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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

JOE GUZMAN, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DECKERS OUTDOOR CORPORATION, a
Delaware Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CVRI2100707
*[Assigned to Hon. Judge Riemer, Dept. 1, for
all Purposes]*

SECOND AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Vested Vacation;
- (2) Failure to Provide Accurate Itemized Wage Statements;
- (3) Unfair and Unlawful Competition;

PAGA CLAIMS

- (4) Failure to Pay Vested Vacation;
- (5) Failure to Pay Sick Pay at the Proper Rate; and
- (6) Failure to Provide Accurate Itemized Wage Statements

JURY TRIAL DEMANDED

1 Plaintiff Joe Guzman (“Plaintiff”) on behalf of himself, on a representative basis, and on
2 behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employer(s), Defendants Deckers
5 Outdoor Corporation and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf
6 of all current and former nonexempt employees (excluding retail employees) employed by
7 Defendants in California (the “Class” or “Represented Employees”), for Labor Code violations
8 stemming from Defendants’ failure to pay vested vacation upon separation of employment,
9 failure to pay sick pay at the proper rate, and failure to provide accurate itemized wage
10 statements.

11 2. Plaintiff was employed by Defendants from approximately 2008 through January
12 2021.

13 3. Plaintiff alleges on information and belief that the Represented Employees were
14 subjected to the same policies, working conditions, and corresponding wage and hour violations
15 to which Plaintiff was subjected during employment.

16 4. At all relevant times, Defendants utilized a policy and practice through which
17 Plaintiff and the Represented Employees accrued vacation and/or PTO hours (collectively,
18 “vacation hours”). However, on occasions when Plaintiff and the Represented Employees had
19 accrued but unused vacation hours upon separation of employment, Defendants failed to pay
20 these wages and, further, failed to pay them at the “final rate” required by Labor Code § 227.3.

21 5. Additionally, Plaintiff alleges that, at all relevant times, Defendant failed to pay
22 mandated sick pay at the proper rate under Labor Code § 246.

23 6. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
24 statements that fully complied with the requirements of Labor Code § 226(a). This claim is
25 detailed below, but one example relates to Defendants’ practice of paying Plaintiff and the
26 Represented Employees shift differentials at a set rate of pay. These shift differentials were
27 indisputably an “applicable hourly rate” during the periods when they were earned, yet
28 Defendants’ wage statements failed to provide information regarding the rate of pay or number

1 of hours worked at the shift differential hourly rate in violation of Labor Code § 226(a)(9).

2 7. Plaintiff alleges that Defendants' violations of the wage and hour components of
3 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
4 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
5 its competitors.

6 8. At all material times, Defendants and DOES 1 through 20 were and/or are the
7 Represented Employees' employers or persons acting on behalf of the Represented Employees'
8 employer, within the meaning of California Labor Code § 558, who violated or caused to be
9 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
10 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
11 underpaid employee as set forth in Labor Code § 558 and under California law.

12 9. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
13 monetary relief against Defendants and each of them, on behalf of himself and the Represented
14 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
15 penalties, costs and expenses pursuant to California Labor Code §§ 226, 227.3, and 246, among
16 possibly other sections inadvertently omitted. Plaintiff also reserves the right to name additional
17 representatives throughout the State of California.

18 **II. JURISDICTION**

19 10. This Court has jurisdiction over the claims for relief of Plaintiff and the
20 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

21 **III. VENUE**

22 11. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
23 Procedure § 395(a). Defendants transact business in Riverside County and the unlawful acts
24 alleged herein have a direct effect on Plaintiff and the Represented Employees in Riverside
25 County. Furthermore, Defendants employed or employ Plaintiff and Represented Employees in
26 Riverside County.

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1 **IV. PARTIES**

2 **Plaintiff**

3 12. Plaintiff and Class Representative Joe Guzman was employed by Defendants
4 from approximately 2008 through January 2021 and performed work for Defendants in Riverside
5 County.

