

CASE ATTACHMENT COVER PAGE	(ENDORSED) ELECTRONICALLY FILED BY SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino on Dec 9, 2022 CLERK OF THE SUPERIOR COURT <i>Deputy Clerk: Michelle Gomez Casillas</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino, CA 92415 BRANCH NAME: San Bernardino Justice Center WEBSITE: http://www.sb-court.org	
ATTACHMENT NAME: Complaint: Complaint	
CASE NAME: Ashley Boguett vs. American Woodmark Corporation	CASE NUMBER: CIVSB2222761
Please log on to www.TurboCourt.com regularly for updates	

Please staple this to your original attachment

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff, on behalf of the State of California as the Real Party In Interest

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ASHLEY BOGUETT, on behalf of the State
of California as the Real Party In Interest;

Plaintiff,

vs.

AMERICAN WOODMARK
CORPORATION, a Virginia Corporation;
RSI HOME PRODUCTS, INC., a Delaware
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.:

**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

Plaintiff Ashley Boguett (“Plaintiff”) brings this Private Attorneys General Act (“PAGA”) Representative Action Complaint (“Complaint”), on behalf of the State of California as the real party in interest,¹ against Defendants as follows.

///

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 her former employer(s), American Woodmark
3 Corporation, RSI Home Products, Inc., and DOES 1 through 20, inclusive, (collectively,
4 “Defendants”) on behalf of the State of California, seeking civil penalties under PAGA for Labor
5 Code violations committed against all current and former nonexempt employees employed by
6 Defendants in California within the last one year and 65-days prior to the filing of this action
7 (hereinafter, the “Aggrieved Employees”). Such violations include, but are not limited to,
8 Defendants’ failure to pay all wages owed, including minimum, regular, and overtime wages,
9 failure to provide meal periods, failure to provide rest breaks, failure to timely pay wages upon
10 separation of employment, and failure to provide accurate itemized wage statements.

11 2. Plaintiff was employed by Defendants from approximately May through
12 September 2022.

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

16 4. Plaintiff and the Aggrieved Employees were not provided all minimum, regular,
17 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
18 worked.

19 5. Furthermore, Defendants failed to pay proper overtime to Plaintiff and certain
20 non-union Aggrieved Employees. For example, Defendants paid Plaintiff and the Aggrieved
21 Employees on an hourly basis but also paid additional nondiscretionary compensation. However,
22 during workweeks where the Aggrieved Employees worked overtime hours and earned
23 additional nondiscretionary compensation, Defendants failed to include that compensation in the
24 calculations for the regular rate of pay – violating the well-established rule that overtime must
25 always be paid at time and one-half the regular rate of pay.

26 6. Plaintiff and the Aggrieved Employees were also denied 30-minute off-duty meal
27 periods, as mandated by California law. As a result of Defendants’ policies and practices, the
28 Aggrieved Employees were subjected to meal period violations when they were: (1) unable to

1 take a meal period due to workload, (2) forced to take an on-duty meal period while under the
2 control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal
3 period after the 5th hour of work, and (5) not provided mandated second meal periods for shifts
4 in excess of 10 hours. Moreover, Defendants failed to record or keep accurate information
5 regarding when Plaintiff and the Aggrieved Employees took mandated meal periods, in violation
6 of the applicable IWC Wage Order § 7(A)(3).

7 7. Defendants also failed to provide Plaintiff and the Aggrieved Employees with 10
8 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated
9 by California law. Defendants did not schedule rest breaks for Plaintiff and the Aggrieved
10 Employees, the Aggrieved Employees were unable to leave the premises for rest breaks, and the
11 Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks
12 due to being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff
13 and the Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit
14 mandated third rest breaks.

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

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

23 10. Plaintiff alleges that Defendants' violations of the wage and hour components of
24 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
25 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
26 its competitors.

27 11. At all material times, Defendants and DOES 1 through 20 were and/or are the
28 Aggrieved Employees' employers or persons acting on behalf of the Aggrieved Employees'

1 employer, within the meaning of California Labor Code § 558, who violated or caused to be
2 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
3 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
4 underpaid employee as set forth in Labor Code § 558 and under California law.

