to the provisions of 28 U.S.C. § 636 (b)(1). Within FOURTEEN (14) days after being served with a copy of these Findings and Recommendations, any party may file written objections with the court and serve a copy on all parties. Such a

Recommendations Any reply to the objections shall be served and filed within FOURTEEN (14) days after service of the objections. The parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: December 20, 2022 /s/ UNITED STATES MAGISTRATE JUDGE