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CASE NAME: Marlene Molina vs. U.S. Bank National Association	CASE NUMBER: CIVSB2302908
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

MARLENE MOLINA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

U.S. BANK NATIONAL ASSOCIATION;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: **CIV SB 2302908**
**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 Reimburse Bus. Expenses;
- (6) Failure to Pay Vested Vacation;
- (7) Failure to Timely Pay Wages;
- (8) Failure to Timely Pay Final Wages; and
- (9) Failure to Provide Accurate Itemized Wage Statements;

JURY TRIAL DEMANDED

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

12 2. Plaintiff was employed by Defendants from approximately September 2021
13 through January 2023.

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 These practices violate California law and led to minimum and overtime wage violations. See
22 *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow
23 employers to require employees to routinely work for minutes off the clock without
24 compensation”); *Frlekin v. Apple Inc* (2020) 8 Cal.5th 1038 (tasks are compensable when
25 employee is under company’s control and where the tasks served the employer’s interests)

26 5. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
27 Aggrieved Employees. At all relevant times, Plaintiff and the Aggrieved Employees were paid
28 on an hourly basis plus additional earned compensation in the form of nondiscretionary bonuses,

1 shift differentials, among other similar payments. However, on the occasions when Plaintiff and
2 the Aggrieved Employees worked overtime hours and received additional earned compensation
3 during the same workweek, Defendants failed to properly include these amounts in the
4 calculations for the regular rate of pay – 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, and the Aggrieved Employees were often not authorized and/or permitted to take
16 mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on
17 occasions when Plaintiff and the Aggrieved Employees worked longer shifts, Defendants failed
18 to authorize and/or permit mandated third or fourth rest breaks.

19 8. Moreover, at all relevant times, Defendants required Plaintiff and the Aggrieved
20 Employees to incur necessary business-related expenses and costs without reimbursement,
21 including, but not limited to, acquiring and maintaining a smart phone and related monthly data
22 plan to communicate with Defendants via phone and text message. Also, Plaintiff and certain
23 Aggrieved Employees worked remotely (from home) and Defendants required them to provide
24 their own internet service to perform required and necessary tasks for Defendants, yet
25 Defendants did not reimburse the Aggrieved Employees for such expenses.

26 9. Also, at all relevant times, Defendants utilized a policy and practice through
27 which Plaintiff and the Aggrieved Employees accrued vacation and/or paid time off hours
28 (collectively, “vacation hours”). California law, specifically Labor Code § 227.3, requires

1 Defendants to pay all accrued and unused vacation hours upon separation of employment at the
2 final rate of pay. However, Defendants' policy and practice violated Labor Code § 227.3, as
3 detailed below.

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

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

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

16 13. At all material times, Defendants and DOES 1 through 20 were and/or are the
17 Aggrieved Employees' employers or persons acting on behalf of the Aggrieved Employees'
18 employer, within the meaning of California Labor Code § 558, who violated or caused to be
19 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
20 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
21 underpaid employee as set forth in Labor Code § 558 and under California law.

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

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1 **II. JURISDICTION**

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

4 **III. VENUE**

5 16. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
6 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
7 acts alleged herein have a direct effect on the Aggrieved Employees in San Bernardino County.
8 Furthermore, Defendants employed or employ the Aggrieved Employees in San Bernardino
9 County and alleged violations therefore occurred in San Bernardino County. Thus, venue is
10 proper in San Bernardino County. *See Crestwood Behavioral Health, Inc. v. Superior Court*
11 (2021) 60 Cal.App.5th 1069, 1075 (“venue is proper in any county in which an aggrieved
12 employee worked and Labor Code violations allegedly occurred.”).

13 **IV. PARTIES**

14 **Plaintiff**

15 17. Plaintiff and PAGA Representative Marlene Molina was employed by Defendants
16 from approximately September 2021 through January 2023 and performed work for Defendants.

17 **Defendants**

18 18. Plaintiff is informed and believes and thereon alleges that Defendant U.S. Bank
19 National Association is a nationally chartered banking association that maintains operations and
20 employs the Aggrieved Employees throughout California, including numerous locations within
21 San Bernardino County.

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

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

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

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

23 23. Plaintiff is further informed and believes that at all relevant times, Defendants
24 have been inadequately capitalized to conduct business, have failed to follow appropriate
25 corporate formalities, and have simply been a shell and instrumentality through which
26 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
27 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
28 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the

1 separate existence of these corporate entities would permit abuse of the corporate privilege,
2 thereby sanctioning fraud and promoting injustice.

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

4 24. Plaintiff is an “aggrieved employee” under the PAGA as she was employed by
5 Defendants during the applicable statutory period and suffered one or more of the Labor Code
6 violations alleged herein. As such, Plaintiff – on behalf of the State of California as the real party
7 in interest – may pursue the remedies described herein for violations committed against the
8 Aggrieved Employees.

9 25. Plaintiff, on behalf of the State of California as the real party in interest, seeks to
10 recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as
11 attorneys’ fees, costs, and/or other damages as permitted by PAGA through a representative
12 action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court*
13 (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor does she, seek class
14 certification of the PAGA claims under Code of Civil Procedure § 382.

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

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY MINIMUM WAGES**

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

25 *Against All Defendants*

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

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

29. 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. As a result of these policies and practices, Defendants failed to pay Plaintiff and the Aggrieved Employees for all hours worked. Consequently, Defendants violated the California Labor Code 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.

31. 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 and regular wages, yet Defendants chose not to pay them in accordance thereto.

