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# [***Robles v. Schneider Nat'l Carriers, Inc.***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5P8K-X961-F04C-T2P2-00000-00&context=)

United States District Court for the Central District of California

August 15, 2017, Decided; August 15, 2017, Filed

EDCV 16-2482 JGB (KKx)

**Reporter**

2017 U.S. Dist. LEXIS 132065 \*

William Robles v. Schneider National Carriers, Inc.

**Prior History:** [*Robles v. Schneider Nat'l Carriers, Inc., 2017 U.S. Dist. LEXIS 221114 (C.D. Cal., Feb. 10, 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5SGN-0WF1-JJD0-G2G3-00000-00&context=)

**Core Terms**

wages, allegations, meal, employees, fail to provide, waiting, breaks, cause of action, drivers, restitution, compensate, rest break, taxes, load, minimum wage, truck driver, theories, asserts, notice, unfair, unpaid, days, independent contractor, leave to amend, earlier order, fail to pay, rest period, misclassified, argues, missed

**Counsel:** **[\*1]**Attorney(s) for Plaintiff(s): Not Present.

Attorney(s) for Defendant(s): Not Present.

**Judges:** JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE.

**Opinion by:** JESUS G. BERNAL

**Opinion**

CIVIL MINUTES—GENERAL

**Proceedings: Order DENYING Defendant's Motion to Dismiss (Dkt. No. 26) (IN CHAMBERS**)

On February 2, 2017, this Court dismissed Plaintiff's first, second, third, fourth, and sixth causes of action for failure to state a claim, granting Plaintiff leave to amend all but his sixth cause of action subject to certain limitations. ("Order," Dkt. No. 17.) Plaintiff subsequently filed his First Amended Complaint on February 28, 2017, and then, pursuant to a joint stipulation with Defendant, filed his Second Amended Complaint on April 18, 2017. ("SAC," Dkt. No. 25.) Defendant now seeks to dismiss all but one of the causes of action in the SAC. For the reasons that follow, the Court DENIES Defendant's motion.

**I. INTRODUCTION**

The Court outlined Plaintiff's factual allegations in its earlier Order, and only briefly summarizes them here. Plaintiff is a former truck driver for Schneider, where he worked from March 2009 through October 2015. (SAC ¶ 4.) He alleges that, during that time, Schneider "willfully misclassified" him as an independent**[\*2]** contractor in order to avoid paying him and other California truck drivers for all time worked, meal and rest periods missed, business expenses, and the employer's share of payroll taxes and mandatory insurance. (Id. at ¶¶ 1-14.)

Based on the above, Plaintiff asserts six causes of action on behalf of a putative class: (1) unfair competition; (2) failure to pay minimum wages; (3) failure to provide accurate itemized statements; (4) failure to provide wages when due; (5) failure to reimburse employees; and (6) violations of the Private Attorneys General Act ("PAGA").

However, Defendant alleges that this SAC does not cure the defects identified in the Court's earlier order. ("Motion," Dkt. No. 26.) Plaintiff opposed the motion on June 2, 2017. ("Opp'n," Dkt. No. 27.) Defendant filed its reply on June 16, 2017. ("Reply," Dkt. No. 28.) On July 6, 2017, the Court took the matter under submission. (Dkt. No. 31.)

**II. DISCUSSION**

Defendant moves to dismiss five of Plaintiff's claims in the SAC. The Court addresses each in turn.

**A. Unlawful, unfair, and deceptive business practices**

Under California's Unfair Competition Law ("UCL"), "unfair competition" means "any unlawful, unfair or fraudulent business**[\*3]** act or practice and unfair, deceptive, untrue or misleading advertising." [*Cal. Bus. & Prof. Code § 17200*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5JFB-2YX1-DYB7-W1SB-00000-00&context=). Plaintiff's theory in the SAC—as clarified in his Opposition—is that Defendant violated the UCL by perpetuating an unfair practice: that of failing to provide meal and rest periods or provide premium pay for missed meal and rest break periods in violation of [*California Labor Code Section 226.7*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-851M-00000-00&context=). (SAC ¶¶ 53-54; Opp'n at 5-6.) In its February Order, the Court explained that, while there could be a legally cognizable theory for failure to provide premium wages in such circumstances, "[t]he problem is rather that Plaintiff has not alleged sufficient facts to explain how Defendant impeded him or other class members from taking breaks—or even that it did." (Order at 4.) Under California law, an employer's duty with respect to meal breaks is an obligation to provide a meal period to employees. [*Brinker Rest. Corp. v. Superior Court, 53 Cal. 4th 1004, 1040, 139 Cal. Rptr. 3d 315, 273 P.3d 513 (2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55D0-34Y1-F04B-P002-00000-00&context=). An employer satisfies this obligation "if it relieves its employees of all duty, relinquishes control over their activities, and permits them a reasonable opportunity to take an uninterrupted 30-minute break." Id. The original complaint provided no factual allegations that Defendant actually required—or even encouraged—class members to skip breaks, but only alleged**[\*4]** that Defendant "failed to provide" these rest periods.

