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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

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

Plaintiff,

v.

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

Defendant.

CASE NO. 34-2016-00202203

CLASS & REPRESENTATIVE ACTION

FIRST AMENDED 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 PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (Lab. Code § 2698 et seq.).

DEMAND FOR JURY TRIAL

BY FAX

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

INTRODUCTION

1. This class action is brought on behalf of all current and former non-exempt employees of Defendant who were employed as premises technicians in the state of California, who were not paid for all hours worked, who were not provided legally complaint meal and rest periods or compensation in lieu thereof, who were not provided with accurate wage statements, and who were not paid all wages due upon termination of their employment.

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

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

JURISDICTION AND VENUE

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

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

6. Venue as to Defendant is proper in this judicial district, pursuant to Code Civ. Proc. § 395(a). Defendant transacts business, maintains an office, and/or resides in Sacramento County and are otherwise within this Court's jurisdiction for purposes of service of process.

The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within the county of Sacramento and the state of California.

7. Pursuant to Rule 3.400 of the California Rules of Court, this case shall be deemed a complex action because it is filed as a class action and involves specialized case management, extensive discovery and evidence, difficult and/or novel issues, and is likely to require extensive post judgment supervision.

CLASS DEFINITION

8. The proposed Class consists of all current and former non-exempt employees of Defendant who were employed as premises technicians in the state of California, who were not paid for all hours worked, who were not provided legally complaint meal and rest periods or compensation in lieu thereof, who were not provided with accurate wage statements, and who were not paid all wages due upon termination of their employment, during the period commencing on the date that is within four years prior to the filing of this Complaint and through the present date (hereinafter the "Class Period"). To the extent that equitable tolling operates to toll the claims by the Class against Defendant, the Class Period should be adjusted accordingly.

9. Members of the Class are all "employees," as the term is used in the California Labor Code (hereinafter "Lab. Code") and the California Industrial Welfare Commission's (hereinafter "IWC") Wage Orders regulating wages, hours, and working conditions in the state of California.

10. If, during the course of investigation, Plaintiff discovers that other technicians employed by Defendant were subject to the same unlawful policies and practices alleged herein, Plaintiff reserves the right to seek certification of a technician Class that is broader than the class definition in paragraph 8 above.

THE PARTIES

A. PLAINTIFF

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

(a) Was and is a resident of Sacramento County;

(b) Was employed by Defendant as a premises 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 and rest periods, or compensation in lieu thereof;

(f) Was provided with inaccurate and incomplete wage statements by Defendant;

(g) Was not paid all wages owed upon termination of the employment relationship.

B. DEFENDANT

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

13. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of Defendant Does 1 through 10, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code Civ. Proc. § 474. Plaintiff will amend his complaint to allege the true names and capacities of Does 1 through 10 when they are ascertained.

14. At all times mentioned herein, the acts alleged to have been done by Defendant are also alleged to have been done by the unascertained defendants mentioned above, and by each of their agents and employees who acted within the scope of their agency and/or employment.

15. At all times mentioned herein, the acts and omissions of each of the defendants concurrently contributed to the various acts and omissions of each and every one of the other

defendants in proximately causing the wrongful conduct, harm, and damages alleged herein. Each of the defendants approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained herein. Each defendant and all doe defendants were and are acting with the authority of each and every other defendant and are acting as agents of each and every other defendant or doe defendant.

FACTUAL ALLEGATIONS

16. Plaintiff was employed by Defendant as a premises technician from approximately January 2014 to August 20, 2015. As a premises technician, Plaintiff was paid an hourly wage and was primarily responsible for installing and delivering telecommunication products and services to Defendant's customers.

17. Defendant employs a number of technicians at various branches throughout the state of California. At all times during the Class Period, Defendant owned, managed, and operated each branch located in the state of California.