6 **Defendants**

7 13. Plaintiff is informed and believes and thereon alleges that Defendant Deckers
8 Outdoor Corporation, is a Delaware Corporation authorized to and doing business in Riverside
9 County, California, with its principal place of business in Goleta, CA. Plaintiff is also informed
10 and believes that Defendant Deckers Outdoor Corporation is and/or was the legal employer of
11 Plaintiff and the Represented Employees during the applicable statutory periods.

12 14. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
13 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
14 inclusive, but on information and belief alleges that those Defendants are legally responsible for
15 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
16 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
17 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
18 Defendants when ascertained.

19 15. Plaintiff is informed and believes and thereon alleges that he and the Represented
20 Employees worked under the joint direction and control of Defendants and that Defendants, and
21 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
22 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
23 each Defendant are legally attributable to the other Defendants. On information and belief, a
24 unity of interest and ownership between each Defendant exists such that all Defendants acted as
25 a single employer of Plaintiff and other Represented Employees.

26 16. Furthermore, Plaintiff is informed and believes and thereon alleges that
27 Defendants, and each of them, are an integrated enterprise and should be treated as a single
28 employer because these entities share an interrelation of operations, with common human

resources and personnel policies and shared common offices and facilities. Additionally, Defendants also have a shared website, common management, a centralized control of labor operations, and common ownership or financial control.

17. Plaintiff is informed and believes and thereon alleges that, in conducting themselves in the manner described herein, Defendants, and each of them, were acting in active concert with one another such that the acts of each were and are fully attributable to the others in all material respects. Plaintiff is further informed and believes that at all relevant times Defendants and each of them are now, and at all material times herein mentioned were, the agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of their remaining co-Defendants.

18. Plaintiff is further informed and believes that at all relevant times, Defendants have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to Defendants should be imposed jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the separate existence of these corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

V. CLASS ACTION ALLEGATIONS

19. Plaintiff incorporates the preceding paragraphs of the Second Amended Complaint as if fully alleged herein.

20. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action, pursuant to Code of Civil Procedure § 382.

21. The relevant time period for this class action is defined as the period beginning four years prior to the filing of this action until class certification (the “Relevant Time Period”).

22. Plaintiff seeks to represent two specific Classes, which are defined below:

1 **Vacation Pay Class**

2 All current and former nonexempt employees (excluding
3 retail employees) employees that separated from
4 employment with Defendant in California since February
5 10, 2017 and who had accrued but unused vacation upon
6 separation of employment.

7 **Wage Statement Class**

8 All current and former nonexempt employees (excluding
9 retail employees) employed by Defendant in California at
10 any time since February 10, 2020.

11 23. Plaintiff reserves the right to amend or modify the class description with greater
12 specificity or further division into subclasses or limitation to particular issues as appropriate.

13 24. Plaintiff, as Class Representative, is a member of the classes that he seeks to
14 represent.

15 25. This action has been brought and may properly be maintained as a class action
16 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
17 litigation and the proposed class is easily ascertainable from Defendants' records.

18 26. **Numerosity:** The potential members of the Class as defined are so numerous that
19 a joinder of all Represented Employees is impracticable. Although the exact number is currently
20 unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

21 27. **Commonality:** There are questions of law and fact common to the class which
22 predominate over any questions affecting only individual members of the class, including
23 without limitation:

24 i. Whether Defendants violated the California Labor Code by failing to
25 compensate Plaintiff and the Vacation Pay Class for all accrued but unused vacation hours upon
26 separation of employment;

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1 ii. Whether Defendants violated the California Labor Code by failing to
2 provide Plaintiff and the Wage Statement Class with complete, accurate, itemized wage
3 statements; and

4 iii. Whether Plaintiff and Represented Employees are entitled to equitable
5 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

6 28. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
7 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'
8 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
9 vested vacation and failure to provide accurate itemized wage statements.