The SAC, however, elaborates on Defendant's practices to make clear how Defendant forced Plaintiff and the putative class members to miss breaks. Specifically, it explains that Defendant instructed Plaintiff "to drive to so many different locations within a day that Plaintiff could not reasonably have taken a meal break of a half hour before the end of the fifth hour worked." (SAC ¶ 17.) Moreover, "the time pressure to arrive at a delivery/pickup location by a designated hour was so severe, that there was little to no time for Plaintiff and other California Class members to take timely, off-duty meal and rest periods." (Id. at ¶ 53.) Similar facts have been held sufficient to establish a violation of an employer's duties. See, e.g., [*Cicairos v. Summit Logistics, Inc., 133 Cal. App. 4th 949, 962, 35 Cal. Rptr. 3d 243 (2005)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4HDX-V9B0-0039-44YS-00000-00&context=) (finding that defendant violated duty to provide meal breaks to employees where "the defendant's management pressured drivers to make more than one daily trip, making drivers feel that they should not stop for lunch"); [*McCowen v. Trimac Transportation Servs. (W.), Inc., 311 F.R.D. 579, 586 (N.D. Cal. 2015)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HP0-9G91-F04C-T4TJ-00000-00&context=) ("If Trimac's drivers are provided breaks only on paper because *the cumulative burden of the company's actual practices undermines the taking of breaks*, then Trimac will be liable to**[\*5]** its hazmat drivers on a class-wide basis.")

The Court acknowledges that, as Defendant points out, other courts in this Circuit have reached different conclusions on somewhat analogous facts. See, e.g., [*Brown v. Wal-Mart Stores, Inc., No. C 08-5221 SI, 2013 U.S. Dist. LEXIS 55930, 2013 WL 1701581, at \*5 (N.D. Cal. Apr. 18, 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5876-J1R1-F04C-T00T-00000-00&context=) (holding that plaintiffs failed to plead sufficient facts to state a claim for violation of California's meal and rest break provisions where they alleged that Wal—Mart's scheduling policy made it "difficult" for drivers to take breaks by failing to schedule meal periods, but did not provide any facts describing instances of this "difficulty" as to any driver). But in viewing the facts in the light most favorable to Plaintiff, as the Court must at this stage, the Court finds the allegations suffice—if just barely—to push Plaintiff over the edge. Specifically, by alleging that Defendant scheduled the drivers to complete so many shifts within a certain period that they did not have time to take breaks, Plaintiff has asserted enough facts to state a plausible claim for relief. This allegation is further bolstered by Plaintiff's contention that he was under pressure to make certain deliveries**[\*6]** *by a designated hour*, indicating that he did not have the flexibility to push back his scheduled shifts to accommodate a break. This state of affairs plausibly suggests that Defendant flouted the requirement to authorize and permit the amount of rest break time called for under the wage order. And, of course, the fact that factual discovery may later undermine such allegations does not at this stage make dismissal proper.

However, Defendant argues that, regardless of whether Plaintiff can meet the standard to show that it deprived employees of meal or rest breaks, Plaintiff cannot recover for such claims under the UCL because its remedies are limited to injunctive relief and restitution. (Motion at 8.) Plaintiff counters that restitution encompasses wages wrongfully withheld, and that the lost meal and wage breaks are akin to overtime wages. (Opp'n at 8.) The Court acknowledges that it did not address this issue in the prior Order, as that discussion focused on whether Plaintiff had established a violation in the first place (and what kind of violation he alleged). Accordingly, the Court considers the Parties' arguments now.

The crux of the dispute centers on whether forgone meal and**[\*7]** rest breaks are recoverable under a restitution theory—a question on which district courts have been split. See [*Brewer v. Gen. Nutrition Corp., No. 11-CV-3587 YGR, 2015 U.S. Dist. LEXIS 114860, 2015 WL 5072039, at \*18 (N.D. Cal. Aug. 27, 2015)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5GT1-SSG1-F04C-T05X-00000-00&context=) (noting split in district courts on this issue and citing diverging opinions); see also [*Singletary v. Teavana Corp., No. 5:13-CV-01163-PSG, 2014 U.S. Dist. LEXIS 62073, 2014 WL 1760884, at \*4 (N.D. Cal. May 2, 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C4N-G3K1-F04C-T01H-00000-00&context=) (noting that "[t]he case law on this question is murky at best"). The conflict stems from two California Supreme Court decisions, issued several years apart, which confused the characterization of the premiums. The first case is [*Murphy v. Kenneth Cole Prods., Inc., 40 Cal. 4th 1094, 56 Cal. Rptr. 3d 880, 155 P.3d 284 (2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NH8-6N80-0039-414W-00000-00&context=), where the court conducted a thorough review of the legislative history of [*Section 226.7*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-851M-00000-00&context=), and concluded that the remedy attached to violations of [*226.7*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-851M-00000-00&context=)—an additional hour of pay for each work day in which an employee was required to work through a meal or rest period—was properly considered a premium wage intended to compensate employees for their time. [*40 Cal. 4th at 1104*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NH8-6N80-0039-414W-00000-00&context=).

