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Electronically FILED by
Superior Court of California,
County of Los Angeles
10/16/2023 10:48 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Nunez, Deputy Clerk

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 LOS ANGELES

DAVID DELGADO, on behalf of the State of
California as the Real Party In Interest;

Plaintiff,

vs.

ELITE ROOTER, INC., a California
Corporation; ELITE ROOTER ORANGE,
INC., a California Corporation; ELITE
ROOTER SDN, INC., a California
Corporation; ELITE ROOTER PENINSULA,
INC., a California Corporation; ELITE
ROOTER PHOENIX, INC., a California
Corporation; ELITE ROOTER SAN JOSE,
INC., a California Corporation; ELITE
ROOTER SFV, INC., a California
Corporation; ELITE ROOTER SOUTH BAY,
INC., a California Corporation; ELITE
ROOTER FRESNO, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: 23STCV25139

**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

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

4 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

5 1. Plaintiff brings this action against his former employer(s), Elite Rooter, Inc., Elite
6 Rooter Orange, Inc., Elite Rooter SDN, Inc., Elite Rooter Peninsula, Inc., Elite Rooter Phoenix,
7 Inc., Elite Rooter San Jose, Inc., Elite Rooter SFV, Inc., Elite Rooter South Bay, Inc., Elite
8 Rooter Fresno, Inc., and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of
9 the State of California, seeking civil penalties under PAGA for Labor Code violations committed
10 against all current and former nonexempt employees employed by Defendants in California
11 within the last one year and 65-days prior to the filing of this action (hereinafter, the “Aggrieved
12 Employees”). Such violations include, but are not limited to, Defendants’ failure to pay all
13 wages owed, including minimum, regular, and overtime wages, failure to provide meal periods,
14 failure to provide rest breaks, failure to reimburse business expenses, failure to pay all vested
15 vacation owed upon separation of employment, failure to timely pay wages each period and upon
16 separation of employment, and failure to provide accurate itemized wage statements.

17 2. Plaintiff was employed by Defendants from approximately August 2021 through
18 June 2023.

19 3. Plaintiff alleges that the Aggrieved Employees were subjected to the same
20 policies, working conditions, and corresponding wage and hour violations to which Plaintiff was
21 subjected during employment.

22 4. Plaintiff and the Aggrieved Employees were not provided all minimum, regular,
23 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
24 worked. As one specific example, Plaintiff and the Aggrieved Employees were paid on a
25 commission-only basis. But, under this commission-only pay plan, Defendants failed to pay the
26

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 Aggrieved Employees at no less than the minimum wage for unpaid, on-duty time and tasks
2 performed for Defendants (*i.e.*, Aggrieved Employees did not receive any compensation for non-
3 commission-generating tasks or mandated paid rest breaks). And Defendants did not pay any
4 overtime compensation despite that the Aggrieved Employees frequently worked in excess of 8
5 hours per day and 40 hours per week.

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

15 6. Defendants also failed to provide Plaintiff and the Aggrieved Employees with 10
16 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated
17 by California law. Defendants did not schedule rest breaks for Plaintiff and the Aggrieved
18 Employees, the Aggrieved Employees were unable to leave the premises for rest breaks, and the
19 Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks
20 due to being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff
21 and the Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit
22 additional mandated rest breaks. Furthermore, Plaintiff and the Aggrieved Employees were
23 denied paid rest breaks by virtue of Defendants' policy that only paid on a commission basis. As
24 Plaintiff and the Aggrieved Employees could not generate commission compensation during a
25 rest break, Plaintiff and the Aggrieved Employees were illegally denied paid rest breaks.

26 7. Moreover, at all relevant times, Defendants required Plaintiff and the Aggrieved
27 Employees to incur necessary business-related expenses and costs without reimbursement,
28 including, but not limited to, acquiring and maintaining cellular phones (including related data

1 plans) and tools to perform their tasks for Defendants.