32. 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.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

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

Against All Defendants

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

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

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

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

13 37. Additionally, at all relevant times, Plaintiff and the Aggrieved Employees were
14 paid on an hourly basis plus additional earned compensation in the form of nondiscretionary
15 bonuses, shift differentials, and other similar payments. However, on the occasions when
16 Plaintiff and the Aggrieved Employees worked overtime hours and received additional earned
17 compensation during the same workweek, Defendants failed to properly include these amounts
18 in the calculations for the regular rate of pay – violating the well-established rule that overtime
19 must always be paid at time and one-half the regular rate of pay.

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

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

26 40. Plaintiff is informed and believes and thereon alleges that Defendants
27 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
28 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

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 the laws governing mandatory meal periods.

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

46. 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.

47. 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 48. 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 49. 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 50. 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 51. 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 **FAILURE TO PROVIDE REST BREAKS**

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

25 *Against All Defendants*

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

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1 53. 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 54. 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 55. 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 56. 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 his regular rate of compensation for each day that the rest period is not provided.

13 57. 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 and the Aggrieved Employees were often not authorized and/or permitted
17 to take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore,
18 on occasions when the Aggrieved Employees worked longer shifts, Defendants failed to
19 authorize and/or permit mandated third or fourth rest breaks.

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

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

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 (Labor Code § 2802)

4 *Against All Defendants*

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

7 61. 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 reimbursement of
9 business expenses.

10 62. Labor Code § 2802(a) requires that the employer indemnify its employees for
11 expenses and losses incurred while discharging their duties or in obedience to the directions of
12 their employer.

13 63. At all relevant times herein mentioned, as a condition of employment, Defendants
14 required Plaintiff and the Aggrieved Employees to incur necessary business-related expenses and
15 costs without reimbursement, including, but not limited to, acquiring and maintaining a smart
16 phone and related monthly data plan to communicate with Defendants via phone and text
17 message. Also, Plaintiff and certain members of the Aggrieved Employees worked remotely
18 (from home) and Defendants required them to provide their own internet service to perform
19 required and necessary tasks for Defendants, yet Defendants did not reimburse for such expenses

20 64. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
21 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
22 consequence of employment with Defendants and/or under the direction of Defendants.

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

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SIXTH CAUSE OF ACTION
FAILURE TO PAY VESTED VACATION

(Labor Code § 227.3)

Against All Defendants

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

67. 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.

68. 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 her final rate of pay.

69. At all relevant times, Defendants utilized a policy and practice through which Plaintiff and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, "vacation hours"). However, Defendants' policy and practice violated Labor Code § 227.3.

70. For instance, Defendants failed to pay all accrued and unused vacation hours to the Aggrieved Employees upon separation of employment. And, for vacation hours that Defendants *did* pay, those were only calculated and paid based on the base rate of pay for the Aggrieved Employees. But Labor Code § 227.3 requires that vested vacation be cashed out at the final rate of pay. And, since the final rate of pay for Plaintiff and the V Aggrieved Employees was often higher than the base rate (due to other nondiscretionary compensation), Defendants failed to correctly calculate and pay all vested vacation wages due and owing.

71. 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.

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1 **SEVENTH CAUSE OF ACTION**

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

3 (Labor Code § 204)

4 *Against All Defendants*

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

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

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

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

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

22 77. 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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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

4 *Against All Defendants*

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

7 79. 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 80. Labor Code § 201 requires that the employer immediately pay any wages, without
11 abatement or reduction, to any employee who is discharged.

12 81. 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 82. 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 83. 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 84. 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, vacation wages, as well as
24 meal and rest period premiums.

25 85. Furthermore, Defendants failed to pay all wages due and owing to the Aggrieved
26 Employees because of the failure to pay all required sick pay wages. Labor Code § 246(l)(1)
27 provides that paid sick time for non-exempt employees must be “calculated in the same manner
28 as the regular rate of pay for the workweek in which the employee uses paid sick time, whether

1 or not the employee actually works overtime in that workweek.” Additionally, Labor Code §
2 246(1)(2) states that the paid sick time must be “calculated by dividing the employee’s total
3 wages, not including overtime premium pay, by the employee’s total hours worked in the full
4 pay periods of the prior 90 days of employment.” Here, Defendants only calculated and paid sick
5 pay at the base rate of pay, rather than at the rate required by Labor Code § 246, leading to
6 unpaid sick pay and violations of Labor Code §§ 201 – 203.

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

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

14 **NINTH CAUSE OF ACTION**

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

16 (Labor Code § 226)

17 *Against All Defendants*

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

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

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

1 91. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
2 and the Aggrieved Employees due to violations including: failure to accurately state total hours
3 worked (for example, the wage statements failed to accurately reflect the compensable hours
4 worked); failure to accurately state gross wages earned; failure to accurately state all deductions;
5 failure to accurately state net wages earned; failure to state the applicable hourly rates (including
6 the accurate overtime rate of pay); failure to accurately state the corresponding number of hours
7 worked at each hourly rate; and failure to accurately identify the name and address of the legal
8 entity of the employer.

9 92. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
10 each period due to: (a) the failure to itemize the applicable hourly rate and hours worked for shift
11 differential pay, and (b) the failure to pay and report premium wages for denied meal periods and
12 rest breaks under § 226.7.

13 93. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
14 to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement
15 to Plaintiff and the Aggrieved Employees in compliance with Labor Code § 226(a).

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

23 95. As a result of the Defendants' violations of Labor Code § 226, Plaintiff, on behalf
24 of the State of California, seeks the assessment of all applicable and available PAGA remedies
25 pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other
26 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.

7
8 Dated: March 31, 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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