Five years later, however, the California Supreme Court returned to the issue in [*Kirby v. Immoos Fire Prot., Inc., 53 Cal. 4th 1244, 140 Cal. Rptr. 3d 173, 274 P.3d 1160 (2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55HT-K631-F04B-P0WF-00000-00&context=) and described [*Section 226.7*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-851M-00000-00&context=) in somewhat inconsistent terms. Specifically, the court explained that [*Section 226.7 of the California Labor Code*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-851M-00000-00&context=) "is not aimed at protecting or providing employees' wages," but was instead "primarily concerned with ensuring the health and welfare of employees by requiring that employers**[\*8]** provide meal and rest periods as mandated by the IWC." [*53 Cal. 4th at 1253*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55HT-K631-F04B-P0WF-00000-00&context=). That is, the court explained, "a [*section 226.7*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-851M-00000-00&context=) action is brought for the nonprovision of meal and rest periods, not for the nonpayment of wages." [*Id. at 1255*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55HT-K631-F04B-P0WF-00000-00&context=). Moreover, the fact that the remedy sought by plaintiff may be a wage does *not* convert the action into one for nonpayment of wages. [*Id. at 1256*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55HT-K631-F04B-P0WF-00000-00&context=). This is because "[*section 226.7*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-851M-00000-00&context=) does not give employers a lawful choice between providing either meal and rest breaks or an additional hour of pay," meaning that "[a]n employer's failure to provide an additional hour of pay does not form part of a [*section 226.7*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-851M-00000-00&context=) violation, and an employer's provision of an additional hour of pay does not excuse a [*section 226.7*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-851M-00000-00&context=) violation." [*Id. at 1256-57*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55HT-K631-F04B-P0WF-00000-00&context=).

Kirby explained that its decision was "not at odds" with that in Murphy, because the latter focused on whether the [*Section 226.7*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-851M-00000-00&context=) *remedy* was a wage, while the former focused on the character of the violation itself. See also [*Finder v. Leprino Foods Co., No. 1:13-CV-2059 AWI-BAM, 2015 U.S. Dist. LEXIS 30652, 2015 WL 1137151, at \*5 (E.D. Cal. Mar. 12, 2015)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5FH0-K6N1-F04C-T1BW-00000-00&context=) ("Kirby was concerned with characterizing the [*Section 226.7*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-851M-00000-00&context=) claim itself rather than the recompense. The two cases could be interpreted to deal with distinctly different topics: Kirby speaks to understanding the substance of the [*Section 226.7*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-851M-00000-00&context=) violation while Murphy governs the nature of the damages.") To understand**[\*9]** which characterization would apply to the situation at hand, the Court turns to [*Pineda v. Bank of Am., N.A., 50 Cal. 4th 1389, 117 Cal. Rptr. 3d 377, 241 P.3d 870 (2010)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:51H1-5961-F04B-P00J-00000-00&context=), where the California Supreme Court explained when a remedy might—or might not—constitute restitution. The court noted that the goal of restitution is to "restore plaintiff to the status quo ante"; thus, for example, unpaid overtime wages constituted restitution because "once earned, those unpaid wages became property to which the employees were entitled." [*50 Cal. 4th at 1401*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:51H1-5961-F04B-P00J-00000-00&context=). On the other hand, penalties authorized by [*Section 203*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-84X6-00000-00&context=), which imposes liability for timely failure to pay all wages due to a discharged employee, "[are] not designed to compensate employees for work performed," but rather intended to encourage employers to pay final wages on time and to punish employees who fail to do so." [*Id. at 1401-02*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:51H1-5961-F04B-P00J-00000-00&context=). Thus, "[u]ntil awarded by a relevant body, employees have no comparable vested interest [*section 203*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-84X6-00000-00&context=) penalties [as in unpaid overtime wages]." Id. This led the court to conclude that [*Section 203*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-84X6-00000-00&context=) penalties were not recoverable as restitution under the UCL. Id.

The character of [*226.7*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-851M-00000-00&context=) violations makes this a closer question: on the one hand, like the violations for [*Section 203*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-84X6-00000-00&context=) discussed in Pineda, there is no obvious vested interest in payments for missed breaks "until awarded by a**[\*10]** relevant body." Neither, unlike payment of unpaid overtime wages, does awarding payments for missed breaks restore plaintiff to the status quo ante: the payments do not return to him the rest or meal time he should have had. On the other hand, there is a stronger argument under [*Section 226.7*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-851M-00000-00&context=) than under [*Section 203*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-84X6-00000-00&context=) that Plaintiff has "earned" the wages by working through the breaks he was denied, and that his employer has been unjustly enriched by this unpaid labor.[[1]](#footnote-0)1 Ultimately, the California Supreme Court's own caveat in [*Kirby*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55HT-K631-F04B-P0WF-00000-00&context=) that its decision in that case applied only to the character of the violation and not to its remedy leads this Court to conclude, in accordance with [*Murphy*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NH8-6N80-0039-414W-00000-00&context=), that the payments Plaintiff seeks under [*226.7*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-851M-00000-00&context=) are wages intended to compensate him for time worked and constitute restitution sufficient to support a UCL claim.

