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CASE NAME: Angel Walden vs. Advanced Payroll Solutions, Inc.	CASE NUMBER: CIVSB2300104
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ANGEL WALDEN, on behalf of the State of
California as the Real Party In Interest;

Plaintiff,

vs.

ADVANCED PAYROLL SOLUTIONS,
INC., a California Corporation; ADVANCED
REAL ESTATE SERVICES, INC., a
California 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 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

Plaintiff Angel Walden (“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), Defendants Advanced
3 Payroll Solutions, Inc., Advanced Real Estate Services, Inc., and DOES 1 through 20, inclusive,
4 (collectively, “Defendants”) on behalf of the State of California, seeking civil penalties under
5 PAGA for Labor Code violations committed against all current and former nonexempt
6 employees employed by Defendants in California within the last one year and 65-days prior to
7 the filing of this action (hereinafter, the “Aggrieved Employees”). Such violations include, but
8 are not limited to, Defendants’ failure to pay all wages owed, including minimum, regular, and
9 overtime wages, failure to provide meal periods, failure to provide rest breaks, failure to pay
10 vested vacation, failure to timely pay wages each period and upon separation of employment,
11 and failure to provide accurate itemized wage statements.

12 2. Plaintiff was employed by Defendants from approximately August through
13 October 2022.

14 3. Plaintiff alleges on information and belief that the Aggrieved Employees were
15 subjected to the same policies, working conditions, and corresponding wage and hour violations
16 to which Plaintiff was subjected during 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. As one specific example, Plaintiff and the Aggrieved Employees were frequently
20 required to perform off-the-clock work at the beginning and end of shifts without compensation.
21 Because this time was spent under Defendants’ control without compensation, this violates
22 California law and led to minimum and overtime wage violations. See *Troester v. Starbucks*
23 *Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to require
24 employees to routinely work for minutes off the clock without compensation”).

25 5. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
26 Aggrieved Employees. For example, at all relevant times, Plaintiff and the Aggrieved
27 Employees were paid on an hourly basis plus additional earned compensation in the form of
28 nondiscretionary bonuses (e.g., “Leasing Bonus” / “Lease Renewal Bonus”) among other similar

1 payments. However, on the occasions when Plaintiff and the Aggrieved Employees worked
2 overtime hours and received additional earned compensation during the same workweek,
3 Defendants failed to properly include these amounts in the calculations for the regular rate of pay
4 – in violation of California law.

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

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

20 8. Also, at all relevant times, Defendants utilized a policy and practice through
21 which Plaintiff and the Aggrieved Employees accrued vacation and/or PTO hours (collectively,
22 “vacation hours”). California law, specifically Labor Code § 227.3, requires Defendants to pay
23 all accrued and unused vacation hours upon separation of employment at the final rate of pay.
24 However, Defendants’ policy and practice violated Labor Code § 227.3, as detailed below.

25 9. Plaintiff further alleges that she and the Aggrieved Employees were not paid all
26 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
27 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
28 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Aggrieved

1 Employees at the time their employment ended with Defendants, including, but not limited to
2 minimum, regular, and overtime wages, wage premiums, vacation and sick wages, among others.

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

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

9 12. At all material times, Defendants and DOES 1 through 20 were and/or are the
10 Aggrieved Employees' employers or persons acting on behalf of the Aggrieved Employees'
11 employer, 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 an IWC Wage Order and, as such, are subject to penalties for each
14 underpaid employee as set forth in Labor Code § 558 and under California law.

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

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 San Bernardino County ("SB County") and
26 the unlawful acts alleged herein have a direct effect on the Aggrieved Employees SB County.
27 Furthermore, Defendants employed or employ the Aggrieved Employees in SB County
28 including, but not limited to, work sites and locations such as "The Pines at Montclair" in

Montclair, CA (SB County), “West Fifth” in Ontario, CA (SB County), and “Countrywood” in Redlands, CA (SB County). Thus, because alleged violations occurred in SB County, venue is proper in SB County. *See Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069, 1075 (“venue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred.”).

IV. PARTIES

Plaintiff

16. Plaintiff and PAGA Representative Angel Walden was employed by Defendants from approximately August through October 2022.

Defendants

17. Plaintiff is informed and believes that Defendant Advanced Payroll Solutions, Inc.: (1) is a California corporation authorized to and doing business in SB County, and (2) is and/or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable statutory periods, and (3) employed Aggrieved Employees in SB County.

