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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

OCT 04 2021

BY ________
SYLVIA GUAJARDO, DEPUTY

BY FAX

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CHRISTINA ABDELMALAK, on behalf of all Aggrieved Employees and the State of California; Plaintiff, vs. PRIME HEALTHCARE ANAHEIM, LLC, a Delaware Limited Liability Company; and DOES 1 through 20, inclusive; Defendants.	CASE NO.: CIV SB 2127232 **REPRESENTATIVE ENFORCEMENT ACTION COMPLAINT [Private Attorneys General Act of 2004 ("PAGA"), Lab. Code § 2698, *et seq.*]** (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks; (5) Failure to Timely Pay Wages; (6) Failure to Timely Pay Final Wages; and (7) Failure to Provide Accurate Itemized Wage Statements. **<u>JURY TRIAL DEMANDED</u>**

Plaintiff Christina Abdelmalak ("Plaintiff"), on behalf of herself and all other similarly Aggrieved Employees and the State of California. hereby brings this Private Attorneys General Act ("PAGA") Representative Action Complaint ("Complaint") against Defendants, as follows.[1]

I. INTRODUCTION AND GENERAL ALLEGATIONS

1. Plaintiff brings this action against her former employers, Defendants Prime Healthcare Anaheim, LLC and/or DOES 1 through 20, inclusive, (collectively, "Defendants") on behalf of all current and former non-exempt employees employed by Defendants in California within the last one year and 65-days prior to the filing of this action (hereinafter, the "Aggrieved Employees") and who were subjected to violations of the California Labor Code stemming from Defendants' failure to pay minimum, regular, and overtime wages, failure to provide compliant meal periods and rest breaks, failure to timely pay wages each period, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

2. Plaintiff was employed by Defendants from approximately June 2019 to August 2020.

3. Plaintiff alleges on information and belief that the Aggrieved Employees were subjected to the same policies, practices, and corresponding wage and hour violations to which she was subjected during his employment.

4. Plaintiff and the Aggrieved Employees were not provided all minimum, regular, and overtime wages due to Defendants' failure to accurately record and compensate for all hours worked. As one such example, Defendants required Plaintiff and the Aggrieved Employees to undergo mandatory COVID-19 health screening prior to clocking in for payroll purposes. However, because this time was spent under Defendants' control but before being allowed to clock in, it was uncompensated in violation of California law and led to minimum and overtime wage violations. *See Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation").

[1] Because a PAGA action is aimed at deterring and punishing violations of the Labor Code, the State of California "is always the real party in interest in the suit." *Iskanian v. CLS Transp. of Los Angeles, LLC* (2014) 59 Cal.4th 348, 360; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 185 (all PAGA claims "are brought on the state's behalf").

5. Additionally, at all relevant times, Defendants utilized a rounding policy and practice that routinely undercompensated Plaintiff and the Aggrieved Employees and resulted in a net benefit to the Company and a net loss for Plaintiff and the Aggrieved Employees. In other words, Defendants' rounding policy is not neutral and results in systematic undercompensation to the Aggrieved Employees for minimum and overtime wages.

6. Also, at all relevant times, Defendants paid Plaintiff and the Aggrieved Employees on an hourly basis plus additional compensation in the form of shift differentials, nondiscretionary bonuses, and other payments such as the "California Stipend". However, on the occasions when Plaintiff and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional nondiscretionary compensation during the workweek, Defendants failed to properly include these amounts in the calculations for the regular rate of pay. Therefore, Defendants failed to pay proper overtime compensation for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

7. Plaintiff and the Aggrieved Employees were also denied 30-minute off-duty meal periods, as mandated by California law, during their employment with Defendants. As a result of Defendants' policies and practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of Defendants, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on shifts in excess of 10 hours. Further, Plaintiff and other Aggrieved Employees were not provided meal period premiums for their missed or non-complaint meal periods.

8. Notably, because of Defendants' understaffing practices, Plaintiff and the Aggrieved Employees were often overwhelmed by the workload, leading to the frequent meal period violations alleged herein.