However, the Court reaches a different conclusion as to Plaintiff's assertion that, as the result of his alleged misclassification, he wrongly paid the employer's share of payroll taxes and mandatory insurance premiums.[[2]](#footnote-1)2 As Defendant argues, this claim is preempted to the extent that it seeks restitution for overpayment of federal taxes.**[\*11]** (Motion at 9.) While there is no controlling case law directly on point, the Court finds that Ninth Circuit precedent, together with relevant case law from other jurisdictions, supports Defendant's argument. As a starting point, the Ninth Circuit made clear in [*Brennan v. Sw. Airlines Co., 134 F.3d 1405 (9th Cir.)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RWW-9VF0-0038-X0KN-00000-00&context=) that "the [Internal Revenue Code] provides the exclusive remedy in tax refund suits and thus preempts state-law claims that seek tax refunds." [*134 F.3d at 1409*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RWW-9VF0-0038-X0KN-00000-00&context=). This is pursuant to [*26 U.S.C. § 7422(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GKX1-NRF4-44W3-00000-00&context=), which describes a tax refund suit as a "suit or proceeding . . . in any court for the recovery of any revenue tax alleged to have been erroneously or illegally assessed or collected . . . or of any sum alleged to have been . . . in any manner wrongfully collected." [*26 U.S.C. § 7422(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GKX1-NRF4-44W3-00000-00&context=). Were plaintiffs able to challenge their tax liabilities against private defendants, employer-defendants "would be placed in the position of having to collect taxes at their peril." [*Brennan, 134 F.3d 1405*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RWW-9VF0-0038-X0KN-00000-00&context=).

Recognizing the same principle, the Third Circuit rejected a claim identical to the one at issue, where the plaintiff claimed she was misclassified as an independent contractor, and was thereby improperly required to pay self-employment taxes. [*Umland v. PLANCO Fin. Servs., Inc., 542 F.3d 59, 61 (3d Cir. 2008)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4TDM-C180-TX4N-G18B-00000-00&context=). Rejecting plaintiff's**[\*12]** attempt to recover those taxes through her breach of contract and unjust enrichment claims, the court explained that, through the IRS, Congress "established a comprehensive ***regulatory*** scheme for resolving disputes over proper classification of employees and independent contractors," and clearly intended the administrative remedies to preempt state-law claims. [*Id. at 65*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4TDM-C180-TX4N-G18B-00000-00&context=). Permitting the suit to proceed "would interfere with the IRS's administrative scheme for handling such disputes." Id. Moreover, "[i]ndividuals would have less incentive to follow IRS procedures if they could simply bring common-law claims for misclassification as an independent contractor in state court (or in federal court sitting in diversity)." Id. The Court finds that these same concerns apply with equal force in this case. Accordingly, the Court agrees that Plaintiff may not proceed in his UCL claims—or any other claim—to the extent he seeks to recover federal taxes. Such claims must be stricken from the SAC.

**B. Failure to pay minimum wages**

Plaintiff's second cause of action asserts that Defendant failed to compensate its truck drivers for all time worked by misclassifying them as independent contractors. In its February Order, the Court**[\*13]** noted that, under [*Landers v. Quality Commc'ns, Inc., 771 F.3d 638 (9th Cir. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5DK8-RG11-F04K-V27Y-00000-00&context=), a plaintiff at a minimum must allege that she worked more than forty hours in a given workweek without being compensated for the hours worked in excess of forty during that week. [*771 F.3d at 645*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5DK8-RG11-F04K-V27Y-00000-00&context=). Acknowledging that claims "are to be evaluated in the light of judicial experience" and that "the plausibility of a claim is context-specific," the Court nonetheless found that Plaintiff could not successfully distinguish his allegations from those in Landers. (Order at 6-7.) Specifically, the Court noted that Plaintiff's allegation that he often had to wait for trucks to be ready "lacked a host of additional contextual information that would take Plaintiff's claims from possible to plausible: for example, how often he was forced to wait for a truck; how long he was generally forced to wait; whether he incurred unpaid waiting time regularly between 2009 and 2015; [and] how the load-rate failed to compensate him for waiting time." (Id.) Finally, the Court explained that Plaintiff should at least provide a general estimate of the time he alleges went uncompensated, which "need not be done with mathematical precision, but should be sufficient to give fair notice to Defendant as to the breadth**[\*14]** of the claim." (Id.)

The SAC satisfactorily addresses the information gaps noted in the Court's Order. Specifically, the SAC contains the following context for his claim that the load-based piece-rate compensation caused uncompensated time:

• "Plaintiff was often required to queue up in his truck and wait in line to load his truck. Plaintiff could not leave this line because if a driver departs the line, the driver would have to re-enter at the end of the line. This on-duty wait time can often last for hours. On one particular workday during the California Class Period, Plaintiff waited for sixteen (16) hours at the mineral yard in Lompoc, California and was not paid for all his hours waiting. Plaintiff was forced to wait for loads for multiple hours at least twice per week during the California Class Period." (SAC ¶¶ 9, 23, 63.)

• "Plaintiff as a typical employee performed approximately 325 shipments each year of the statutory period. For each shipment, Plaintiff spent 30 minutes on nonproductive time . . . the load rate was based per mile driven not by minute or hour worked . . ." (SAC ¶ 17.)

• "Defendant only paid Plaintiff and other California Labor Subclass Members a flat amount per**[\*15]** load the truck drivers delivered on behalf of Defendant. Although Plaintiff and the California Labor Subclass Members manually logged their time on log sheets, they were not paid for the actual number of hours they worked . . . [and] were not compensated for any of their time spent working other than the flat piece rate . . . which resulted in [their] earning less than the legal minimum wage." (SAC ¶¶ 9, 63.)

