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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

JUAN DIAZ, on behalf of all Aggrieved
Employees and the State of California;

Plaintiff,

vs.

LEGACY TILE AND STONE, INC., a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: **CVRI2104520**

**REPRESENTATIVE ENFORCEMENT
ACTION COMPLAINT [Labor Code
Private Attorneys General Act of 2004
("PAGA"), Lab. Code §§ 2698, et seq.]**

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay for Rest and Recovery
Periods and Nonproductive Time;
- (3) Failure to Pay Overtime Wages;
- (4) Failure to Provide Meal Periods;
- (5) Failure to Provide Rest Breaks;
- (6) Failure to Pay Vested Vacation;
- (7) Failure to Timely Pay Wages;
- (8) Failure to Timely Pay Final Wages;
- (9) Failure to Provide Accurate Itemized
Wage Statements

JURY TRIAL DEMANDED

Plaintiff Juan Diaz ("Plaintiff"), on behalf of all Aggrieved Employees and the State of
California as the real party in interest, alleges the following causes of action against Defendants,
and each of them.¹

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").

1 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

2 1. Plaintiff brings this action against his employers, Defendants Legacy Tile and
3 Stone, Inc. and/or DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all
4 current and former non-exempt employees employed by Defendants in California within the last
5 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’
6 failure to pay minimum, regular, and overtime wages, failure to pay for rest and recovery periods
7 and other nonproductive time under Labor Code § 226.2, failure to provide compliant meal
8 periods and rest breaks, failure to pay vested vacation pursuant to Labor Code § 227.3, failure to
9 timely pay wages each period, failure to timely pay final wages, and failure to provide accurate
10 itemized wage statements.
11

12 2. Plaintiff was employed by Defendants from approximately February 2020
13 through September 2021.

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

17 4. Plaintiff and the Aggrieved Employees were not provided all minimum, regular,
18 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
19 worked. For instance, at all relevant times, Defendants paid Plaintiff and certain Aggrieved
20 Employees on a piece-rate basis calculated based on the square footage of tile installed.
21 However, Defendants did not accurately record these Aggrieved Employees’ hours worked and,
22 under this pay plan, Defendants (a) failed to provide separate hourly compensation at no less
23 than the minimum wage for on-duty time when the Aggrieved Employees were not installing
24 tile, and (b) failed to pay any overtime compensation for hours worked above 8 and/or 12 per day
25 and/or 40 per week.

26 5. Additionally, Plaintiff and the Aggrieved Employees are/were employees of
27 Defendants who were paid on a piece-rate basis. However, Defendants did not comply with the
28 requirements of Labor Code § 226.2 when it failed to provide separate payments to its piece-rate

1 employees for rest and recovery periods and other nonproductive time.

2 6. Also, at all relevant times, Defendants paid Plaintiff and the Aggrieved
3 Employees additional nondiscretionary compensation in the form of nondiscretionary bonuses.
4 However, on the occasions when Plaintiff and the Aggrieved Employees worked in excess of 8
5 and/or 12 hours per day and/or 40 hours per week and received additional nondiscretionary
6 compensation during the workweek, Defendants failed to properly include these amounts in the
7 calculations for the regular rate of pay. Therefore, Defendants failed to pay proper overtime
8 compensation for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

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

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

23 9. Also, at all relevant times, Defendants utilized a policy and practice through
24 which Plaintiff and the Aggrieved Employees accrued vacation and/or Paid Time Off hours
25 (collectively, "vacation hours"). However, on occasions when Plaintiff and the Aggrieved
26 Employees had accrued but unused vacation hours upon separation of employment, Defendants
27 failed to pay these wages and, further, failed to pay them at the "final rate" required by Labor
28 Code § 227.3.

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

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

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

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

20 **II. JURISDICTION**

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

23 **III. VENUE**

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

1 **IV. PARTIES**

2 **Plaintiff**

3 16. Plaintiff and PAGA Representative Juan Diaz was employed by Defendants as a
4 non-exempt employee from approximately February 2020 through September 2021.

5 **Defendants**

6 17. Plaintiff is informed and believes and thereon alleges that Defendant Legacy Tile
7 and Stone, Inc. is a California corporation authorized to and doing business in Riverside County,
8 California, and is and/or was the legal employer of Plaintiff and the Aggrieved Employees
9 during the applicable statutory periods.