9. Similarly, Plaintiff and the Aggrieved Employees were not provided with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and Plaintiff and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks due to being

overwhelmed by the hectic workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break. As such, Plaintiff and other Aggrieved Employees were not provided rest period premiums for their missed or non-complaint rest periods

10. Plaintiff also alleges that she and the Aggrieved Employees were not paid all wages due and owing each pay period (Labor Code § 204) and upon separation of employment within the time required by Labor Code §§ 201–203. Plaintiff further alleges that Defendants engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Aggrieved Employees at the time their employment ended with Defendants, including, but not limited to minimum and regular wages, overtime wages, vacation wages, wage premiums, among others.

11. Plaintiff further alleges that Defendants failed to provide accurate itemized wage statements that fully complied with the requirements of Labor Code § 226(a).

12. At all material times, Defendants and DOES 1 through 20 were and/or are the employer of Plaintiff and the Aggrieved Employees or were persons acting on behalf of said employer(s), within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558.

13. Plaintiff brings this lawsuit on behalf of all Aggrieved Employees and the State of California, as the real party in interest, to recover all applicable and available PAGA remedies for the violations of the California Labor Code alleged herein, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA. Plaintiff reserves the right to name additional representatives throughout the State of California.

II. JURISDICTION

14. This Court has jurisdiction over the claims for relief of Plaintiff and the Aggrieved Employees pursuant to the Labor Code and the IWC Wage Orders.

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III. VENUE

15. Venue as to each Defendant is proper in this Court, pursuant to Code of Civil Procedure § 395(a). Defendants transact business in San Bernardino County, maintain an office in Ontario located in San Bernardino County, and the unlawful acts alleged herein have a direct effect on Plaintiff and the Aggrieved Employees in San Bernardino County. Furthermore, Defendants employed or employ the Aggrieved Employees in San Bernardino County and alleged violations therefore occurred in San Bernardino County. Thus, venue is proper in San Bernardino County. *See Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069, 1075 ("venue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred.").

IV. PARTIES

Plaintiff

16. Plaintiff and PAGA Representative Christina Abdelmalak was employed by Defendants as a nonexempt employee from approximately June 2019 to August 2020.

Defendants

17. Plaintiff is informed and believes and thereon alleges that Defendant Prime Healthcare Anaheim, LLC is a Delaware limited liability company authorized to and doing business in San Bernardino County, California, and is and/or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable statutory periods.

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

19. Plaintiff is informed and believes and thereon alleges that he worked under the joint direction and control of Defendants and that Defendants, and each of them, acted in all

respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. On information and belief, a unity of interest and ownership between each Defendant exists such that all Defendants acted as a single employer of Plaintiff and other similarly situated employees.

20. Furthermore, Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, are joint employers for all purposes of Plaintiff and the Aggrieved Employees and are an integrated enterprise and should be treated as a single 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.

21. 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.

22. 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.

23. Additionally, Defendants DOES 11 through 20 are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the wage violations among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws or 'pays or causes to be paid to any employee' less than minimum wage, then that party is liable for certain civil penalties regardless of the identity or business structure of the employer") (internal citations omitted); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same).

V. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION (Labor Code §§ 2698 – 2699.5)

24. Plaintiff is an "aggrieved employee" under the PAGA as she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil action filed on behalf of himself and all other similarly situated current and former aggrieved employees against whom one or more of the alleged violations was committed.

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

26. Pursuant to Labor Code § 2699.3(a), on or about July 30, 2021, Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency ("LWDA") and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Now that sixty-five (65) days have elapsed since Plaintiff provided notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged, Plaintiff has fully satisfied her administrative prerequisites for bringing suit under the PAGA.

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FIRST CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

(Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

27. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

28. Plaintiff and the Aggrieved Employees were not exempt from the requirement to be paid at least the applicable California minimum wage throughout the statutory period for each hour worked.

29. At all relevant times, Plaintiff and the Aggrieved Employees were not provided proper minimum wages due to Defendants' failure to accurately record and compensate for all hours worked.

30. As one such example, Defendants required Plaintiff and the Aggrieved Employees to undergo mandatory COVID-19 screening prior to clocking in for payroll purposes. However, because this time was spent under Defendants' control but before being allowed to clock in, it was uncompensated in violation of California law and led to minimum and overtime wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation").