Plaintiff also explains that he spent many hours unloading products, cleaning his truck, and conducting vehicle inspections—yet none of these tasks were factored into the piece-rate compensation. (SAC ¶ 9.) The Court finds that the additional allegations plausibly entitle Plaintiff to relief under California labor law. See [*Green v. Lawrence Serv. Co., No. LA CV12-06155 JAK, 2013 U.S. Dist. LEXIS 109270, 2013 WL 3907506, at \*5 (C.D. Cal. July 23, 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5928-2C01-F04C-T00T-00000-00&context=) (noting that, "in California, employers who compensate their employees on a piece-rate basis must pay them a separate hourly minimum wage for time spent on tasks unrelated to their primary work, even when an employee's total compensation for a pay period does not fall below the minimum wage floor"); [*Gonzalez v. Downtown LA Motors, LP, 215 Cal. App. 4th 36, 40-41, 155 Cal. Rptr. 3d 18 (2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:583P-1PY1-F04B-N0JH-00000-00&context=) ("[C]lass members were entitled to separate hourly compensation for time spent waiting for repair work or performing other non-repair**[\*16]** tasks directed by the employer during their work shifts.") While Defendant argues that the SAC "does not provide any facts as to how the piece-rate system worked, how much he received under it, [or] how this piece-rate was calculated," the Court finds that these deficiencies do not doom the complaint. While the inclusion of such information may have been preferable, the Ninth Circuit has explained that the test at this stage is whether the complaint contains sufficient allegations of underlying facts "to give fair notice and to enable the opposing party to defend itself effectively." [*Starr, 652 F.3d at 1216*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:53D4-3NY1-JCNJ-417W-00000-00&context=). Here, Defendant may not plausibly claim that it has no knowledge of the rates it paid its drivers, or how it calculated such rates. In fact, it is *more* likely that such information is in Defendant's possession than that it would be in Plaintiff's. Accordingly, the Court finds that Plaintiff is entitled to proceed with discovery on this claim.

**C. Failure to provide itemized wage statements**

Plaintiff's third cause of action asserts that Defendant violated [*California Labor Code Section 226*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8MS4-D542-8T6X-72GN-00000-00&context=) by failing to provide him with complete and accurate wage statements. In its earlier Order, the Court explained that it agreed with other district courts**[\*17]** that, insofar as Plaintiff claimed that the wage statements included only the amount he was actually paid, but not the amount he *earned*, Plaintiff could assert a violation of the statute. (Order at 8.) The Court also concluded that Plaintiff could satisfy the intent element by alleging that Defendant deliberately underpaid its employees. See [*Michael Kors, 2015 U.S. Dist. LEXIS 164690, at \*21*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HJV-2101-F04C-T2D5-00000-00&context=) ("Plaintiff has alleged facts sufficient to infer that Defendant deliberately failed to pay wages for time worked, that it failed to provide requisite meal breaks, and therefore it knew it was providing inaccurate wage statements."); see also [*Davenport v. Wendy's Co., No. 2:14-CV-00931 JAM, 2014 U.S. Dist. LEXIS 103058, 2014 WL 3735611, at \*7 (E.D. Cal. July 28, 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5CSK-1XT1-F04C-T553-00000-00&context=) ("Plaintiff alleges that Defendant 'purposely' misclassified salaried General Manager employees as exempt, and therefore Plaintiff has sufficiently alleged that the failure to provide accurate wage statements was 'knowing and intentional' under [*section 226(e)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8MS4-D542-8T6X-72GN-00000-00&context=)). Nonetheless, the Court granted Defendant's motion to dismiss this claim because, while "Plaintiff *could* satisfy the intent element where he could show that Defendant engaged in a deliberate scheme to underpay its employees . . . the Complaint in general fails to support a claim that Defendant deprived him of wages—which, of**[\*18]** course, dooms his claim that Defendant *deliberately* underpaid him." (Order at 8.)

Moreover, the Court explained that, with regard to the injury element, "the theory may work, but the claim lacks sufficient facts to support the cause of action." (Id.) This was because the complaint failed to provide any clarifying information that would explain how Defendant's statements were inaccurate. (See id. at 9 ("For example, if Plaintiff alleges that the statements did not accurately recite the number of hours worked, in what way does he allege that the statements under-counted his hours? Does he allege that he worked additional hours that Defendant never recognized? That Defendant listed him as having worked a set number of hours per load delivery, regardless of how many hours he actually worked? The same concerns apply to his remaining allegations, which seem only to parrot the language of [*226*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8MS4-D542-8T6X-72GN-00000-00&context=), but do not explain how these terms applied in his case."))

To the extent that Defendant raises arguments that the Court already rejected in its earlier Order, the Court disregards them. (See, e.g., Motion at 12 (arguing that Plaintiff cannot establish intent under [*226(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8MS4-D542-8T6X-72GN-00000-00&context=) where he alleges that Defendant deliberately**[\*19]** underpaid employees).) Instead, the Court reviews whether Plaintiff has remedied the deficiencies earlier noted. The Court concludes that he has, although just barely. In the SAC, Plaintiff asserts that Defendant failed to list the total hours worked by Plaintiff each pay period, and instead underreported them—and even neglected to list any hours worked during certain pay periods in which Plaintiff had, in fact, worked. (SAC ¶ 21.) Moreover, that Defendant knew—or should have known—that Plaintiff had worked such hours seems apparent from the allegation that Plaintiff "manually logged their time on log sheets" to which Defendant presumably had access. (SAC ¶ 9.) Taking these allegations as true, Plaintiff has plausibly alleged that employees could not "promptly and easily" determine from the wage statements "the total hours worked," as required by [*Section 226(a)(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8MS4-D542-8T6X-72GN-00000-00&context=). See [*Cal. Lab. Code § 226(e)(2)(B)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8MS4-D542-8T6X-72GN-00000-00&context=) (incorporating [*§ 226(a)(2-4)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8MS4-D542-8T6X-72GN-00000-00&context=) elements in list of items to be provided on wage statements). Accordingly, Plaintiff may proceed on his third cause of action.[[3]](#footnote-2)3