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

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

24 20. Furthermore, Plaintiff is informed and believes and thereon alleges that
25 Defendants, and each of them, are an integrated enterprise and should be treated as a single
26 employer because these entities share an interrelation of operations, with common human
27 resources and personnel policies and shared common offices and facilities. Additionally,
28 Defendants also have a shared website, common management, a centralized control of labor

1 operations, and common ownership or financial control.

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

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

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

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

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

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

13 26. Pursuant to Labor Code § 2699.3(a), on July 29, 2021, Plaintiff gave written
14 notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by
15 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
16 violated, including the facts and theories to support the alleged violations. More than sixty-five
17 (65) days have elapsed since Plaintiff provided notice of the claims alleged herein without the
18 LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied
19 his administrative prerequisites to suit under the PAGA.

20 **FIRST CAUSE OF ACTION**

21 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

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

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

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

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1 29. At all relevant times, Plaintiff and the Aggrieved Employees were not provided
2 proper minimum wages due to Defendants' failure to accurately record and compensate for all
3 hours worked. For instance, at all relevant times, Defendants paid Plaintiff and certain Aggrieved
4 Employees on a piece-rate basis calculated based on the square footage of tile installed.
5 However, Defendants did not accurately record these Aggrieved Employees' hours worked and,
6 under this pay plan, Defendants failed to provide separate hourly compensation at no less than
7 the minimum wage for on-duty time when the Aggrieved Employees were not installing tile.

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

11 31. Consequently, Defendants violated California Labor Code laws and minimum
12 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
13 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

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

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

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

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PAGA ASSESSMENT FOR FAILURE TO PAY FOR REST AND RECOVERY PERIODS AND OTHER NONPRODUCTIVE TIME

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

37. Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for rest and recovery periods at a regular hourly rate that is no less than the higher of the applicable minimum wage or “an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.” Labor Code § 226.2(a)(3)(A).

39. At all relevant times herein, Defendants failed to compensate the Aggrieved Employees, including Plaintiff, for all rest and recovery periods and all other nonproductive time separate from any piece-rate compensation at the rate required by Labor Code § 226.2. Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and each and every one of the Aggrieved Employees.

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1 **THIRD CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

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

4 41. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
5 alleged herein.

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

8 43. Labor Code § 204 requires that the employer timely pay all overtime wages to its
9 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
10 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
11 any one workweek shall be compensated at the rate of no less than one and one-half times the
12 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
13 in one workday shall be compensated at twice the regular rate of pay for an employee.

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

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

21 46. For instance, at all relevant times, Defendants paid Plaintiff and certain Aggrieved
22 Employees on a piece-rate basis calculated based on the square footage of tile installed.
23 However, Defendants did not accurately record these Aggrieved Employees' hours worked and,
24 under this pay plan, Defendants failed to pay any overtime compensation for hours worked
25 above 8 and/or 12 per day and/or 40 per week.

26 47. Also, at all relevant times, Defendants paid Plaintiff and the Aggrieved
27 Employees additional nondiscretionary compensation in the form of nondiscretionary bonuses.
28 However, on the occasions when Plaintiff and the Aggrieved Employees worked in excess of 8

1 and/or 12 hours per day and/or 40 hours per week and received additional nondiscretionary
2 compensation during the workweek, Defendants failed to properly include these amounts in the
3 calculations for the regular rate of pay. Therefore, Defendants failed to pay proper overtime
4 compensation for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

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

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

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

15 **FOURTH CAUSE OF ACTION**

16 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE MEAL PERIODS**

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

18 51. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
19 alleged herein.

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

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

25 54. Labor Code § 512(a), in part, provides that employers, including Defendants, may
26 not employ an employee for a work period of more than five hours per day without providing an
27 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
28 except that if the total work period per day of the employee is no more than six hours, the meal

1 period may be waived by mutual consent of both the employer and the employee. Employers
2 may not employ an employee for a work period more than 10 hours per day without providing
3 the employee with a second meal period of not less than 30 minutes.

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

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

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

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

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

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

61. 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 PROVIDE REST BREAKS

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

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

63. 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.

64. 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.

65. 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.

66. 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 his regular rate of compensation for each day that the rest period is not provided.

67. 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

1 authorize and/or permit a third mandated rest break.

2 68. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
3 Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff
4 and the Aggrieved Employees were not provided with all mandatory rest periods and Defendants
5 failed to pay Plaintiff and the Aggrieved Employees one additional hour of compensation in lieu
6 thereof at the regular rate of pay. See *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th
7 858 (meal and rest premiums must be paid at the “regular rate”).