18. As a matter of company policy, Plaintiff and other putative Class Members were required to load and unload their service vehicles prior to their scheduled start time, and after their scheduled end time. It took Plaintiff and others approximately 10 to 15 minutes to load and unload their service vehicle each work day. As a matter of company policy, Plaintiff and other members of the putative Class were not compensated for the time they spent loading and unloading their service vehicles. Plaintiff believes that Defendant knew or should have known that Class Members were not being compensated for all hours worked because despite specifically requiring its technicians to load their service vehicles prior to the start of each shift, and unload them at the end of each shift, Defendant deemed such time non-compensable. Defendant therefore willfully failed to compensate Plaintiff and the putative Class for all hours worked.

19. Plaintiff asserts that he and other members of the Class were not provided with opportunities to take 30 minute off-duty meal periods or 10 minute rest periods, because in preparing technicians' schedules, Defendant failed to set aside adequate time between appointments for meal and rest periods. Defendant's efficiency policies and practices, which

reward technicians who complete a greater number of tasks in less time, undermines California labor laws by encouraging employees to work through their meal and rest periods out of fear of being terminated due to low performance.

20. Defendant knew or should have known that its scheduling did not allow adequate time for technicians to take legally compliant meal and rest periods. However, despite the fact that Plaintiff and other Class Members were regularly denied meal and rest periods, or received meal and rest periods that were cut short, Defendant failed to pay missed meal and rest period premiums as required under California law.

21. As a result of Defendant's failure to properly compensate Plaintiff and Class Members for all time worked and/or to pay premiums for noncompliant meal and rest periods, the wage statements Plaintiff and other members of the putative Class received from Defendant were inaccurate.

22. Finally, although Plaintiff and a number of other Class Members have terminated their employment with Defendant, to date, Defendant has failed to promptly pay them for all wages owed.

23. Pursuant to Code Civ. Proc. § 382, Plaintiff brings this class action on behalf of himself and all other putative Class Members.

24. Plaintiff has complied with all the requirements provided by Lab. Code § 2699. Pursuant to Lab. Code § 2699.3(a)(2)(A) Plaintiff brings this representative action on behalf of himself and all other aggrieved employees.

CLASS ALLEGATIONS

25. Plaintiff brings this action on behalf of himself and on behalf of all persons within the defined Class, outlined in paragraph 8.

26. This class action meets the statutory prerequisites for the maintenance of a class action, as set forth in Code Civ. Proc. § 382 and California Civil Code ("Civ. Code") § 1781, in that:

(a) The persons who comprise the Class are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

(b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the Class and will apply uniformly to every member of the Class, and as a practical matter be dispositive of the interests of the other members not party to the adjudication;

(c) The party opposing the Class has acted or has refused to act on grounds generally applicable to the Class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the Class as a whole; and

(d) Common questions of law and fact exist as to the members of the Class and predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

i. The interests of Class Members in individually controlling the prosecution or defense of a separate actions;

ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;

iii. The desirability or undesirability of concentrating the litigation of the claims in this particular forum; and

iv. The difficulties likely to be encountered in the management of a class action.

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

(a) Questions of law and fact common to the Class are substantially similar and predominate over any questions affecting only individual members;

(b) A class action is superior to any other available method for the fair and efficient adjudication of Class Members' claims;

(c) The members of the Class are so numerous that it is impractical to bring all Class Members before the Court;

(d) Plaintiff's claims are typical of the claims of the Class;

(e) Plaintiff and the other members of the Class will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;

(f) There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties alleged, and in obtaining adequate compensation for the damages that Defendant's actions have inflicted upon the Class;

(g) Plaintiff can, and will, fairly and adequately protect the interest of the Class;

(h) There is a community of interest in ensuring that the combined assets and available insurance of Defendant is sufficient to adequately compensate the members of the Class for the injuries sustained; and

(i) Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

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

FAILURE TO PAY MINIMUM WAGES AND OVERTIME COMPENSATION

[Lab. Code §§ 510, 1194, and 1197]

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

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

30. Lab. Code § 204 establishes an employee's right to be paid wages in a timely fashion.

31. Lab. Code § 1197 provides: "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wages than the minimum so fixed is unlawful."