**D. Failure to provide wages when due**

Under [*Section 201*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-84WP-00000-00&context=) of the Labor Code, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." [*Cal. Lab. Code § 201(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-84WP-00000-00&context=). [*Section 202*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-84X3-00000-00&context=) provides**[\*20]** that "[i]f 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." Id. Finally, under [*Section 203*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-84X6-00000-00&context=), "[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with [*Sections 201*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-84WP-00000-00&context=), [*201.3*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8NWD-S8D2-D6RV-H2TX-00000-00&context=), [*201.5*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-84WW-00000-00&context=), [*202*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-84X3-00000-00&context=), and [*205.5*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-84Y2-00000-00&context=), 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 therefor is commenced." [*§ 203(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-84X6-00000-00&context=).

In its earlier Order, the Court concluded that Plaintiff's allegations with regard to this cause of action were conclusory, finding that his statement that Defendant "did not timely tender payment of all wages owed as required by law" fell far short of the Twombly/Iqbal standard. (Order at 11.) Specifically, Plaintiff "[did] not explain what wages he alleges were due nor the basis for asserting that such wages were due." (Id.) The SAC, however, as discussed above, now alleges plausible claims for the denial of minimum wage, so Plaintiff has also asserted plausible claims for the denial of timely payment of such wages.

With regard to the willfulness of the violation, Plaintiff**[\*21]** has alleged as follows: "When Plaintiff left employment with Defendant in October of 2015, Defendant still owed Plaintiff minimum wages for work performed because Plaintiff was not compensated for any of the time spent working for Defendant other than the flat piece rate for each load delivered on Plaintiff's behalf and Plaintiff performed a variety of work-related tasks for which he was not paid during his employment with Defendant . . . Upon information and belief, Defendant intentionally failed to pay wages to Plaintiff when those wages were due." (SAC ¶ 76.) Moreover, Plaintiff has alleged that Defendant willfully misclassified Plaintiff and the other truck drivers to avoid paying them minimum wages. (SAC ¶¶ 8, 9.) And, as noted earlier, this claim is bolstered by Plaintiff's allegation that he and the other truck drivers "manually logged their time on log sheets," indicating that Defendant knew that its drivers were working uncompensated hours. (SAC ¶ 9.) This is sufficient at this stage to assert a willful violation under [*Section 203*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-84X6-00000-00&context=). In reaching this conclusion, the Court acknowledges that "a good faith dispute that any wages are due" may preclude imposition of waiting time penalties under**[\*22]** [*Section 203*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-84X6-00000-00&context=). [*Alonzo v. Maximus, Inc., 832 F. Supp. 2d 1122, 1133 (C.D. Cal. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:54MT-F2C1-F04C-T4D6-00000-00&context=). But the fact that Defendant may be successful at a later stage—for example, summary judgment—in establishing a good faith belief that no wages were due does not render Plaintiff's claim implausible at this stage.

**E. PAGA claims**

Finally, Defendant seeks to dismiss Plaintiff's sixth cause of action—his PAGA claim—on the basis that he failed to seek leave to add this claim and that it is time-barred. (Motion at 19.) This claim was not included in Plaintiff's original complaint. When the Court granted Plaintiff leave to amend his complaint after granting Defendant's motion to dismiss, it granted such leave only as to the claims and issues described in that Order. (Order at 13.) However, Plaintiff argues that Defendant was neither unduly burdened nor prejudiced by Plaintiff's inclusion of his PAGA claim and that the interests of justice and expediency require this Court to allow his PAGA claim to proceed. (Opp'n at 19-20.)

As a general matter, where a prior court order grants limited leave to amend—as it did here—courts in this Circuit will typically strike new claims contained in an amended complaint when the plaintiff did not seek leave to amend. [*Gulamnabi Vahora v. Valley Diagnostics Laboratory Inc. et al, No. 1:16-CV-01624-SKO, 2017 U.S. Dist. LEXIS 91750, 2017 WL 2572440, at \*2 (E.D. Cal. June 14, 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5NSX-8TX1-F04C-T3V8-00000-00&context=)**[\*23]**; see also [*Mariano v. U.S. Bank Nat'l Ass'n, No. CV1210842MMMJCGX, 2013 U.S. Dist. LEXIS 200226, 2013 WL 12138730, at \*1 (C.D. Cal. Sept. 11, 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5P9V-HR71-F04C-T43W-00000-00&context=) ("The new claims and new factual allegations concerning securitization that Mariano added exceed the scope of the leave to amend granted, and the claims and allegations could be stricken for that reason.") However, "[e]xceeding the scope of a court's leave to amend is not necessarily sufficient grounds for striking a pleading or portions thereof." [*Lamumba Corp. v. City of Oakland, No. C05-2712 MHP, 2006 U.S. Dist. LEXIS 82193, 2006 WL 3086726, at \*4 (N.D. Cal. Oct. 30, 2006)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4M9W-78D0-TVSH-323J-00000-00&context=). Here, the Court finds that, while Plaintiff was delinquent in failing to seek leave to amend, the circumstances do not merit striking the claim in its entirety: as Plaintiff explains, he could not include a PAGA claim in his original complaint because he was still waiting to hear back from the Labor and Workforce Development Agency ("LWDA") regarding his claim. (Opp'n at 19.) However, the Court warns Plaintiff that any future failures to comply with the procedures required by Local Rules may result in sanctions.

