Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444 | Fax: (951) 320-1445

Mehrdad Bokhour, Esq. (Cal. Bar No. 285256)
mehrdad@bokhourlaw.com
BOKHOUR LAW GROUP, P.C.
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493 | Fax: (310) 675-0861

Attorneys for Plaintiff and Aggrieved Employees

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO

OCT 13 2021

NICOLE CARTWRIGHT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

STEPHANIE PAOLA MARTINEZ, on behalf of all Aggrieved Employees and the State of California; Plaintiff, vs. BURLINGTON DISTRIBUTION CORP., a Delaware Corporation; and DOES 1 through 20, inclusive; Defendants.	CASE NO. CIV SB 2129538 **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 Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks; (5) Failure to Pay Vested Vacation; (6) Failure to Timely Pay Wages; (7) Failure to Timely Pay Final Wages; and (8) Failure to Provide Accurate Itemized Wage Statements. **JURY TRIAL DEMANDED**

By Fax

Plaintiff Stephanie Paola Martinez ("Plaintiff"), on behalf of herself and all Aggrieved Employees 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 Burlington Distribution Corp. and/or DOES 1 through 20, inclusive, (collectively, "Defendants") on behalf of all current and former non-exempt employees employed by Defendants and any of their related, merged, and/or affiliated entities 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 pay vested vacation pursuant to Labor Code § 227.3, 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 2018 through May 2021.

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, Plaintiff and the Aggrieved Employees were frequently required to spend time subject to the direction and control of Defendants to perform tasks at the beginning of each shift (before being allowed to clock in) and at the end of each shift (after being required to clock out). To illustrate, Defendants required Plaintiff and the Aggrieved Employees to clock out and then wait in lines to undergo mandatory security checks and/or bag searches each time they left the facility for a rest break, meal period, and at the end of shifts. Additionally, at the

[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").

start of shifts (but before clocking in), Defendants required Plaintiff and the Aggrieved Employees to undergo mandatory security checks. However, because both examples illustrate time spent under Defendant's control either *before* clocking in or *after* clocking out, 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"); *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company's control and where the tasks served the employer's interests).

5. Also, at all relevant times, Defendants paid Plaintiff and the Aggrieved Employees on an hourly basis plus additional nondiscretionary compensation. 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.

6. 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) forced to take short (less than 30 minute) meal periods, (2) unable to take a meal period due to workload, (3) forced to take an on-duty meal period while under the control of Defendants, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period on shifts in excess of 10 hours.

7. 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.

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

9. 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, regular, and overtime wages, vacation and sick pay, wage premiums, among others.

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

11. 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.

12. 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.

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II. JURISDICTION

13. 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.

III. VENUE

14. 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 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

15. Plaintiff and PAGA Representative Stephanie Paola Martinez was employed by Defendants as a non-exempt employee from approximately 2018 through May 2021 and performed work for Defendants in San Bernardino County.

Defendants

16. Plaintiff is informed and believes and thereon alleges that Defendant Burlington Distribution Corp. is a Delaware corporation 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.

17. 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.

18. Plaintiff is informed and believes and thereon alleges that she 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.

19. Furthermore, Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, 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.

20. 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.

21. 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.

22. 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. <u>LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION (Labor Code §§ 2698–2699.5)</u>

23. 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 herself and all other similarly situated current and former aggrieved employees against whom one or more of the alleged violations was committed.

24. 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.

25. Pursuant to Labor Code § 2699.3(a), on August 5, 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 to suit under the PAGA.

FIRST CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

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

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

27. 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.

28. 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.

29. As one such example, Plaintiff and the Aggrieved Employees were frequently required to spend time subject to the direction and control of Defendants to perform tasks at the beginning of the shift (before being allowed to clock in) and at the end of the shift (after being required to clock out). To illustrate, Defendants required Plaintiff and the Aggrieved Employees to clock out and then wait in lines to undergo mandatory security checks and/or bag searches each time they left the facility for a rest break, meal period, and at the end of shifts. Additionally, at the start of shifts (but before clocking in), Defendants required Plaintiff and the Aggrieved Employees to undergo security checks. However, because both examples illustrate time spent under Defendant's control either *before* clocking in or *after* clocking out, 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"); *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company's control and where the tasks served the employer's interests).

30. 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.

31. 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).

32. 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.

33. 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.

34. 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))

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

36. 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.

37. 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.

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38. 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.

39. 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.

40. As one such example, Plaintiff and the Aggrieved Employees were frequently required to spend time subject to the direction and control of Defendants to perform tasks at the beginning of the shift (before being allowed to clock in) and at the end of the shift (after being required to clock out). To illustrate, Defendants required Plaintiff and the Aggrieved Employees to clock out and then wait in lines to undergo mandatory security checks and/or bag searches each time they left the facility for a rest break, meal period, and at the end of shifts. Additionally, at the start of shifts (but before clocking in), Defendants required Plaintiff and the Aggrieved Employees to undergo security checks. However, because both examples illustrate time spent under Defendant's control either *before* clocking in or *after* clocking out, 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"); *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company's control and where the tasks served the employer's interests).

41. Also, at all relevant times, Defendants paid Plaintiff and the Aggrieved Employees on an hourly basis plus additional nondiscretionary compensation. 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.

42. 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.

43. 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.

44. 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)

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

46. 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.

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

48. 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.

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49. 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.

50. 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

51. As a result of Defendants' policies and practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when they were: (1) forced to take short (less than 30 minute) meal periods, (2) unable to take a meal period due to workload, (3) forced to take an on-duty meal period while under the control of Defendants, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period on shifts in excess of 10 hours.

52. Notably, because Defendants required Plaintiff and the Aggrieved Employees to undergo a mandatory security check process every time they left the facility, Plaintiff and the Aggrieved Employees were denied compliant 30-minute meal periods. Indeed, because these security checks occurred *after clocking out*, any time that Plaintiff and the Aggrieved Employees left the facility for a meal period, they were deprived of the full 30-minute meal period because the time spent undergoing the mandatory security check infringed on the 30 minutes allotted for the meal period.

53. As a separate theory of meal period liability, Plaintiff alleges that Defendants' mandatory off-the-clock security check impermissibly impedes and discourages the Aggrieved Employees from taking off-duty, off-premises meal periods. *See Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040 (an employer may not "impede or discourage" employees from taking compliant meal periods).

54. 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").

55. 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.

56. 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.

<u>FOURTH CAUSE OF ACTION</u>

PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS

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

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

58. 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.

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

60. 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.

61. 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.

62. 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.

63. 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").

64. 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 PAY VESTED VACATION

(Labor Code § 227.3)

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

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

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

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

69. 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.

70. 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.

SIXTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

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

72. 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.

73. 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.

74. 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."

75. 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.

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.

SEVENTH CAUSE OF ACTION

FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201 – 203)

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

78. 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.

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

80. 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.

81. 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.

82. 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.

83. 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.

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

85. 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."

86. Here, Plaintiff and the Aggrieved Employees were compensated on an hourly basis plus additional compensation in the form of shift differentials and/or nondiscretionary compensation. 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)), leading to unpaid wages at the time of separation of employment.

87. 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.

88. 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 PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

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

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90. 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.

91. 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.

92. 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 uncompensated time spent in mandatory security check); 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.

93. 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).

94. 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)]").

95. 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. PRAYER FOR RELIEF

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. DEMAND FOR JURY TRIAL

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

Dated: October 11, 2021

LAUBY, MANKIN & LAUBY LLP

BY: ______________________

Brian J. Mankin, Esq.
Peter J. Carlson, Esq.
Attorneys for Plaintiff