

CASE ATTACHMENT COVER PAGE	(ENDORSED) ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino, CA 92415 BRANCH NAME: San Bernardino Justice Center WEBSITE: http://www.sb-court.org	BY SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino on Jul 13, 2023 <i>CLERK OF THE SUPERIOR COURT</i> <i>Deputy Clerk: Abrianna Rodriguez</i>
ATTACHMENT NAME: Complaint: Complaint	
CASE NAME: Joel Suarez vs. Builder Services Group, Inc.	CASE NUMBER: CIVSB2316043
Please log on to www.TurboCourt.com regularly for updates	

Please staple this to your original attachment

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

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

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

JOEL SUAREZ, on behalf of the State of
California as the Real Party In Interest;

Plaintiff,

vs.

BUILDER SERVICES GROUP, INC., a
Florida Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: **CIV SB 2316043**

**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

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

12 2. Plaintiff was employed by Defendants from approximately January 2022 through
13 January 2023.

14 3. Plaintiff alleges that the Aggrieved Employees were subjected to the same
15 policies, working conditions, and corresponding wage and hour violations to which Plaintiff was
16 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. These practices violate California law and led to minimum and overtime wage
20 violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es]
21 not allow employers to require employees to routinely work for minutes off the clock without
22 compensation”); *Frlekin v. Apple Inc* (2020) 8 Cal.5th 1038 (tasks are compensable when
23 employee is under company’s control and where the tasks served the employer’s interests).

24 5. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
25 Aggrieved Employees. For example, Defendants paid Plaintiff and the Aggrieved Employees on
26 an hourly basis but also paid additional nondiscretionary compensation. However, during
27 workweeks where the Aggrieved Employees worked overtime hours and earned additional
28 nondiscretionary compensation, Defendants failed to properly include that compensation in the

1 calculations for the regular rate of pay – violating the well-established rule that overtime must
2 always be paid at time and one-half the regular rate of pay.

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

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 additional mandated rest breaks.

20 8. Moreover, at all relevant times, Defendants required Plaintiff and the Aggrieved
21 Employees to incur necessary business-related expenses and costs without reimbursement,
22 including, but not limited to, acquiring and maintaining a smart phone and related monthly data
23 plan to communicate with Defendants via phone and text message.

24 9. Also, at all relevant times, Defendants utilized a policy and practice through
25 which Plaintiff and the Aggrieved Employees accrued vacation and/or paid time off hours
26 (collectively, “vacation hours”). California law, specifically Labor Code § 227.3, requires
27 Defendants to pay all accrued and unused vacation hours upon separation of employment at the
28 final rate of pay. However, Defendants’ policy and practice violated Labor Code § 227.3, as

1 detailed below.

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

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

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

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

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

25 **II. JURISDICTION**

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

28 ///

1 **III. VENUE**

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

10 **IV. PARTIES**

11 **Plaintiff**

12 17. Plaintiff and PAGA Representative Joel Suarez was employed by Defendants
13 from approximately January 2022 through January 2023.

14 **Defendants**

15 18. Plaintiff is informed and believes and thereon alleges that Defendant Builder
16 Services Group, Inc. is a Florida corporation authorized to and doing business in San Bernardino
17 County, California. Plaintiff is also informed and believes that Defendant Builder Services
18 Group, Inc. is and/or was the legal employer of Plaintiff and the Aggrieved Employees during
19 the applicable statutory periods.

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

27 20. Plaintiff is informed and believes and thereon alleges that she and the Aggrieved
28 Employees worked under the joint direction and control of Defendants and that Defendants, and

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

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

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

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

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

2 24. Plaintiff is an “aggrieved employee” under the PAGA as he 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 he, 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.

28 ///

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.

28 ///

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, Defendants paid Plaintiff and certain non-union Aggrieved
12 Employees on an hourly basis but also paid additional nondiscretionary compensation. However,
13 during workweeks where the non-union Aggrieved Employees worked overtime hours and
14 earned additional nondiscretionary compensation, Defendants failed to include that
15 compensation in the calculations for the regular rate of pay – violating the well-established rule
16 that overtime must always be paid at time and one-half the regular rate of pay.

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

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

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

26 42. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
27 Aggrieved Employees were entitled to be paid proper overtime wages throughout the statutory
28 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.

49. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal

1 period while under the control of the Company, (3) forced to take a shortened meal period, (4)
2 forced to take a meal period after the 5th hour of work, and (5) not provided mandated second
3 meal periods for shifts in excess of 10 hours.

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

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

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

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

21 **FOURTH CAUSE OF ACTION**

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

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

24 *Against All Defendants*

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

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

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

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

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

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

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

23 61. 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.

27 ///

28 ///

1 **FIFTH CAUSE OF ACTION**

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

3 (Labor Code § 2802)

4 *Against All Defendants*

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

7 63. 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 64. 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 65. 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
15 without reimbursement, including, but not limited to, acquiring and maintaining a smart phone
16 and related monthly data plan to communicate with Defendants via phone and text message.

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

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

24 ///

25 ///

26 ///

27 ///

28 ///

PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION

PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION

(Labor Code § 227.3)

Against All Defendants

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

69. 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.

70. 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.

71. 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.

72. 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, Defendants failed to calculate and pay for said hours at the “final rate” of pay as required by Labor Code § 227.3. Since the final rate of pay for Plaintiff and the 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.

73. 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.

///

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

7 75. 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 76. 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 77. 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 78. 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 79. 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.

26 ///

27 ///

28 ///

1 **EIGHTH CAUSE OF ACTION**

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

3 (Labor Code §§ 201 – 203)

4 *Against All Defendants*

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

7 81. 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 82. Labor Code § 201 requires that the employer immediately pay any wages, without
11 abatement or reduction, to any employee who is discharged.

12 83. 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 84. 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 85. 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 86. 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 87. 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 ///

28 ///

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

89. 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.

NINTH CAUSE OF ACTION

PAGA ASSESSMENT FOR

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Against All Defendants

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

91. 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.

92. 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.

93. 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 correct compensable hours); failure to accurately state gross wages earned, all deductions, and net wages earned (due to, for example, the failure to pay all required minimum and overtime wages); failure to state the

1 applicable hourly rates (including the accurate overtime rate of pay); failure to state the inclusive
2 dates of the pay period; failure to accurately state the name and address of the legal entity of the
3 employer; and failure to accurately state the corresponding number of hours worked at each
4 hourly rate.

5 94. Moreover, Defendants' wage statements directly violated Labor Code § 226(a)
6 each period due to: (1) the failure to list any applicable hours or rates for the "OT Premium" line-
7 item on the wage statements, and (2) the failure to pay and report premium wages for denied
8 meal periods and rest breaks under § 226.7.

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

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

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

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **VI. PRAYER FOR RELIEF**

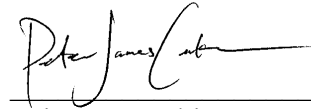
2 WHEREFORE, Plaintiff, on behalf of the State of California as the real party in interest,
3 prays for judgment and relief against Defendants, jointly and severally, as follows:

- 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: July 13, 2023

LAUBY, MANKIN & LAUBY LLP

9
10 BY:



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