The Court next turns to the argument that this claim is time-barred. The statute of limitations on a PAGA claim is one year. Cal. Civ. Code § 340. However,**[\*24]** this statute of limitations may be tolled for up to 65 days to account for the period between when LWDA receives a PAGA complaint letter and when it provides notice (or fails to provide such notice) to the aggrieved employee as to whether it grants permission for the aggrieved employee to initiate a civil action. *Cal. Lab. Code § 2699.3(a)(2)* and *(d)*.

Here, Plaintiff alleges that his employment with Defendant terminated in "October 2015." (SAC ¶ 4.) Accordingly, under the most favorable assumption for Plaintiff, the deadline within which to file a PAGA claim—not accounting for tolling—was October 31, 2016.[[4]](#footnote-3)4

However, Plaintiff sent his PAGA complaint letter to the LWDA on September 28, 2016, which tolled the statute of limitations for 65 days while he waited for LWDA to respond. Once LWDA had failed to respond for 65 days, the limitations period again began to run, and expired on January 4, 2017 (that is, one year and 65 days after Plaintiff's last day of employment). But Plaintiff failed to file his PAGA claim until February 28, 2017. (First Amended Complaint, Dkt. No. 18.) Plaintiff now argues that his PAGA claim is timely under the relation-back doctrine, asserting that this claim relates back to the filing of the**[\*25]** original complaint filed September 22, 2016. (Opp'n at 20-21.) Defendant counters that the cases Plaintiff cites for this proposition involves situations in which the plaintiff had filed his claim *within* the one-year limitation period. (Reply at 11.)

The Court notes that the Ninth Circuit has yet to weigh in on the application of the relation-back doctrine in this context. However, district courts in this Circuit have, for the most part, permitted the later PAGA claim to relate back to the filing of the original complaint. See, e.g., [*Ramirez v. Ghilotti Bros. Inc., 941 F. Supp. 2d 1197, 1209 (N.D. Cal. 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:588M-54S1-F04C-T1WB-00000-00&context=); see also [*Martinez v. Antique & Salvage Liquidators, Inc., No. C09-00997-HRL, 2011 U.S. Dist. LEXIS 12198, 2011 WL 500029, at \*9 (N.D. Cal. Feb. 8, 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:524P-1XJ1-652H-70VB-00000-00&context=) (allowing plaintiffs' PAGA claim to relate back to earlier, timely-filed complaint when they had given notice to LWDA before limitations period had run). Moreover, the PAGA statute contains a provision that seems to address whether a late-filed claim may relate back to an earlier complaint: *Section 2699.3* provides that, "[n]otwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part." *Cal. Lab. Code § 2699.3(a)(2)(C)*. The text of PAGA itself thus seems to indicate that claims made**[\*26]** outside of the one-year period will relate back if included in a complaint *filed within sixty days of that deadline*. Here, as noted, Plaintiff's deadline was January 4, 2017. However, pursuant to *Section 2699.3*, Plaintiff had until March 5, 2017—sixty days from the deadline—to amend his complaint to add a cause of action under PAGA. He filed the amended complaint on February 28, within the sixty-day window. Accordingly, the Court concludes that Plaintiff's PAGA claim is not time-barred.

However, Defendant next challenges whether Plaintiff in fact met the administrative exhaustion requirements. Specifically, Defendant asserts that, contrary to *Section 2699.3*, Plaintiff failed to give proper notice "of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation." (Motion at 20.) This is because "the LWDA Letter merely recites various provisions of the Labor Code that Plaintiff summarily concludes were violated by [Defendant], and simply attaches and incorporates by reference a copy of his original Complaint—which the Court already has found to be factually lacking as to all but one of Plaintiff's claims." (Id.)

