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CASE NAME: Easter Lyons vs. Ride Plus, LLC		CASE NUMBER: CIVSB2312049
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO
10

11 EASTER LYONS, on behalf of the State of
12 California as the Real Party In Interest;

13 Plaintiff,

14 vs.

15 RIDE PLUS, LLC, a Delaware Limited
16 Liability Company; MODIVCARE INC., a
17 Delaware Corporation; MODIVCARE
18 SOLUTIONS, LLC, a Delaware Limited
Liability Company; and DOES 1 through 20,
inclusive;

19 Defendants.
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Case No.: **CIV SB 2312049**

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

- (1) Willful Misclassification;
- (2) Failure to Pay Minimum Wages;
- (3) Failure to Pay Overtime Wages;
- (4) Failure to for Rest and Recovery
Periods and Nonproductive Time;
- (5) Failure to Provide Meal Periods;
- (6) Failure to Provide Rest Breaks;
- (7) Failure to Reimburse Bus. Expenses;
- (8) Failure to Timely Pay Wages;
- (9) Failure to Timely Pay Final Wages;
- (10) Failure to Provide Accurate Itemized
Wage Statements; and
- (11) Failure to Maintain Time Records

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

4 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

5 1. Plaintiff brings this action against her former employer(s), American Woodmark
6 Corporation, RSI Home Products, Inc., and DOES 1 through 20, inclusive, (collectively,
7 “Defendants”) on behalf of the State of California, seeking civil penalties under PAGA for Labor
8 Code violations committed against all persons that performed transportation services for
9 Defendants in the State of California and who were classified as independent contractors within
10 the last one year and 65-days prior to the filing of this action (hereinafter, the “Aggrieved
11 Employees”). Such violations include, but are not limited to, Defendants’ willful
12 misclassification of employees as independent contractors, failure to pay all wages owed, failure
13 to separately pay for rest breaks and nonproductive time under Labor Code § 226.2, failure to
14 provide meal periods, failure to provide rest breaks, failure to reimburse business expenses,
15 failure to timely pay wages each period and upon separation of employment, failure to provide
16 accurate itemized wage statements, and failure to maintain time records.

17 2. Plaintiff was employed by Defendants during January 2023 and she alleges on
18 information and belief that the Aggrieved Employees were subjected to the same policies,
19 working conditions, and corresponding wage and hour violations to which Plaintiff was
20 subjected during employment.

21 3. At all relevant times, Plaintiff and the Aggrieved Employees performed various
22 duties for Defendants as employees. However, Defendants maintained policies and practices
23 based on or including the willful misclassification of Plaintiff and the Aggrieved Employees as
24 independent contractors despite that, under applicable standards of law, Plaintiff and the
25 Aggrieved Employees are/were employees and not independent contractors.

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27 ¹ Because a PAGA action is aimed at deterring and punishing violations of the Labor Code, the
28 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 4. Notably, at all relevant times, Defendants engaged in a practice of willfully
2 misclassifying the Aggrieved Employees as independent contractors when they are/were
3 employees of Defendants because they (A) are/were subject to the control and direction of
4 Defendants in connection with the performance of their work, both under contract and in fact,
5 (B) performed work that was the core business of the company (*e.g.*, providing non-emergency
6 medical transportation among other services), and therefore the tasks were not outside the usual
7 course of Defendants' business, and (C) were not customarily engaged in an independently
8 established trade, occupation, or business of the same nature as work performed by Defendants.

9 5. Also, at all relevant times, Plaintiff and the Aggrieved Employees were subject to
10 the direction and control of Defendants in regard to work assignments, scheduling requirements,
11 and days of work. Furthermore, Defendants directly and indirectly exercised control over the
12 wages, hours, and working conditions of Plaintiff and the Aggrieved Employees. At all relevant
13 times, the daily schedule for Plaintiff and the Aggrieved Employees was controlled solely by
14 Defendants, and Defendants told them the exact time and location for all daily appointments.
15 Furthermore, through the performance of their job duties, Plaintiff and the Aggrieved Employees
16 performed an integral and entirely essential aspect of Defendants' business. In fact, Plaintiff and
17 the Aggrieved Employees were tasked to perform the one and only service that Defendants
18 provided: providing non-emergency medical transportation among other services. Additionally,
19 the customers are and/or were Defendants' customers, not those of Plaintiff or the Aggrieved
20 Employees. Plaintiff and the Aggrieved Employees were also not engaged in an independently
21 established trade, occupation or business of the same nature as the work performed by
22 Defendants. And, perhaps most importantly, Defendants retained the right to terminate Plaintiff
23 and the Aggrieved Employees' working relationship without cause and at its discretion. Despite
24 these facts, Defendants misclassified the Aggrieved Employees as independent contractors.