2 8. Also, at all relevant times, Defendants utilized a policy and practice through
3 which Plaintiff and the Aggrieved Employees accrued vacation and/or paid time off hours
4 (collectively, “vacation hours”). California law, specifically Labor Code § 227.3, requires
5 Defendants to pay all accrued and unused vacation hours upon separation of employment at the
6 final rate of pay. However, Defendants failed to pay all accrued and unused vacation hours to
7 the Aggrieved Employees upon separation of employment. And, for vacation hours that
8 Defendants *did* pay, Defendants failed to calculate and pay for said hours at the “final rate” of
9 pay as required by Labor Code § 227.3 (the final rate of pay for the Aggrieved Employees was
10 often higher than the base rate due to other nondiscretionary compensation, yet Defendants failed
11 to calculate the correct rate to pay all vested vacation wages due and owing).

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

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

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

24 12. At all material times, Defendants and DOES 1 through 20 were and/or are the
25 Aggrieved Employees’ employers or persons acting on behalf of the Aggrieved Employees’
26 employer, within the meaning of California Labor Code § 558, who violated or caused to be
27 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
28 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each

underpaid employee as set forth in Labor Code § 558 and under California law.

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

II. JURISDICTION

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

III. VENUE

15. Venue as to each Defendant is proper in this Court pursuant to Code of Civil Procedure § 395(a) because: Defendants transact business in Los Angeles County, the unlawful acts alleged herein have a direct effect on the Aggrieved Employees in Los Angeles County, Defendants employed or employ the Aggrieved Employees Los Angeles County, and the alleged violations occurred in Los Angeles County. *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069, 1075 ("venue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred.").

IV. PARTIES

Plaintiff

16. Plaintiff and PAGA Representative David Delgado was employed by Defendants from approximately August 2021 through June 2023.

Defendants

17. Plaintiff is informed and believes and thereon alleges that Defendant Elite Rooter, Inc. is a California corporation authorized to and doing business in Los Angeles County and is or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable periods.

18. Plaintiff is informed and believes and thereon alleges that Defendant Elite Rooter Orange, Inc. is a California corporation authorized to and doing business in Los Angeles County and is or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable

1 periods.

2 19. Plaintiff is informed and believes and thereon alleges that Defendant Elite Rooter
3 SDN, Inc. is a California corporation authorized to and doing business in Los Angeles County
4 and is or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable
5 periods.

6 20. Plaintiff is informed and believes and thereon alleges that Defendant Elite Rooter
7 Peninsula, Inc. is a California corporation authorized to and doing business in Los Angeles
8 County and is or was the legal employer of Plaintiff and the Aggrieved Employees during the
9 applicable periods.

10 21. Plaintiff is informed and believes and thereon alleges that Defendant Elite Rooter
11 Phoenix, Inc. is a California corporation authorized to and doing business in Los Angeles County
12 and is or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable
13 periods.

14 22. Plaintiff is informed and believes and thereon alleges that Defendant Elite Rooter
15 San Jose, Inc. is a California corporation authorized to and doing business in Los Angeles
16 County and is or was the legal employer of Plaintiff and the Aggrieved Employees during the
17 applicable periods.

18 23. Plaintiff is informed and believes and thereon alleges that Defendant Elite Rooter
19 SFV, Inc. is a California corporation authorized to and doing business in Los Angeles County
20 and is or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable
21 periods.

22 24. Plaintiff is informed and believes and thereon alleges that Defendant Elite Rooter
23 South Bay, Inc. is a California corporation authorized to and doing business in Los Angeles
24 County and is or was the legal employer of Plaintiff and the Aggrieved Employees during the
25 applicable periods.

26 25. Plaintiff is informed and believes and thereon alleges that Defendant Elite Rooter
27 Fresno, Inc. is a California corporation authorized to and doing business in Los Angeles County
28 and is or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable

1 periods.