As the Ninth Circuit has**[\*27]** made clear, a plaintiff does not satisfy his obligation to provide notice to the LWDA where he "merely lists several California Labor Code provisions" alleged to be violated and requests an investigation. [*Archila v. KFC U.S. Properties, Inc., 420 F. App'x 667, 669 (9th Cir. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5293-6MN1-JCNJ-405R-00000-00&context=). Courts in this Circuit have, for the most part, interpreted the Ninth Circuit's decision to require "at least *some* alleged facts and theories." [*Holak v. K Mart Corp., No. 1:12-CV-00304-AWI, 2015 U.S. Dist. LEXIS 105441, 2015 WL 4756000, at \*5 (E.D. Cal. Aug. 11, 2015)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5GND-4RS1-F04C-T371-00000-00&context=) (emphasis added); see also [*Ovieda v. Sodexo Operations, LLC, No. CV 12-1750-GHK SSX, 2013 U.S. Dist. LEXIS 99293, 2013 WL 3887873, at \*4 (C.D. Cal. July 3, 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:58X3-CG91-F04C-T4PM-00000-00&context=) ("This conclusion is not inconsistent with our view that the requisite 'facts and theories' must include some facts specific to the plaintiff's principal claims.") However, plaintiffs are not required to include every potential fact or every future theory. See [*Cardenas v. McLane FoodServices, Inc., 796 F. Supp. 2d 1246, 1259-60 (C.D. Cal. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:82K9-GV71-652H-72F6-00000-00&context=) (noting that "[s]uch a result is absurd and would undermine the principles of PAGA"). Neither does Defendant provide any precedent for its theory that Plaintiff failed to provide sufficient "facts and theories" where his complaint failed to meet the standards of [*Rule 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=); it is far from clear that the standards are interchangeable; rather, the requirement that Plaintiff provide "some facts and theories" to support his alleged violations suggests that the standard for administrative**[\*28]** exhaustion is lower.

Here, Plaintiff provided a letter explaining that he was a truck driver for Defendant for six years, and that he was allegedly misclassified as an independent contractor and thereby deprived of certain labor protections. More importantly, Plaintiff attached a copy of his complaint to that letter; that complaint, as discussed in the Court's earlier order, alleged that he was not compensated for time spent driving to assigned locations, or waiting for and loading the pick-up loads; moreover, he was not reimbursed for any of the expenses that he incurred as part of the job. (See Order at 2 (outlining broad summary of claims).) The complaint also included all of Plaintiff's legal theories for recovery based on those facts. Notwithstanding that the complaint did not satisfy the relatively rigorous standards of Iqbal/Twombly, the Court finds that it was sufficient to meet Plaintiff's obligations under *Section 2699.3*. Accordingly, Plaintiff may proceed on his PAGA claims.

**III. CONCLUSION**

For the reasons stated above, the Court DENIES Defendant's motion to dismiss any of the five causes of action at issue. However, as discussed above, the Court GRANTS Defendant's motion to strike Plaintiff's**[\*29]** restitution claims for overpayment of federal taxes.

**IT IS SO ORDERED**.

**End of Document**

1. 1On this point, the Court disagrees with the court's statement in [*Parson v. Golden State FC, LLC, No. 16-CV-00405-JST, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010 (N.D. Cal. May 2, 2016)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5JNX-TWN1-F04C-T1FG-00000-00&context=) that "wages awarded for failure to provide rest breaks under [*section 226.7*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-GYK1-66B9-851M-00000-00&context=) would not be earned by the employee who has given his or her labor to the employer in exchange for that property." [*2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at \*7*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5JNX-TWN1-F04C-T1FG-00000-00&context=). In this Court's view, [*Murphy*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NH8-6N80-0039-414W-00000-00&context=) counsels exactly the opposite: specifically, when an employee has been forced to work through his rest and meal breaks, his inability to take the break he is owed—and the fact the he has worked during that time instead—would seem to suggest that he has earned the wages that the employer is then required to pay. [↑](#footnote-ref-0)
2. 2Plaintiff argues that, pursuant to [*Federal Rule of Civil Procedure 12(g)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=), the Court may not consider this argument because Defendant did not raise it in its first motion. However, the Court does not find this fact dispositive. The Ninth Circuit has adopted a relatively flexible approach with regard to [*Rule 12(g)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=), suggesting that a district court need not deny a motion on this basis where the failure to raise an argument in an earlier motion was not made "for any strategically abusive purpose." [*In re Apple Iphone* ***Antitrust*** *Litig., 846 F.3d 313, 320 (9th Cir. 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5MM5-MW71-F04K-V1PR-00000-00&context=); see also [*Evans v. Arizona Cardinals Football Club, LLC, 231 F. Supp. 3d 342, 2017 WL 467830, at \*6 (N.D. Cal. 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5MT0-R0R1-F04C-T06C-00000-00&context=) (noting that "courts faced with a successive motion often exercise their discretion to consider the new arguments in the interests of judicial economy.") Here, it seems that Defendant did not raise this point in its earlier motion because the complaint failed on a threshold issue—whether Plaintiff had established a violation at all—and so it was unnecessary to reach this more nuanced challenge about the scope of recovery. Moreover, the Court finds that addressing this issue now will expedite the case and narrow the issues involved. [↑](#footnote-ref-1)
3. 3The Court does not address here the Parties' arguments regarding whether Plaintiff may recover under [*Section 226(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8MS4-D542-8T6X-72GN-00000-00&context=) for a failure to itemize missed meal or rest breaks on a wage statement. While the Court is skeptical that missed meal and rest breaks are within the contemplation of [*Section 226(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8MS4-D542-8T6X-72GN-00000-00&context=), as Plaintiff urges, it need not reach this issue, as it concludes that Plaintiff may proceed on this claim on other grounds. [↑](#footnote-ref-2)
4. 4The Court makes this assumption on the basis that, as noted, all allegations at this stage must be construed in the light most favorable to Plaintiff. Of course, discovery may confirm that Plaintiff's employment terminated earlier, which would affect the Court's assumptions here about the statute of limitations deadlines. [↑](#footnote-ref-3)