25 6. In addition to the misclassification claims, Defendants subjected Plaintiff and the
26 Aggrieved Employees to a multitude of Labor Code violations.

27 7. For instance, Plaintiff and the Aggrieved Employees were not provided proper
28 minimum, regular, and overtime wages due to Defendants' failure to accurately record and

1 compensate for all hours worked. For example, Defendants did not record hours worked by the
2 Aggrieved Employees and instead paid the Aggrieved Employees on a flat-rate basis with
3 additional per-client pay. But, under this pay plan, Defendants failed to pay the Aggrieved
4 Employees at no less than the minimum wage for all unpaid, on-duty, time and tasks performed
5 for Defendants. And Defendants did not pay any overtime compensation despite the Aggrieved
6 Employees working in excess of 8 hours per day and 40 hours per week.

7 8. Plaintiff and the Aggrieved Employees were also denied 30-minute off-duty meal
8 periods, as mandated by California law. As a result of Defendants' policies and practices, the
9 Aggrieved Employees were subjected to meal period violations when they were: (1) unable to
10 take a meal period due to workload, (2) forced to take an on-duty meal period while under the
11 control of Defendants, (3) forced to take a shortened meal period, (4) forced to take a meal
12 period after the 5th hour of work, and (5) not provided mandated second meal periods for shifts
13 in excess of 10 hours. Moreover, Defendants failed to record or keep accurate information
14 regarding when Plaintiff and the Aggrieved Employees took mandated meal periods, in violation
15 of the applicable IWC Wage Order § 7(A)(3).

16 9. Defendants also failed to provide Plaintiff and the Aggrieved Employees with 10
17 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated
18 by California law. Defendants did not schedule rest breaks for Plaintiff and the Aggrieved
19 Employee, and the Aggrieved Employees were often not authorized and/or permitted to take
20 mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on
21 occasions when Plaintiff and the Aggrieved Employees worked longer shifts, Defendants failed
22 to authorize and/or permit mandated third rest breaks. Also, at all relevant times, Plaintiff and
23 the Aggrieved Employees were denied paid rest breaks by virtue of Defendants' policy that only
24 paid the Aggrieved Employees on a piece-rate / flat-rate basis. As Plaintiff and the Aggrieved
25 Employees could not generate compensation if they took a rest break, Plaintiff and the
26 Aggrieved Employees were illegally denied paid rest breaks.

27 10. Moreover, Defendants required Plaintiff and the Aggrieved Employees to incur
28 necessary business-related expenses and costs without reimbursement, including, but not limited

1 to: (1) significant costs and expenses for use of their personal vehicles on behalf of Defendants
2 [including mileage, repairs, upkeep, inspections, among others], and (2) acquiring and
3 maintaining a smart phone and related monthly data plan to communicate with Defendants via
4 phone and text message.

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

11 12. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
12 statements that fully complied with the requirements of Labor Code § 226(a) and, further, failed
13 to keep and maintain records regarding the Aggrieved Employees' daily hours worked.

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

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

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

1 **II. JURISDICTION**

2 16. 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 17. 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 18. Plaintiff and PAGA Representative Easter Lyons was employed by Defendants in
16 January 2023.

17 **Defendants**

18 19. Plaintiff is informed and believes and thereon alleges that Defendant Ride Plus,
19 LLC is a Delaware limited liability company authorized to and doing business in San Bernardino
20 County, California. Plaintiff is also informed and believes that Defendant Ride Plus, LLC is
21 and/or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable
22 statutory periods.

23 20. Plaintiff is informed and believes and thereon alleges that Defendant Modivcare,
24 Inc. is a Delaware corporation authorized to and doing business in San Bernardino County,
25 California. Plaintiff is also informed and believes that Defendant Modivcare, Inc. is and/or was
26 the legal employer of Plaintiff and the Aggrieved Employees during the applicable statutory
27 periods.

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1 21. Plaintiff is informed and believes and thereon alleges that Defendant Modivcare
2 Solutions, LLC Inc. is a Delaware corporation authorized to and doing business in San
3 Bernardino County, California. Plaintiff is also informed and believes that Defendant
4 Modivcare, Inc. is and/or was the legal employer of Plaintiff and the Aggrieved Employees
5 during the applicable statutory periods.