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

33. Lab. 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 work week, 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. 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. Nothing in this § requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. (Emphasis added.)

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

35. California Labor Code § 1194(a) states:

> 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.

36. Defendant requires Plaintiff and other members of the putative Class to load and unload their service vehicles prior to their scheduled start time and after their scheduled end time. Plaintiff and other putative Class Members are not compensated for their time. Loading and unloading equipment from service vehicles is compensable labor pursuant to California law. As such, Plaintiff and putative Class Members should be paid at least minimum wage and/or applicable rate of overtime compensation for their time worked.

37. At all relevant times, Plaintiff and other members of the Class worked more than eight hours in a single work day and/or more than 40 hours in a workweek due to Defendant's requirement.

38. Defendant knowingly fails to compensate Plaintiff and the putative Class for their time.

39. By virtue of Defendant's unlawful failure to compensate Plaintiff and Class Members for their timed worked, Class Members have suffered, and will continue to suffer, damages in amounts which are presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

40. Having received less than the legal minimum wage and/or applicable rate of overtime compensation, Plaintiff and putative Class Members are entitled to and now seek to recover all wages owed, penalties, including penalties pursuant to Lab. Code § 558, as well as interest, reasonable attorneys' fees and costs pursuant to Lab. Code § 1194.

SECOND CAUSE OF ACTION

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

FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

[Lab. Code §§ 226.7 and 512 & IWC Order No. 7-2001]

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

42. California Labor Code § 512(a) provides:

> An employer may 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 may 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. (Emphasis added.)

43. In pertinent part, Labor Code § 226.7 provides:

> (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
>
> (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including but not limited to, an applicable statute or applicable regulation, standard, 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.

44. 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.)

45. 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

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

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

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

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

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

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

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

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

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

54. Under Lab. Code § 1194, Plaintiff and members of the putative Class are entitled to, and seek to recover, the full amount of unpaid premium wages for noncompliant meal periods, including interest, reasonable attorneys' fees, and costs of suit.

55. Pursuant to Lab. Code § 218.6, Plaintiff and Class Members are entitled to, and seek to recover prejudgment interest on the amount of premium wages owed.

56. Plaintiff and members of the Class are entitled to, and seek, to recover reasonable attorneys' fees and costs as permitted under Lab. Code § 218.5.

THIRD CAUSE OF ACTION

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

FAILURE TO PROVIDE REST PERIODS

[Lab. Code § 226.7 & IWC Order No. 4-2001]

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

58. In pertinent part, California Labor Code § 226.7 provides:

> (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.
>
> (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including but not limited to, an applicable statute or applicable regulation, standard, 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.

59. IWC Order No. 4-2001, paragraph 12 states:

> (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, as rest period need not be authorized for

> employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period item shall be counted as 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.)

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

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

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

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

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

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

66. Under Lab. Code § 1194, Plaintiff and members of the putative Class are entitled to, and seek to recover, the full amount of unpaid premium wages for noncompliant meal periods, including interest, reasonable attorneys' fees and costs of suit.

67. Pursuant to Lab. Code § 218.6, Plaintiff and Class Members are entitled to, and seek to recover, prejudgment interest on the amount of premium wages owed.

68. Plaintiff and members of the Class are entitled to, and seek to recover, reasonable attorneys' fees and costs as permitted under Lab. Code § 218.5.

FOURTH CAUSE OF ACTION

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

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

[Lab. Code § 226]

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

70. California Labor Code § 226 states in pertinent part:

> Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee…, (4) all deductions…, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid…, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee…"

71. Lab. Code § 226(e)(1) further provides:

> An employee suffering injury as a result of knowingly and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand ($4,000), and is entitled to an award of costs and reasonable attorneys' fees.