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

10 **II. JURISDICTION**

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

13 **III. VENUE**

14 14. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
15 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
16 acts alleged herein have a direct effect on the Aggrieved Employees in San Bernardino County.
17 Furthermore, Defendants employed or employ the Aggrieved Employees in San Bernardino
18 County and alleged violations therefore occurred in San Bernardino County. Thus, venue is
19 proper in San Bernardino County. *See Crestwood Behavioral Health, Inc. v. Superior Court*
20 (2021) 60 Cal.App.5th 1069, 1075 (“venue is proper in any county in which an aggrieved
21 employee worked and Labor Code violations allegedly occurred.”).

22 **IV. PARTIES**

23 **Plaintiff**

24 15. Plaintiff and PAGA Representative Ashley Bogue was employed by Defendants
25 from approximately May through September 2022.

26 **Defendants**

27 16. Plaintiff is informed and believes and thereon alleges that Defendant American
28 Woodmark Corporation is a Virginia corporation authorized to and doing business in San

1 Bernardino County, California. Plaintiff is also informed and believes that Defendant American
2 Woodmark Corporation is and/or was the legal employer of Plaintiff and the Aggrieved
3 Employees during the applicable statutory periods.

4 17. Plaintiff is informed and believes and thereon alleges that Defendant RSI Home
5 Products, Inc. is a Delaware corporation authorized to and doing business in San Bernardino
6 County, California. Plaintiff is also informed and believes that Defendant RSI Home Products,
7 Inc. is and/or was the legal employer of Plaintiff and the Aggrieved Employees during the
8 applicable statutory periods.

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

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

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

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

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

18 **V. PAGA CAUSES OF ACTION (Labor Code §§ 2698 – 2699.5)**

19 23. Plaintiff is an “aggrieved employee” under the PAGA as she was employed by
20 Defendants during the applicable statutory period and suffered one or more of the Labor Code
21 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
22 action filed on behalf of the State of California and for violations committed against the
23 Aggrieved Employees.

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

25. Pursuant to Labor Code § 2699.3(a), 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.

FIRST CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

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

Against All Defendants

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. Plaintiff and the Aggrieved Employees were not provided proper minimum and regular wages due to Defendants' failure to accurately record and compensate for all hours worked. As a result of this policy and practice, Plaintiff and the Aggrieved Employees were required to perform off-the-clock work that Defendants either knew or should have known they were performing.

29. 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).

30. 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.

/ / /

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

5 32. As a result of the unlawful employment practices alleged herein, Plaintiff, on
6 behalf of the State of California, seeks the assessment of all applicable and available PAGA
7 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or
8 any other damages permitted under PAGA.

9 **SECOND CAUSE OF ACTION**

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

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

12 *Against All Defendants*

13 33. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
14 alleged herein.

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

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

23 36. At all relevant times, Plaintiff and the Aggrieved Employees were required by
24 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
25 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
26 Aggrieved Employees did not receive proper overtime compensation.

27 37. Additionally, Defendants paid Plaintiff and certain non-union Aggrieved
28 Employees on an hourly basis but also paid additional nondiscretionary compensation (such as

bonuses). However, during workweeks where the non-union Aggrieved Employees worked overtime hours and earned additional nondiscretionary compensation, Defendants failed to include that compensation in the calculations for the regular rate of pay – violating the well-established rule that overtime must always be paid at time and one-half the regular rate of pay.

38. As a result of these policies and practices, Defendants failed to pay Plaintiff and the Aggrieved Employees for all overtime hours worked.

39. 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.

40. 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.

41. Defendants' conduct was willful, as Defendants knew that Plaintiff and the Aggrieved Employees were entitled to be paid proper overtime wages throughout the statutory period, yet Defendants chose not to pay them in accordance thereto.

42. As a result of the unlawful employment practices alleged herein, Plaintiff, on behalf of the State of California, 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)

Against All Defendants

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

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

1 45. Labor Code § 226.7 requires employers, including Defendants, to provide
2 employees with meal periods as mandated by the Industrial Welfare Commission.

3 46. Labor Code § 512(a), in part, provides that employers, including Defendants, may
4 not employ an employee for a work period of more than five hours per day without providing an
5 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
6 except that if the total work period per day of the employee is no more than six hours, the meal
7 period may be waived by mutual consent of both the employer and the employee. Employers
8 may not employ an employee for a work period more than 10 hours per day without providing
9 the employee with a second meal period of not less than 30 minutes.