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

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

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

26 25. Plaintiff is informed and believes and thereon alleges that, in conducting
27 themselves in the manner described herein, Defendants, and each of them, were acting in active
28 concert with one another such that the acts of each were and are fully attributable to the others in

1 all material respects. Plaintiff is further informed and believes that at all relevant times
2 Defendants and each of them are now, and at all material times herein mentioned were, the
3 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
4 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
5 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
6 their remaining co-Defendants.

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

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

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

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

26 29. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
27 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
28 Defendants of the specific provisions of the Labor Code alleged to have been violated, including

1 the facts and theories to support the alleged violations. Now that sixty-five (65) days have
2 elapsed since Plaintiff provided notice of the claims alleged herein without the LWDA assuming
3 jurisdiction over the claims alleged, Plaintiff has fully satisfied her administrative prerequisites
4 for bringing suit under the PAGA.

5 **FIRST CAUSE OF ACTION**

6 **PAGA ASSESSMENT FOR WILLFUL MISCLASSIFICATION**

7 (Labor Code § 226.8)

8 *Against All Defendants*

9 30. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
10 alleged herein.

11 31. At all relevant times, Plaintiff and the Aggrieved Employees performed various
12 duties for Defendants as employees. However, as alleged herein, Defendants have maintained
13 policies and practices based on or including the willful misclassification of Plaintiff and the
14 Aggrieved Employees as independent contractors despite that, under applicable standards of law,
15 Plaintiff and all Aggrieved Employees are, or were during their employment with Defendants,
16 employees and not independent contractors.

17 32. Labor Code § 226.8(a) states “It is unlawful for any person or employer to engage
18 in any of the following activities: (1) Willful misclassification of an individual as an independent
19 contractor.”

20 33. Labor Code § 226.8(b) states that if “a person or employer has engaged in any of
21 the enumerated violations of subdivision (a), the person or employer shall be subject to a civil
22 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars
23 (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.”

24 34. Labor Code § 226.8(c) further states that if “a person or employer has engaged in
25 any of the enumerated violations of subdivision (a) and the person or employer has engaged in or
26 is engaging in a pattern or practice of these violations, the person or employer shall be subject to
27 a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five
28 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines

1 permitted by law.

2 35. At all relevant times herein, Defendants engaged in a pattern and practice of
3 willfully and knowingly misclassifying Plaintiff and the Aggrieved Employees as independent
4 contractors. Therefore, Plaintiff and the Aggrieved Employees are entitled to the stepped-up
5 penalties as set forth in Labor Code § 226.8(c).

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

10 **SECOND CAUSE OF ACTION**

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

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

13 *Against All Defendants*

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

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

19 39. Plaintiff and the Aggrieved Employees were not provided proper minimum and
20 regular wages due to Defendants' failure to accurately record and compensate for all hours
21 worked. For example, Defendants did not record hours worked by the Aggrieved Employees and
22 instead paid the Aggrieved Employees on a flat-rate basis with additional per-client pay. But,
23 under this pay plan, Defendants failed to pay the Aggrieved Employees at no less than the
24 minimum wage for all unpaid, on-duty, time and tasks performed for Defendants. As a result of
25 this policy and practice, Plaintiff and the Aggrieved Employees were required to perform off-the-
26 clock work that Defendants either knew or should have known they were performing.

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40. 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).

41. 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.

42. 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.

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 PAY OVERTIME WAGES

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

Against All Defendants

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

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

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

1 47. At all relevant times, Plaintiff and the Aggrieved Employees were required by
2 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
3 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
4 Aggrieved Employees did not receive proper overtime compensation. For example, Defendants
5 did not record hours worked by the Aggrieved Employees and instead paid the Aggrieved
6 Employees on a flat-rate basis with additional per-client pay. But, under this pay plan,
7 Defendants did not pay any overtime compensation despite the Aggrieved Employees working in
8 excess of 8 hours per day and 40 hours per week.

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

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

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

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

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

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1 **FOURTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO SEPARATELY PAY FOR REST AND**
3 **RECOVERY PERIODS AND NONPRODUCTIVE TIME**

4 (Labor Code § 226.2)

5 *Against All Defendants*

6 53. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
7 alleged herein.

8 54. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
9 who were paid on a piece-rate / flat-rate basis.

10 55. Labor Code § 226.2 requires employers that pay their employees on a piece-rate
11 basis to provide separate compensation (above the piece-rate pay) for rest and recovery periods
12 and other nonproductive time.