72. Lab. Code § 226(h) states "an employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorneys' fees."

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

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

FAILURE TO PAY WAGES OWED

[Lab. Code §§ 201, 202, and 203]

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

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

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

82. According to Labor Code § 202(a):

> If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other 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.

83. Labor Code § 203 further provides:

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

84. A number of Class Members, including Plaintiff, are no longer employed by Defendant. To date, Defendant has not paid the wages owed to Plaintiff and the applicable putative Class Members as required under California law.

85. As a consequence of Defendant's willful and deliberate refusal to tender such wages, Plaintiff and affected putative Class Members are entitled to, and seek, a maximum 30 days' wages at their daily rate of pay as a waiting time penalty pursuant to Lab. Code § 203.

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SIXTH CAUSE OF ACTION

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

UNFAIR BUSINESS PRACTICES

[Bus. & Prof. Code § 17200 et seq.]

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

87. As codified in Bus. & Prof. Code § 17200 et seq., California's Unfair Competition Law ("UCL") broadly prohibits "any unlawful, unfair or fraudulent business act or practice."

88. The UCL permits a cause of action to be brought if a practice violates some other law. In effect, the "unlawful" prong of the UCL makes a violation of the underlying law a per se violation of Bus. & Prof. Code § 17200. (*Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.) Virtually any law or regulation – federal or state, statutory, or common law – can serve as a predicate for a § 17200 "unlawful" violation. (*See Farmers Ins. Exch. v. Superior Court (People)* (1992) 2 Cal.4th 377, 383.)

89. Under the UCL, a practice may be "unfair" even if some other law does not specifically proscribe it. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20 Cal.4th 1134, 1143 [internal citations omitted].) Pursuant to the California Supreme Court, the "unfair" standard is intentionally broad to allow courts maximum discretion is prohibiting new schemes to defraud. (*Cel-Tech Commc'ns, Inc., supra*, 20 Cal.4th at 180-181.)

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

91. As discussed in the preceding paragraphs, Defendant's business practices violate all three prongs of California's UCL.

Unlawful:

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

Unfair:

93. It is inherently unfair for Defendant to require technicians to load and unload their service vehicles prior to their scheduled start time and after their scheduled end time without compensation. It is also unfair for Defendant to set up a scheme where they create a schedule, which prohibits the opportunity to take a legally compliant meal or rest period, and to impose a policy and practice where technicians who do not complete their schedules in a timely fashion are labeled as inefficient, thus undermining the rights provided to employees under California law. Defendant also violates the unfair prong of the UCL by failing to pay Plaintiff and members of the putative Class timely premiums for meal and rest period violations, as well as failing to adequately identify payment of premiums on the employee's wage statement.

Fraudulent:

94. Defendant's practice of providing Plaintiff and putative Class Members with inaccurate and incomplete wage statements is not only unlawful, but constitutes a fraudulent business practice under the UCL. This is particularly true as Plaintiff and other members of the putative Class are likely to be, and actually are deceived, as to their earned wages because they

are unable to determine from their wage statements whether or not they were paid for all work performed and whether they received premium wages for noncompliant meal and rest periods.

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

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

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

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.]

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

99. 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 Agency ("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.

100. Plaintiff is an "aggrieved employee" under PAGA, as he is was employed by Defendant from January 2014 to August 20, 2015 and suffered one or more violations of the California Labor Code as set forth above.

101. 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.

102. 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.

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

104. As set forth above, Plaintiff's claim is based on the following violations of the California Labor Code as permitted by Lab. Code § 2699.5:

(a) Failure to pay minimum wages and overtime compensation in violation of Lab. Code §§ 510, 1194, and 1197;

(b) Failure to provide compliant meal periods in violation of Lab. Code §§ 226.7 and 512;

(c) Failure to provide complaint rest periods in violation of Lab. Code § 226.7;

(d) Failure to provide accurate wage statements in violation of Lab. Code § 226(a);

(e) Failure to pay wages owed in violation of Lab. Code §§ 201- 203.