31. Additionally, at all relevant times, Defendants utilized a rounding policy and practice that routinely undercompensated Plaintiff and the Aggrieved Employees and resulted in a net benefit to the Company and a net loss for Claimant. In other words, Defendants' rounding policy is not neutral and results in systematic undercompensation to the Aggrieved Employees for minimum and overtime wages.

32. As a result of Defendants' policies or practices described above, Plaintiff and the Aggrieved Employees were required to perform off-the-clock work that Defendants either knew or should have known they were performing.

33. Consequently, Defendants violated California Labor Code laws and minimum wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and

Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

34. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

35. Defendants' conduct was willful, as Defendants knew that Plaintiff and the Aggrieved Employees were entitled to be paid wages throughout the statutory period for each hour worked, including proper minimum wages, yet Defendants chose not to pay them in accordance thereto.

36. 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.

SECOND CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

(Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

37. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

38. Plaintiff and the Aggrieved Employees were employees of Defendants who did not receive proper protections and benefits of the laws governing payment of overtime wages.

39. Labor Code § 204 requires that the employer timely pay all overtime wages to its employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours 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. Furthermore, any work performed in excess of twelve (12) in one workday shall be compensated at twice the regular rate of pay for an employee.

40. At all relevant times, Plaintiff and the Aggrieved Employees were required by Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to the reasons discussed herein, Plaintiff and the Aggrieved Employees did not receive proper overtime compensation.

41. At all relevant times, Plaintiff and the Aggrieved Employees were not provided proper overtime wages due to Defendants' failure to accurately record and compensate for all hours worked.

42. As one such example, Defendants required Plaintiff and the Aggrieved Employees to undergo mandatory COVID-19 screening prior to clocking in for payroll purposes. However, because this time was spent under Defendants' control but before being allowed to clock in, it was uncompensated in violation of California law and led to minimum and overtime wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation").

43. Additionally, at all relevant times, Defendants utilized a rounding policy and practice that routinely undercompensated Plaintiff and the Aggrieved Employees and resulted in a net benefit to the Company and a net loss for Claimant. In other words, Defendants' rounding policy is not neutral and results in systematic undercompensation to the Aggrieved Employees for minimum and overtime wages.

44. Also, at all relevant times, Defendants paid Plaintiff and the Aggrieved Employees on an hourly basis plus additional nondiscretionary compensation in the form of shift differentials, bonuses, and other payments such as the "California Stipend." However, on the occasions when Plaintiff and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional nondiscretionary compensation during the workweek, Defendants failed to properly include these amounts in the calculations for the regular rate of pay. Therefore, Defendants failed to pay proper overtime compensation for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

45. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per week without proper overtime compensation.

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46. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

47. 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.

THIRD CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE MEAL PERIODS

(Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

48. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

49. Plaintiff and the Aggrieved Employees are and/or were "non-exempt" employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory meal periods.

50. Labor Code § 226.7 requires employers, including Defendants, to provide non-exempt employees with meal periods as mandated by the Industrial Welfare Commission.

51. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an employee the opportunity to take an uninterrupted 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 the employee. Employers may not employ an employee for a work period more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.

52. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B), Defendants shall pay an employee one additional hour of pay at the employee's regular rate of pay for each meal period that is missed.

53. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied the 30-minute off-duty meal periods that they were entitled to under California law.

54. As a result of Defendants' policies and practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of Defendants, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on shifts in excess of 10 hours.

55. Notably, because of Defendants' understaffing practices, Plaintiff and the Aggrieved Employees were often overwhelmed by the workload and were unable to take compliant meal periods, leading to the frequent meal period violations alleged herein.

56. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff and the Aggrieved Employees were not provided with all mandatory meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour of compensation at the regular rate of pay in lieu thereof. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 (meal and rest premiums must be paid at the "regular rate").

57. On information and belief, Plaintiff and the Aggrieved Employees did not voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not voluntarily agreed to, were a condition of employment, or were a part of a contract of an unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved Employees to take meal periods in accordance with California law.

58. 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.

FOURTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS

(Labor Code § 226.7 and 512; IWC Wage Order § 12)

59. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

60. Plaintiff and the Aggrieved Employees are and/or were "non-exempt" employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

61. Labor Code § 226.7 requires employers, including Defendants, to provide rest breaks to its non-exempt employees as mandated by Order of the Industrial Welfare Commission.