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

13 48. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
14 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
15 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
16 they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal
17 period while under the control of the Company, (3) forced to take a shortened meal period, (4)
18 forced to take a meal period after the 5th hour of work, and (5) not provided mandated second
19 meal periods for shifts in excess of 10 hours.

20 49. Moreover, Defendants failed to record or keep accurate information regarding
21 when Plaintiff and the Aggrieved Employees took mandated meal periods, in violation of the
22 applicable IWC Wage Order § 7(A)(3).

23 50. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
24 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
25 all mandatory meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
26 one additional hour of compensation at the regular rate of pay in lieu thereof.

27 51. On information and belief, Plaintiff and the Aggrieved Employees did not
28 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers

1 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
2 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
3 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
4 Employees to take meal periods in accordance with California law.

5 52. As a result of the unlawful employment practices alleged herein, Plaintiff, on
6 behalf of the State of California, seeks the assessment of all applicable and available PAGA
7 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or
8 any other damages permitted under PAGA.

9 **FOURTH CAUSE OF ACTION**

10 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

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

12 *Against All Defendants*

13 53. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
14 alleged herein.

15 54. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
16 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

17 55. Labor Code § 226.7 requires employers, including Defendants, to provide rest
18 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

19 56. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
20 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
21 each work period. Employees shall receive a 10-minute rest period every four hours or major
22 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
23 hours worked, for which there shall be no deduction from wages.

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

27 58. At all relevant times, Defendants also failed to provide Plaintiff and the
28 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major

1 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
2 Aggrieved Employees, the Aggrieved Employees were unable to leave the premises for breaks,
3 and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest
4 breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when the
5 Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit
6 mandated third rest breaks.

7 59. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
8 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
9 all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
10 one additional hour of compensation in lieu thereof.

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

14 **FIFTH CAUSE OF ACTION**

15 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

16 (Labor Code § 204)

17 *Against All Defendants*

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

20 62. 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 regarding the
22 timing of payment of wages each period.

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

28 ///

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

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

8 66. As a result of the unlawful employment practices alleged herein, Plaintiff, on
9 behalf of the State of California, seeks the assessment of all applicable and available PAGA
10 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys’ fees, costs, and/or
11 any other damages permitted under PAGA

12 **SIXTH CAUSE OF ACTION**

13 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

14 (Labor Code §§ 201 – 203)

15 *Against All Defendants*

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

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

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

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

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

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

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

8 74. Additionally, at all relevant times, Defendants failed to pay all mandated sick
9 wages owed to the Aggrieved Employees at the proper rate of pay under Labor Code § 246(l).

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

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

17 **SEVENTH CAUSE OF ACTION**

18 **PAGA ASSESSMENT FOR**

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

20 (Labor Code § 226)

21 *Against All Defendants*

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

24 78. 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 79. 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 80. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
6 and the Aggrieved Employees due to violations including: failure to accurately state total hours
7 worked (for example, the wage statements failed to accurately reflect the correct compensable
8 hours); failure to accurately state gross wages earned, all deductions, and net wages earned (Due
9 to, for example, the failure to pay all required minimum and overtime wages); failure to state the
10 applicable hourly rates (including the accurate overtime rate of pay); failure to state the inclusive
11 dates of the pay period; failure to accurately state the name and address of the legal entity of the
12 employer; and failure to accurately state the corresponding number of hours worked at each
13 hourly rate.

14 81. Additionally, Defendants’ wage statements directly violated Labor Code § 226(a)
15 each period due to the failure to pay and report premium wages for denied meal periods and rest
16 breaks under § 226.7.

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

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

27 84. As a result of the Defendants’ violations of Labor Code § 226, Plaintiff, on behalf
28 of the State of California, seeks the assessment of all applicable and available PAGA remedies

1 pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other
2 damages permitted under PAGA.

3 **VI. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, on behalf of the State of California as the real party in interest,
5 prays for judgment and relief against Defendants, jointly and severally, as follows:

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

9
10 Dated: December 9, 2022

LAUBY, MANKIN & LAUBY LLP

11
12 BY:



13 Brian J. Mankin, Esq.
14 Peter J. Carlson, Esq.
15 Attorneys for Plaintiff
16
17
18
19
20
21
22
23
24
25
26
27
28