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

> For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions as follows:
>
> …
>
> (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

106. As described herein, Defendant failed to compensate Plaintiff and other aggrieved employees for all of the time spent loading and unloading their service vehicles in 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.

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

108. As described herein, Defendant failed to provide Plaintiff and other aggrieved employees with accurate wage statements because the statements provided to employees did not accurately reflect all time worked. Moreover, Plaintiff and other aggrieved employees are unable to determine if they were paid the appropriate premium for noncompliant meal and rest periods. As such, Plaintiff is entitled to, and seeks, the applicable penalty outlined by PAGA,

in addition to an award of costs and reasonable attorneys' fees as provided by Lab. Code § 226(e)(1).

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

PRAYER FOR RELIEF

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

(a) For an order determining that this action may be maintained as a class action with the named Plaintiff as the class representative;

(b) For the attorneys appearing on the above caption to be appointed as class counsel;

(c) For an order determining that the PAGA cause of action may be maintained as a representative action;

(d) For Plaintiff to serve as the PAGA representative for all aggrieved employees and for the state of California;

(e) For an order determining that this action may be maintained as a representative action with the named Plaintiff as the representative;

(f) For damages pursuant to Lab. Code § 226;

(g) For all minimum wages and overtime compensation owed pursuant to Lab. Code §§ 510, 1194 and 1197.1;

(h) For premium wages pursuant to Lab. Code § 226.7;

(i) For waiting time penalties pursuant to Lab. Code § 203;

(j) For all liquidated damages pursuant to Lab. Code §§ 226(e), 1194.4(a), and 1197.1;

(k) For civil penalties pursuant to Lab. Code §§ 558 and 1197;

(l) For PAGA penalties pursuant to Lab. Code § 2699(f);

(m) For injunctive relief pursuant to Lab. Code § 226(h) and Bus. & Prof. Code § 17203;

(n) For disgorged profits from Defendant's unfair, unlawful, and fraudulent business practices;

(o) For reasonable attorneys' fees and costs of suit pursuant to Lab. Code §§226(e)(1), 2699(g), 1194, and/or other applicable law;

(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: February 21, 2017

CLARK LAW GROUP

SIGNATURE REDACTED

By:

R. Craig Clark
Dawn M. Berry
Monique R. Rodriguez
Attorneys for Plaintiff and the Putative Class

DEMAND FOR JURY TRIAL

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

Dated: February 21, 2017

CLARK LAW GROUP

SIGNATURE REDACTED

By:

R. Craig Clark
Dawn M. Berry
Monique R. Rodriguez
Attorneys for Plaintiff and the Putative Class

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Attorneys for Defendant
PACIFIC BELL TELEPHONE COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

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

Plaintiff,

v.

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

Defendant.

CASE NO. 34-2016-00202203

DEFENDANT PACIFIC BELL TELEPHONE COMPANY'S ANSWER TO PLAINTIFF'S UNVERIFIED FIRST AMENDED COMPLAINT

Dept: 35
Judge: Hon. Alan G. Perkins
Trial Date: None set
Date Action Filed: October 24, 2016

TO PLAINTIFF JASON HUDSON AND TO HIS ATTORNEYS OF RECORD, R. CRAIG CLARK, DAWN M. BERRY, MONIQUE R. RODRIGUEZ, AND THE CLARK LAW GROUP; WALTER HAINES AND THE UNITED EMPLOYEES LAW GROUP:

Defendant PACIFIC BELL TELEPHONE COMPANY ("Pacific Bell," "Defendant" or the "Company"), for itself alone and no other person or entity, hereby answers the unverified First Amended Complaint ("FAC") of Plaintiff JASON HUDSON ("Plaintiff") as follows:

1. Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Defendant denies, generally and specifically, each and every material allegation in Plaintiff's FAC.