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

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

22 58. 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 **FIFTH CAUSE OF ACTION**

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

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

4 *Against All Defendants*

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

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

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

11 62. Labor Code § 512(a), in part, provides that employers, including Defendants, may
12 not employ an employee for a work period of more than five hours per day without providing an
13 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
14 except that if the total work period per day of the employee is no more than six hours, the meal
15 period may be waived by mutual consent of both the employer and the employee. Employers
16 may not employ an employee for a work period more than 10 hours per day without providing
17 the employee with a second meal period of not less than 30 minutes.

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

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

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

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

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

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

18 **SIXTH CAUSE OF ACTION**

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

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

21 *Against All Defendants*

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

24 70. 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 mandatory rest breaks.

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

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

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

9 74. At all relevant times, Defendants also failed to provide Plaintiff and the
10 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
11 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
12 Aggrieved Employees, the Aggrieved Employees were unable to leave the premises for breaks,
13 and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest
14 breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when the
15 Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit
16 mandated third rest breaks. Also, at all relevant times, Plaintiff and the Aggrieved Employees
17 were denied paid rest breaks by virtue of Defendants' policy that only paid the Aggrieved
18 Employees on a piece-rate / flat-rate basis. As Plaintiff and the Aggrieved Employees could not
19 generate compensation if they took a rest break, Plaintiff and the Aggrieved Employees were
20 illegally denied paid rest breaks.

21 75. 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 76. 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 **SEVENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 (Labor Code § 2802)

4 *Against All Defendants*

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

7 78. 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 79. 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 80. 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: (1) significant costs and expenses for
16 use of their personal vehicles on behalf of Defendants [including mileage, repairs, upkeep,
17 inspections, among others], and (2) acquiring and maintaining a smart phone and related monthly
18 data plan to communicate with Defendants via phone and text message.

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

22 82. 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 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

3 (Labor Code § 204)

4 *Against All Defendants*

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

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

10 85. 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 86. 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 87. 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 88. 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 **NINTH CAUSE OF ACTION**

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

3 (Labor Code §§ 201 – 203)

4 *Against All Defendants*

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

7 90. 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 91. Labor Code § 201 requires that the employer immediately pay any wages, without
11 abatement or reduction, to any employee who is discharged.

12 92. 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 93. 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 94. 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 95. 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, sick pay, and payments required under Labor Code § 226.2.

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

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97. 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.

TENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Against All Defendants

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

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

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

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

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

4 103. As a threshold issue, Defendants did not provide any document that would serve
5 as the itemized wage statements under Labor Code § 226. Because of the failure to provide a
6 wage statement, Defendants violated nearly all subsections of § 226(a), including: failure to
7 accurately state total hours worked; failure to accurately state gross wages earned; failure to
8 accurately state all deductions; failure to accurately state net wages earned; failure to state all
9 applicable hourly rates in effect during the pay period and the corresponding number of hours
10 worked at each hourly rate by the employee; failure to accurately state the name and address of
11 the legal entity that is the employer; and all other items required by § 226.2(a) addressed above.

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

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

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

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

1 **ELEVENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO MAINTAIN TIME RECORDS**

3 (Labor Code § 1199; IWC Wage Order §§ 6, 7)

4 *Against All Defendants*

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

7 109. 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 record and
9 timekeeping required of employers.

10 110. The relevant IWC Wage Order(s) required Defendants to accurately record and
11 maintain “each employee’s “[t]ime records showing when the employee begins and ends each
12 work period,” the time that each meal period began and ended, daily hours worked, and total
13 hours worked in the payroll period.

14 111. Here, Defendants did not keep any timekeeping records for the Aggrieved
15 Employees and, thus, failed to accurately record and maintain the information required under
16 California law.

17 112. An employer violates Labor Code § 1199 when it violates or refuses or neglects to
18 comply with any provision of an IWC Wage Order. And Labor Code § 2699.5 specifically
19 enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply.

20 113. As a result of the Defendants’ violations of Labor Code § 226, Plaintiff, on behalf
21 of the State of California, seeks the assessment of all applicable and available PAGA remedies
22 pursuant to Labor Code § 2699, and seeks to recover all attorneys’ fees, costs, and/or any other
23 damages permitted under PAGA.

24 **VI. PRAYER FOR RELIEF**

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

- 27 1. For the assessment of all remedies and/or penalties available under the PAGA;
28 2. For reasonable attorneys’ fees and costs of suit to the extent permitted by law; and

3. For such other and further relief as the Court deems just and proper.

Dated: May 4, 2023

LAUBY, MANKIN & LAUBY LLP

BY:

Pete Jones

Brian J. Mankin, Esq.

Peter J. Carlson, Esq.

Attorneys for Plaintiff