8 69. As a result of the unlawful employment practices alleged herein, 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 **SIXTH CAUSE OF ACTION**

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

13 (Labor Code § 227.3)

14 70. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
15 alleged herein.

16 71. Plaintiff and the Aggrieved Employees were employees of Defendants who did
17 not receive proper protections and benefits of the laws governing the payment of vested vacation
18 time and/or paid time off upon separation of employment.

19 72. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
20 vacation, paid time off, or compensated time off policy must, upon an employee’s separation
21 from employment, pay to the employee all vested but unused vacation and/or paid time off at his
22 final rate of pay.

23 73. At all relevant times, Defendants utilized a policy and practice through which
24 Plaintiff and the Aggrieved Employees accrued vacation hours. However, on the occasions
25 when Plaintiff and the Aggrieved Employees had accrued but unused vacation hours upon
26 separation of employment, Defendants failed to pay for all accrued but unused vacation wages
27 and, further, failed to for these earned wages at the “final rate” including applicable shift
28 differentials, as required by Labor Code § 227.3.

74. As a result, Plaintiff and the Aggrieved Employees did not receive compensation for all accrued but unused vacation hours at the “final rate” upon separation of employment – in violation of Labor Code § 227.3.

75. 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 any other damages permitted under the PAGA.

SEVENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

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

77. 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.

78. 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.

79. 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.”

80. 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.

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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.

EIGHTH CAUSE OF ACTION

FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201 – 203)

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 timing and payment of wages.

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

85. 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.

86. 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.

87. 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.

88. 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.

89. Additionally, at all relevant times, Defendants failed to pay all mandated sick wages owed to the Aggrieved Employees at the proper rate of pay.

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

7 91. Here, Plaintiff and the Aggrieved Employees were compensated on an hourly
8 basis plus additional compensation in the form of shift differentials and/or nondiscretionary
9 compensation. However, on the occasions that the Aggrieved Employees took sick time and
10 received paid sick leave, Defendants only paid sick time at the base rate of pay (not factoring in
11 the additional compensation as required by Labor Code §§ 246(l)(1-2)), leading to unpaid wages
12 at the time of separation of employment.

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

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

19 **NINTH CAUSE OF ACTION**

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

21 (Labor Code § 226)

22 94. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
23 alleged herein.

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

27 96. Labor Code § 226(a) requires an employer to provide its employees with itemized
28 wage statements accurately stating gross wages earned, all deductions, net wages earned, the

1 inclusive dates of the pay period, the employee's name and the last four digits of his or her
2 Social Security number (or employee identification number), the name and address of the legal
3 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee.

5 97. Defendants violates Labor Code § 226(a) every pay period with respect to
6 Plaintiff and the Aggrieved Employees due to violations including: failure to accurately state
7 total hours worked (the wage statements routinely only stated 8 hours of work per day, regardless
8 of the hours actually worked); failure to accurately state gross wages earned; failure to accurately
9 state all deductions; failure to accurately state net wages earned; failure to state the applicable
10 hourly rates (including the accurate overtime rate of pay); and failure to accurately state the
11 corresponding number of hours worked at each hourly rate.

12 98. Furthermore, Labor Code § 226.2(a) states "[f]or employees compensated on a
13 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the
14 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items
15 specified in that subdivision, separately state the following, to which the provisions of Section
16 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the
17 rate of compensation, and the gross wages paid for those periods during the pay period [and] (B)
18 [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross
19 wages paid for that time during the pay period."

20 99. At all relevant times, Defendants failed to provide a wage statement to Plaintiff
21 and the Aggrieved Employees that complied with the requirements of Labor Code § 226.2(a)(2)
22 because the wage statements did not include any information regarding compensable rest and
23 recovery periods, nonproductive time, or the rates of pay and compensation for the same. As
24 such, Defendants violate Labor Code § 226 and § 226.2 every pay period.

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

28 ///

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

8 102. As a result of the Defendants’ violations of Labor Code § 226(a)(9), Plaintiff
9 seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code §
10 2699, and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under
11 PAGA, including the \$250 penalty per violation specified by Labor Code § 226.3. See *Raines v.*
12 *Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 (“Section 226.3 provides
13 the civil penalty for failure to comply” with Labor Code § 226).

14 **VI. PRAYER FOR RELIEF**

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

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

20 **VII. DEMAND FOR JURY TRIAL**

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

23 Dated: October 4, 2021

LAUBY, MANKIN & LAUBY LLP

24
25 BY: 

26 Brian J. Mankin, Esq.
27 Peter J. Carlson, Esq.
28 Attorneys for Plaintiff