2. Defendant further denies, generally and specifically, that Plaintiff and/or those who are or may be encompassed in his representative action have been or will be damaged in any sum, or at all, by reason of any act or omission on the part of Defendant, or any of its past or present agents, representatives or employees. Defendant further denies, generally and specifically, that Plaintiff and/or those who are or may be encompassed in his representative action are entitled to the relief that he seeks or any relief.

AFFIRMATIVE DEFENSES

Without admitting any facts alleged by Plaintiff, Defendant also pleads the following separate and affirmative defenses to the FAC:

FIRST SEPARATE AND AFFIRMATIVE DEFENSE

1. The FAC, and each of its causes of action, fails to state facts sufficient to constitute a cause of action.

SECOND SEPARATE AND AFFIRMATIVE DEFENSE

2. The FAC is barred, in whole or in part, to the extent that Plaintiff and/or members of the purported class (the existence of which is expressly denied) failed to properly and timely exhaust their administrative remedies.

THIRD SEPARATE AND AFFIRMATIVE DEFENSE

3. The FAC, and each of its causes of action, is barred in whole or in part by all applicable statutes of limitation, including but not limited to (A) California Code of Civil

Procedure sections 338 and 340; (B) California Labor Code sections 200 *et seq.* (including the statute of limitations applicable to Plaintiff's California Labor Code section 226 claim) and 2699 *et seq.*; and (C) California Business and Professions Code section 17208.

FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

4. The FAC is barred, in whole or in part, to the extent that Plaintiff and/or members of the purported class (the existence of which is expressly denied) have released and/or settled the bona fide wage disputes or claims asserted in this action.

FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

5. The FAC, and each of its claims for relief, is barred, in whole or in part, by the after-acquired evidence doctrine to the extent that Plaintiff and/or members of the purported class (the existence of which is expressly denied), or any one of them, for example, did not accurately report their time worked.

SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

6. Plaintiff and/or members of the purported class (the existence of which is expressly denied) may not recover damages in this action because under the circumstances presented that would constitute unjust enrichment.

SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

7. The FAC, and each purported cause of action contained therein, is barred to the extent that Plaintiff and/or members of the purported class (the existence of which is expressly denied) acted with unclean hands.

EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

8. Plaintiff has waived the right, if any, to pursue the claims in the FAC, by reason of Plaintiff's own actions and course of conduct.

NINTH SEPARATE AND AFFIRMATIVE DEFENSE

9. Plaintiff and members of the purported class (the existence of which is expressly denied), are estopped from asserting the FAC, and each purported cause of action contained therein, by their own actions and course of conduct.

TENTH SEPARATE AND AFFIRMATIVE DEFENSE

10. Plaintiff's and members of the purported class (the existence of which is expressly denied) claims are barred, in whole or in part, to the extent that they are barred by California Labor Code Sections 2854 and 2856 in that Plaintiff and/or members of the purported class (the existence of which is expressly denied) failed to use ordinary care and diligence in the performance of their duties and failed to comply substantially with reasonable directions of their employer.

ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

11. The FAC, and each purported cause of action contained therein, is barred by the doctrine of laches.

TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE

12. Plaintiff has failed to mitigate or make reasonable efforts to mitigate his alleged damages, and Plaintiff's recovery of damages, if any, must be barred or reduced accordingly.

THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

13. The FAC, and each purported cause of action contained therein, is barred because if Pacific Bell ever owed any obligation to Plaintiff and/or members of the purported class (the existence of which is expressly denied), the same has been timely paid and satisfied.

FOURTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

14. Plaintiff's claims for injunctive and other equitable relief are barred to the extent that Plaintiff and/or members of the purported class (the existence of which is expressly denied) have an adequate and complete remedy at law.

FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

15. The Plaintiff and members of the purported class (the existence of which is expressly denied) are not entitled to any penalty or damages award pursuant to California Labor Code §§ 226, or any other similar penalty provision applicable to the FAC, because Pacific Bell acted in good faith and had reasonable grounds for believing that it did not violate the compensation provisions of the Labor Code, wage orders, or any other applicable laws.

SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

16. Plaintiff's and members of the purported class (the existence of which is expressly denied) claims are barred, in whole or in part, because Pacific Bell's business practices are and were not "unlawful" and there was compliance with all applicable statutes and regulations in payment of wages to Plaintiffs.

SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

17. Any recovery on the FAC, or any purported cause of action alleged therein, is barred because Pacific Bell's conduct was at all times privileged, undertaken in good faith and/or justified under California law and for legitimate business reasons.

EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

18. The First Cause of Action is barred, in whole or in part, to the extent that the time for which Plaintiff seeks compensation is *de minimis*.

NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE

19. The Second and Third Causes of Action are barred, in whole or in part, because Pacific Bell provided meal and rest periods as required by California law, and Plaintiff and/or members of the purported class (the existence of which is expressly denied) were not required to work during any meal or rest period, and any failure to take a meal or rest period was due to voluntary choice and not any act or omission by Pacific Bell.

TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE

20. The Fourth Cause of Action is barred to the extent that Pacific Bell fully complied with the statute.

TWENTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

21. The Fourth Cause of Action is barred on the grounds that there was no "knowingly and intentional failure" on Pacific Bell's part to provide proper itemized earnings statements.

TWENTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

22. The Fourth Cause of Action is barred to the extent that Plaintiff and/or members of the purported class (the existence of which is expressly denied) did not suffer injury as a result of any alleged violation of Labor Code Section 226.

TWENTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

23. The Fourth Cause of Action is barred to the extent that Pacific Bell's failure, if any, to provide, maintain, and/or preserve accurate wage statements was inadvertent and/or due to clerical error.

TWENTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

24. The Fifth Cause of Action for waiting time penalties under California Labor Code § 203 is barred because Pacific Bell paid all wages owed to Plaintiff and members of the purported class (the existence of which is expressly denied) at the time of separation.

TWENTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

25. The Fifth Cause of Action for waiting time penalties under California Labor Code § 203 is barred because at all times relevant to the FAC, Pacific Bell did not willfully fail to comply with the applicable provisions of the California Labor Code and California Industrial Welfare Commission wage orders, but rather, the Company acted based on a good faith belief that its acts were lawful.

TWENTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

26. Without admitting the allegations of the FAC, Pacific Bell alleges Plaintiff's Sixth Cause of Action is barred because the alleged practices are not unfair, the public is not likely to be deceived by any alleged practices, Pacific Bell gained no competitive advantage by such practices, and the benefits of the alleged practices outweigh any harm or other impact they may cause.

TWENTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

27. The Sixth Cause of Action is barred because Plaintiff and members of the purported class (the existence of which is expressly denied) are not seeking recovery of a quantifiable sum owed.

TWENTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

28. The Sixth Cause of Action is barred because Plaintiff and members of the purported class (the existence of which is expressly denied) cannot show an injury to competition, as distinguished from injury to Plaintiff, which such injury Pacific Bell denies.

TWENTY-NINTH SEPARATE AND AFFIRMATIVE DEFENSE

29. The Sixth Cause of Action is barred because Plaintiff and members of the purported class (the existence of which is expressly denied), as private litigants, lack standing to bring a cause of action for damages under California Business and Professions Code section 17203 because they have not suffered "an injury in fact" and cannot show they "have lost money or property as a result of the unfair competition."

THIRTIETH SEPARATE AND AFFIRMATIVE DEFENSE

30. The Sixth Cause of Action is barred because restitution under California Business and Professions Code § 17200 *et seq.* denies Pacific Bell due process and otherwise impinges upon the Company's procedural and substantive due process rights, and violates the United States Constitution, in that, among other things, they are void for vagueness, violative of equal protection, violative of due process, an undue burden upon interstate commerce, and violative of the freedom of contract.

THIRTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

31. The Sixth Cause of Action is barred because California Business and Professions Code section 17200 *et seq.* violate Pacific Bell's rights to due process under the United States Constitution and the California Constitution to the extent that the cause of action does not afford Pacific Bell the protections against multiple suits and duplicative liability ordinarily provided by class actions.

THIRTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

32. The Seventh Cause of Action is barred to the extent that Plaintiffs failed to properly exhaust the administrative remedies under the Labor Code Private Attorney General Act, California Labor Code section 2698 *et seq.*

THIRTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

33. Plaintiffs' prayer for civil penalties, attorneys' fees and costs pursuant to California Labor Code sections 2699(f) and (g) is barred because Plaintiffs are not "aggrieved employees" as required by California Labor Code section 2699(a).

THIRTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

34. To the extent that Plaintiff and members of the purported class (the existence of which is expressly denied) are entitled to damages or penalties, Pacific Bell is entitled to an offset for any overpayments of wages or other consideration previously provided to those parties.

THIRTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

35. Pacific Bell currently has insufficient knowledge or information on which it may form a belief as to whether it may have additional, yet unasserted, affirmative defenses. Pacific Bell therefore reserves the right to assert additional affirmative defenses in the event that discovery and/or further investigation indicates that they would be appropriate.

WHEREFORE, Defendant prays for judgment as follows:

1. That the Court deny class certification in this matter;

2. That the Court deny representative status for purposes of Plaintiff's PAGA cause of action;

3. That Plaintiff and members of the purported class (the existence of which is expressly denied) take nothing by reason of his FAC, that the FAC be dismissed in its entirety with prejudice, and that judgment be entered for Pacific Bell;

4. That Pacific Bell be awarded its reasonable costs and attorneys' fees; and

5. That Pacific Bell be awarded such other and further relief as the Court deems just and proper.

DATED: April 26, 2017

PAUL HASTINGS LLP
RAYMOND W. BERTRAND

SIGNATURE REDACTED

By: _____
RAYMOND W. BERTRAND

Attorneys for Defendant
PACIFIC BELL TELEPHONE COMPANY

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

MINUTE ORDER [X] Amended on 05/16/2017

DATE: 05/16/2017 TIME: 08:30:00 AM DEPT: 35

JUDICIAL OFFICER PRESIDING: Alan Perkins
CLERK: D. Lashley
REPORTER/ERM: NONE
BAILIFF/COURT ATTENDANT: M. Meraz

CASE NO: **34-2016-00202203-CU-OE-GDS** CASE INIT.DATE: 10/24/2016
CASE TITLE: **Jason Hudson, as an idividual, on behalf of himself, and all persons similarly situated vs. Pacific Bell Telephone Company, a California corporation authorized to do business in the state of California**
CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Case Management Conference - Complex

APPEARANCES
Dawn Bery, counsel, present for Plaintiff(s) telephonically.
Raymond W Bertrand, counsel, present for Defendant(s) telephonically.

The above-entitled matter came before this Court this day for Case Management Conference-Complex with the above named counsel present.

The Court held the conference/hearing.

The Court has scheduled a hearing for case management conference on 12/8/17 at 2:00 p.m.

Case Management Statements are due 14 days before hearings. Joint Statements allowed. No need to follow judicial council form.

The Court has scheduled a hearing for a motion to certify class action on 3/23/18 at 1:30 p.m.

Moving papers are due 1/24/18 by 4:00 p.m.;
Opposition due 2/21/18 by 4:00 p.m.; and
Reply due 3/7/18 by 4:00 p.m.

All filings and pleadings except Law and Motion matters are to be filed in Department 35.

The Court designates this case complex.

The Case Management Conference - Complex is scheduled for 12/08/2017 at 02:00 PM in Department 35.

The Motion to Certify a Class Action - Complex is scheduled for 03/23/2018 at 01:30 PM in Department 35.