18. Plaintiff is informed and believes that Defendant Advanced Real Estate Services, Inc.: (1) is a California corporation authorized to and doing business in SB County, and (2) is and/or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable statutory periods, and (3) employed Aggrieved Employees in SB County.

19. 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.

20. Plaintiff is informed and believes and thereon alleges that she and the Aggrieved Employees 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,

1 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
2 each Defendant are legally attributable to the other Defendants. On information and belief, a
3 unity of interest and ownership between each Defendant exists such that all Defendants acted as
4 a single employer of Plaintiff and other Aggrieved Employees.

5 21. Furthermore, Plaintiff is informed and believes and thereon alleges that
6 Defendants, and each of them, are an integrated enterprise and should be treated as a single
7 employer because these entities share an interrelation of operations, with common human
8 resources and personnel policies and shared common offices and facilities. Additionally,
9 Defendants also have a shared website, common management, a centralized control of labor
10 operations, and common ownership or financial control.

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

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

28 ///

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

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

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

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

19 **FIRST CAUSE OF ACTION**

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

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

22 *Against All Defendants*

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

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

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

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

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

20 **SECOND CAUSE OF ACTION**

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

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

23 *Against All Defendants*

24 34. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
25 alleged herein.

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

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

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

11 38. Additionally, at all relevant times, Plaintiff and the Aggrieved Employees were
12 paid on an hourly basis plus additional earned compensation in the form of nondiscretionary
13 bonuses (*e.g.*, "Leasing Bonus" / "Lease Renewal Bonus") and other similar payments.
14 However, on the occasions when Plaintiff and the Aggrieved Employees worked overtime hours
15 and received additional earned compensation during the same workweek, Defendants failed to
16 properly include these amounts in the calculations for the regular rate of pay – violating the well-
17 established rule that overtime must always be paid at time and one-half the regular rate of pay.

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

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

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

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42. 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.

43. 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

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

45. 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.

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

47. 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.

48. 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.

/ / /

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

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

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

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

22 **FOURTH CAUSE OF ACTION**

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

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

25 *Against All Defendants*

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

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

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

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

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

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

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

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

1 **FIFTH CAUSE OF ACTION**

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

3 (Labor Code § 227.3)

4 *Against All Defendants*

5 61. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

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

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

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

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

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

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PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

Against All Defendants

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1 **SEVENTH CAUSE OF ACTION**

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

3 (Labor Code §§ 201 – 203)

4 *Against All Defendants*

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

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

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

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

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

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

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

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

27 81. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees
28 must be “calculated in the same manner as the regular rate of pay for the workweek in which the

1 employee uses paid sick time, whether or not the employee actually works overtime in that
2 workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be
3 “calculated by dividing the employee’s total wages, not including overtime premium pay, by the
4 employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

5 82. Here, Defendants only calculated and paid sick pay at the base rate of pay, rather
6 than at the rate required by Labor Code § 246, leading to unpaid sick pay and violations of Labor
7 Code §§ 201 – 203.

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

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

15 **EIGHTH CAUSE OF ACTION**

16 **PAGA ASSESSMENT FOR**

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

18 (Labor Code § 226)

19 *Against All Defendants*

20 85. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
21 alleged herein.

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

25 87. Labor Code § 226(a) requires an employer to provide its employees with itemized
26 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
27 inclusive dates of the pay period, the employee’s name and the last four digits of his or her
28 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.

88. Defendants violate 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 (for example, the wage statements failed to accurately reflect the compensable hours worked); 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); failure to accurately state the corresponding number of hours worked at each hourly rate; and failure to accurately identify the name and address of the legal entity of the employer.

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

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

91. 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)]").

92. As a result of the Defendants' violations of Labor Code § 226, 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.

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1 **VI. PRAYER FOR RELIEF**

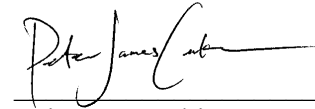
2 WHEREFORE, Plaintiff, on behalf of the State of California as the real party in interest,
3 prays for judgment and relief against Defendants, jointly and severally, as follows:

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

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8 Dated: January 9, 2023

LAUBY, MANKIN & LAUBY LLP

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10 BY:



11 Brian J. Mankin, Esq.
12 Peter J. Carlson, Esq.
13 Attorneys for Plaintiff
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