10 29. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
11 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in
12 conflict with those of the Class. Class Representative's counsel are competent and experienced in
13 litigating large employment class actions and other complex litigation matters, including cases
14 like this case.

15 30. **Superiority of Class Action.** Class certification is appropriate because a class
16 action is superior to other available means for the fair and efficient adjudication of this
17 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
18 law and fact common to the Class predominate over any questions affecting only individual
19 members of the Class. Each Represented Employee has been damaged and is entitled to
20 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
21 treatment will allow those similarly situated persons to litigate their claims in the manner that is
22 most efficient and economical for the parties and the judicial system.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY VESTED VACATION**

25 (Labor Code § 227.3)

26 *Plaintiff and the Vacation Pay Class Against All Defendants*

27 31. Plaintiff incorporates the preceding paragraphs of the Second Amended
28 Complaint as if fully alleged herein.

1 32. Plaintiff and the Vested Pay Class were employees of Defendants who did not
2 receive proper protections and benefits of the laws governing the payment of vested vacation
3 time and/or paid time off upon separation of employment.

4 33. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
5 vacation, paid time off, or compensated time off policy must, upon an employee's separation
6 from employment, pay to the employee all vested but unused vacation and/or paid time off at his
7 final rate of pay.

8 34. At all relevant times, Defendants utilized a policy and practice through which
9 Plaintiff and the Vacation Pay Class accrued vacation hours. However, on occasions when
10 Plaintiff and the Vacation Pay Class had accrued but unused vacation hours upon separation of
11 employment, Defendants failed to pay these wages and, further, failed to pay them at the "final
12 rate" required by Labor Code § 227.3.

13 35. As a result, Plaintiff and the Vacation Pay Class did not receive compensation for
14 all accrued but unused vacation hours as required by Labor Code § 227.3.

15 36. At all relevant times herein, Defendants failed to pay the Vacation Pay Class,
16 including Plaintiff, all vested but unused vacation time and/or paid time off upon separation from
17 employment, thereby receiving an economic benefit.

18 37. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
19 them, knowingly refused to perform their obligations to compensate the Vacation Pay Class for
20 all vested but unused vacation time and/or paid time off upon separation from employment.

21 As a result of Defendants' violations of Labor Code § 227.3, Plaintiff and the Vacation
22 Pay Class seek to recover the unpaid vacation hours, as well as penalties, interest, attorneys'
23 fees, and costs as permitted under California law.

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 (Labor Code § 226)

4 *Plaintiff and the Wage Statement Class against All Defendants*

5 38. Plaintiff incorporates the preceding paragraphs of the Second Amended
6 Complaint as if fully alleged herein.

7 39. Plaintiff and the Wage Statement Class are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing the provision of
9 accurate itemized wage statements.

10 40. Labor Code § 226(a) requires an employer to provide its employees with itemized
11 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
12 inclusive dates of the pay period, the employee's name and the last four digits of his or her
13 Social Security number (or employee identification number), the name and address of the legal
14 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee.

16 41. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
17 and the Wage Statement Class because Defendants failed to provide a wage statement to Plaintiff
18 and the Wage Statement Class that complied with the requirements of Labor Code § 226(a).

19 42. Due to violations discussed herein, Defendants' wage statements failed to
20 accurately state total hours worked, the hours worked at each hourly rate, the accurate rates of
21 pay, and further failed to accurately state gross wages earned, all deductions, and net wages
22 earned.

23 43. Additionally, Defendants' wage statements frequently failed to state the accurate
24 overtime rate of pay.

25 44. Defendants also failed to comply with Labor Code § 226(a) in another respect. At
26 all relevant times, Defendants paid Plaintiff and the Wage Statement Class shift differentials at a
27 set rate of pay. These shift differentials were indisputably an "applicable hourly rate" during the
28 periods when they were earned, yet Defendants' wage statements failed to provide information

1 regarding the rate of pay or number of hours worked at the shift differential hourly rate in
2 violation of Labor Code § 226(a)(9).