62. The IWC Wage Order § 12 states, in part, that 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. Employees shall receive a 10-minute rest period every four hours or major fraction thereof that they are required to work. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

63. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order, Defendants shall pay Plaintiff one additional hour of pay at her regular rate of compensation for each day that the rest period is not provided.

64. At all relevant times, Plaintiff and the Aggrieved Employees were not provided with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and Plaintiff and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

65. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff and the Aggrieved Employees were not provided with all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour of compensation in lieu thereof at the regular rate of pay. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 (meal and rest premiums must be paid at the "regular rate").

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66. 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.

FIFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

67. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

68. Plaintiff and the Aggrieved Employees are and/or were "non-exempt" employees of Defendants who did not receive proper protections and benefits of the laws regarding the timing of payment of wages each period.

69. Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month.

70. Furthermore, Labor Code § 204(d) states "[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period."

71. At all relevant times herein, Defendants did not provide Plaintiff and the Aggrieved Employees with all wages due and owing each pay period, including, but not limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums, within the time specified by Labor Code § 204.

72. 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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SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201–203)

73. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

74. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the timing and payment of wages.

75. Labor Code § 201 requires that the employer immediately pay any wages, without abatement or reduction, to any employee who is discharged.

76. Labor Code § 202 requires that the employer pay all wages earned and unpaid, without abatement or reduction, no later than 72 hours of receiving an employee's notice of intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

77. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than thirty (30) days.

78. At all relevant times, Defendants employed a policy and practice whereby Plaintiff and the Aggrieved Employees were not paid all wages due and owing upon separation of employment within the time required by Labor Code §§ 201 and 202.

79. Also, at all relevant times, Defendants engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Aggrieved Employees upon separation of employment, including, but not limited to, minimum, regular, and overtime wages, vacation wages, as well as meal and rest period premiums.

80. Plaintiff alleges that, at all times material to this action, Defendants had a planned pattern and practice of failing to timely pay Plaintiff and the Aggrieved Employees all wages due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

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81. 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.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

82. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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

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

85. Defendants violates Labor Code § 226(a) every pay period with respect to Plaintiff and the Aggrieved Employees due to violations including: failure to accurately state total hours worked (the wage statements failed to accurately reflect total compensable hours due to the illegal rounding policy and uncompensated time spent in COVID-19 screenings); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay); and failure to accurately state the corresponding number of hours worked at each hourly rate.

86. Therefore, at all relevant times, Defendants violate Labor Code §§ 226(a) every pay period with respect to Plaintiff and each and every one of the Aggrieved Employees because Defendants' wage statements failed to accurately state all information required by § 226(a).

87. Unlike class action claims, a PAGA plaintiff need not meet the "injury" and "knowing and intentional" violation requirements of Labor Code § 226(e). See *Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 788 ("a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the "injury" and "knowing and intentional" requirements of section 226(e)(1)"); See also *Lawson v. ZB, N.A.* (2017) 18 Cal.App.5th 705, 722 ("the scienter requirement [of § 226(e)] has no application in a PAGA claim for violation of [§ 226(a)]").

88. As a result of the Defendants' violations of Labor Code § 226(a)(9), 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, including the $250 penalty per violation specified by Labor Code § 226.3. See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

VI. <u>PRAYER FOR RELIEF</u>

WHEREFORE, Plaintiff prays for judgment and relief against Defendants, jointly and severally, as follows:

1. For the assessment of all remedies and/or penalties available under the PAGA;
2. For reasonable attorneys' fees and costs of suit to the extent permitted by law; and
3. For such other and further relief as the Court deems just and proper.

VII. <u>DEMAND FOR JURY TRIAL</u>

WHEREFORE, Plaintiff hereby demands a jury trial as to the First through Seventh Causes of Action pled herein.

Dated: October 4, 2021

LAUBY. MANKIN & LAUBY LLP

BY: Peter James Carlson

Brian J. Mankin, Esq.
Peter J. Carlson, Esq.
Attorneys for Plaintiff and Aggrieved Employees