3 45. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
4 to Plaintiff and the Wage Statement Class because Defendants failed to provide a wage
5 statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
6 requirements of Labor Code § 226(a).

7 46. Defendants' failure to provide the required writing deprived Plaintiff and the
8 Wage Statement Class of the ability to know, understand, and question the calculation and rate of
9 pay and hours used to calculate the wages paid by Defendants. Therefore, Plaintiff and the Wage
10 Statement Class had no way to dispute the resulting miscalculation of wages, all of which
11 resulted in an unjustified economic enrichment to said Defendants. As a direct result, Plaintiff
12 and the Wage Statement Class have suffered and continue to suffer, substantial losses related to
13 the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's
14 fees in seeking to compel Defendants to fully perform its obligation under state law, all to their
15 respective damages in amounts according to proof at trial.

16 47. As a result of Defendants' knowing and intentional failure to comply with Labor
17 Code § 226(a), Plaintiff and the Wage Statement Class have suffered an injury in that each was
18 prevented from knowing, understanding and disputing the wage payments paid to them.
19 Furthermore, Plaintiff and the Wage Statement Class have each suffered an injury in that the
20 failure to show all wages earned on the itemized wage statements resulted in Plaintiff and the
21 Wage Statement Class being denied all necessary deductions, payments, and withholdings owed
22 by the employer, including, but not limited to, the failure to make all necessary contributions for
23 unemployment benefits, social security benefits, proper payment of taxes and withholdings, and
24 other mandated state and federal benefits.

25 48. Plaintiff has also been injured as a result of having to bring this action to attempt
26 to obtain correct wage information following Defendants' refusal to comply with many of the
27 mandates of California's Labor Code and related laws and regulations.

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1 49. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
2 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
3 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
4 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were
5 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the
6 applicable penalty is all in an amount to be shown according to proof at trial.

7 **THIRD CAUSE OF ACTION**

8 **UNFAIR AND UNLAWFUL COMPETITION**

9 (Business and Professions Code § 17200 *et seq.*)

10 *Plaintiff and the Vacation Pay Class against All Defendants*

11 50. Plaintiff incorporates the preceding paragraphs of the Second Amended
12 Complaint as if fully alleged herein.

13 51. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
14 competition, which includes any "unlawful, unfair or fraudulent business act or practice." The
15 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
16 due to the unfair and unlawful business practices of Defendants as alleged herein.

17 52. Defendants, and each of them, are "persons" as defined under Business &
18 Professions Code § 17021.

19 53. As alleged herein, Defendants engaged in conduct that violated California's wage
20 and hour laws, including failure to pay vested vacation, all to decrease their costs and increase
21 their profits.

22 54. At all times relevant herein, Defendants did not pay Plaintiff and the Vacation Pay
23 Class wages and monies and other financial obligations to which they were entitled.

24 55. As a result of Defendants' failure to comply with the Labor Code and IWC
25 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
26 an amount to be shown according to proof at trial. Defendants' ongoing violations of the
27 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

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1 56. Defendants' violations of the California Labor Code and IWC Wage Orders and
2 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
3 practices because it was done in a systematic manner over a period of time to the detriment of the
4 Plaintiff and all others similarly-situated.

5 57. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
6 unlawful, and harmful to Plaintiff, the Vacation Pay Class , and to the general public. Plaintiff
7 seek to enforce important rights affecting the public interest within the meaning of Code of Civil
8 Procedure § 1021.5.

9 58. A violation of California Business & Professions Code § 17200, et seq. may be
10 predicated on the violation of any state or federal law. All of the acts described herein as
11 violations of, among other things, the California Labor Code and IWC Wage Orders, are
12 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
13 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
14 practices in violation of California Business and Professions Code §§ 17200, et seq.

15 59. Plaintiff, individually, and on behalf of the Vacation Pay Class , has no plain,
16 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
17 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
18 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
19 and on behalf of the Vacation Pay Class , has suffered and will continue to suffer irreparable
20 harm unless Defendants, and each of them, are restrained from continuing to engage in said
21 unfair, unlawful and/or fraudulent business practices.

22 60. Plaintiff, individually, and on behalf of the Vacation Pay Class, is entitled to, and
23 does, seek such relief as may be necessary to disgorge the profits which Defendants have
24 acquired, or of which Plaintiff and the Vacation Pay Class have been deprived, by means of the
25 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the Vacation
26 Pay Class are not obligated to establish individual knowledge of the unfair practices of
27 Defendants in order to recover restitution.

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1 61. Plaintiff, individually, and on behalf of the Vacation Pay Class, is further entitled
2 to and does seek a declaration that the above described business practices are unfair, unlawful
3 and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from engaging
4 in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

5 62. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and the
6 Vacation Pay Class are entitled to restitution of the wages withheld and retained by Defendants
7 during a period that commences four years prior to the filing of this complaint; a permanent
8 injunction requiring Defendants to pay all outstanding wages due to Plaintiff and the Vacation
9 Pay Class; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5
10 and other applicable laws; and an award of costs.

11 **VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION**
12 **(Cal. Lab. Code. §§ 2698 – 2699.5)**

13 63. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
14 Defendants during the applicable statutory period and suffered one or more of the Labor Code
15 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
16 action filed on behalf of himself and all other similarly situated current and former aggrieved
17 employees in California against whom one or more of the alleged violations was committed
18 (hereinafter the “Aggrieved Employees”).

19 64. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
20 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by
21 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
22 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor
23 does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

24 65. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice and
25 supplemental amended notices by online filing to the Labor and Workforce Development
26 Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor
27 Code alleged to have been violated, including the facts and theories to support the alleged
28 violations. More than sixty-five (65) days have elapsed since the date Plaintiff provided the

1 written notice of the claims alleged herein without the LWDA assuming jurisdiction over the
2 claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit
3 under the PAGA.

4 **FOURTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION**

6 (Labor Code § 227.3)

7 *Plaintiff and the Aggrieved Employees against All Defendants*

8 66. Plaintiff incorporates the preceding paragraphs of the Second Amended
9 Complaint as if fully alleged herein.

10 67. Plaintiff and the Aggrieved Employees were employees of Defendants who did
11 not receive proper protections and benefits of the laws governing the payment of vested vacation
12 time and/or paid time off upon separation of employment.

13 68. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
14 vacation, paid time off, or compensated time off policy must, upon an employee's separation
15 from employment, pay to the employee all vested but unused vacation and/or paid time off at her
16 final rate of pay.

17 69. At all relevant times, Defendants utilized a policy and practice through which
18 Plaintiff and the Aggrieved Employees accrued vacation hours. However, on occasions when
19 Plaintiff and the Aggrieved Employees had accrued but unused vacation hours upon separation
20 of employment, Defendants failed to pay these wages and, further, failed to pay them at the
21 "final rate" required by Labor Code § 227.3.

22 70. As a result, Plaintiff and the Aggrieved Employees did not receive compensation
23 for all accrued but unused vacation hours as required by Labor Code § 227.3.

24 71. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
25 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
26 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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FIFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY SICK PAY AT THE PROPER RATE

(Labor Code § 246)

Plaintiff and the Aggrieved Employees against All Defendants

72. Plaintiff incorporates the preceding paragraphs of the Second Amended Complaint as if fully alleged herein.

73. Plaintiff and the Aggrieved Employees were employees of Defendants who did not receive proper sick pay as mandated by Labor Code § 246.

74. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

75. Here, Plaintiff and the Aggrieved Employees were compensated on an hourly basis plus additional compensation in the form of shift differentials and/or nondiscretionary bonuses. However, on the occasions that the Aggrieved Employees took sick time and received paid sick leave, Defendants only paid sick time at the base rate of pay (not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2)).

76. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

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1 **SIXTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR**

3 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

4 (Labor Code § 226)

5 *Plaintiff and the Aggrieved Employees against All Defendants*

6 77. Plaintiff incorporates the preceding paragraphs of the Second Amended
7 Complaint as if fully alleged herein.

8 78. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
9 who did not receive proper protections and benefits of the laws governing the provision of
10 accurate itemized wage statements.

11 79. Labor Code § 226(a) requires an employer to provide its employees with itemized
12 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
13 inclusive dates of the pay period, the employee's name and the last four digits of his or her
14 Social Security number (or employee identification number), the name and address of the legal
15 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee.

17 80. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
18 and the Aggrieved Employees because Defendants failed to provide a wage statement to Plaintiff
19 and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a).

20 81. Due to violations discussed herein, Defendants' wage statements failed to
21 accurately state total hours worked, the hours worked at each hourly rate, the accurate rates of
22 pay, and further failed to accurately state gross wages earned, all deductions, and net wages
23 earned.

24 82. Additionally, Defendants' wage statements frequently failed to state the accurate
25 overtime rate of pay.

26 83. Defendants also failed to comply with Labor Code § 226(a) in another respect. At
27 all relevant times, Defendants paid Plaintiff and the Aggrieved Employees shift differentials at a
28 set rate of pay. These shift differentials were indisputably an "applicable hourly rate" during the

1 periods when they were earned, yet Defendants' wage statements failed to provide information
2 regarding the rate of pay or number of hours worked at the shift differential hourly rate in
3 violation of Labor Code § 226(a)(9).

4 84. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
5 to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement
6 to Plaintiff and the Wage Statement Penalties Subclass that complied with the requirements of
7 Labor Code § 226(a).

8 85. As a result of the Defendants' violations of Labor Code §226(a)(9), Plaintiff seeks
9 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
10 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.
11 See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section
12 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

13 **VII. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
15 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
16 follows:

17 1. As to the Fourth through Sixth Causes of Action, the assessment of all applicable
18 and available remedies under the PAGA;

19 2. For reasonable attorneys' fees and costs as permitted under the PAGA;

20 3. That the First through Third Causes of Action be certified as a class action;

21 4. That Plaintiff be appointed as Class Representative;

22 5. That counsel for Plaintiff be appointed Class Counsel;

23 6. For all applicable statutory penalties recoverable under the First through Third
24 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
25 Orders of the Industrial Welfare Commission;

26 7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
27 law, including those pursuant to the Labor Code;

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1 8. For injunctive relief and/or restitution as provided by the Labor Code and
2 Business and Professions Code § 17200, *et seq.*;

3 9. For a declaratory judgment that Defendants have violated Labor Code §§ 226,
4 227.3, and 246, among other sections inadvertently omitted;

5 10. For an award of damages in the amount of unpaid compensation including, but
6 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
7 thereon;

8 11. For pre- and post-judgment interest; and

9 12. For such other relief as the Court deems just and proper.

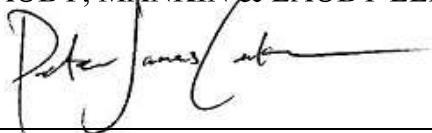
10 **DEMAND FOR JURY TRIAL**

11 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby
12 demands a jury trial as to the First through Third Causes of Action pled herein.

13
14 Dated: March 24, 2022

LAUBY, MANKIN & LAUBY LLP

15
16 BY:



17 Brian J. Mankin, Esq.
18 Peter J. Carlson, Esq.
19 Attorneys for Plaintiff
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On April 4, 2022, I caused to be served the foregoing document(s) described as follows:

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[] **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

[] Federal I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Javi Chauri

Tracie Chiarito, Declarant

SERVICE LIST

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