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

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

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

22 29. Plaintiff is informed and believes and thereon alleges that, in conducting
23 themselves in the manner described herein, Defendants, and each of them, were acting in active
24 concert with one another such that the acts of each were and are fully attributable to the others in
25 all material respects. Plaintiff is further informed and believes that at all relevant times
26 Defendants and each of them are now, and at all material times herein mentioned were, the
27 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
28 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and

purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of their remaining co-Defendants.

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

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

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

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

33. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Sixty-five (65) days have elapsed since Plaintiff provided notice of the claims alleged herein without the LWDA assuming jurisdiction, so Plaintiff has fully satisfied his administrative prerequisites for bringing suit under the PAGA.

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1 **FIRST CAUSE OF ACTION**

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

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

4 *Against All Defendants*

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

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

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

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

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

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

25 40. 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 **SECOND CAUSE OF ACTION**

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

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

4 *Against All Defendants*

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

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

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

15 44. At all relevant times, Plaintiff and the Aggrieved Employees were required by
16 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, as a
17 result of the policies and practices described in this Complaint, Defendants failed to pay Plaintiff
18 and the Aggrieved Employees for all overtime hours worked.

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

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

27 47. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
28 Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because

1 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
2 week without proper overtime compensation.

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

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

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

13 **THIRD CAUSE OF ACTION**

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

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

16 *Against All Defendants*

17 51. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
18 alleged herein.

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

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

23 54. Labor Code § 512(a), in part, provides that employers, including Defendants, may
24 not employ an employee for a work period of more than five hours per day without providing an
25 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
26 except that if the total work period per day of the employee is no more than six hours, the meal
27 period may be waived by mutual consent of both the employer and the employee. Employers
28 may not employ an employee for a work period more than 10 hours per day without providing

1 the employee with a second meal period of not less than 30 minutes.

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

5 56. At all relevant times, and as a result of the policies and practices described in this
6 Complaint, Plaintiff and the Aggrieved Employees were denied the 30-minute meal periods to
7 which they were entitled.

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

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

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

21 60. 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 PROVIDE REST BREAKS**

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

4 *Against All Defendants*

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

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

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

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

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

19 66. At all relevant times, and as a result of the policies and practices described in this
20 Complaint, Plaintiff and the Aggrieved Employees were denied mandated rest breaks.

21 67. 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 68. As a result of the unlawful employment practices alleged herein, Plaintiff, on
26 behalf of the State of California, seeks the assessment of all applicable and available PAGA
27 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or
28 any other damages permitted under PAGA.

1 **FIFTH CAUSE OF ACTION**

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

3 (Labor Code § 2802)

4 *Against All Defendants*

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

7 70. 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 71. 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 72. At all relevant times herein mentioned, Defendants violated Labor Code § 2802(a)
14 when they failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a
15 direct consequence of employment with Defendants and/or under the direction of Defendants.

16 73. 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 **SIXTH CAUSE OF ACTION**

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

22 (Labor Code § 227.3)

23 *Against All Defendants*

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

26 75. Plaintiff and the Aggrieved Employees were employees of Defendants who did
27 not receive proper protections and benefits of the laws governing the payment of vested vacation
28 time and/or paid time off upon separation of employment.

1 76. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
2 vacation, paid time off, or compensated time off policy must, upon an employee's separation
3 from employment, pay to the employee all vested but unused vacation and/or paid time off at her
4 final rate of pay.

5 77. At all relevant times, and as a result of the policies and practices described in this
6 Complaint, Defendants violated Labor Code § 227.3 when they failed to pay the Aggrieved
7 Employees for all accrued and unused vacation hours to the Aggrieved Employees upon
8 separation of employment and, moreover, failed to calculate and pay for said hours at the "final
9 rate" of pay as required by Labor Code § 227.3.

10 78. 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 **SEVENTH CAUSE OF ACTION**

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

16 (Labor Code § 204)

17 *Against All Defendants*

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

20 80. Plaintiff and the Aggrieved Employees are and/or were "non-exempt" employees
21 of Defendants who did not receive proper protections and benefits of the laws regarding the
22 timing of payment of wages each period.

23 81. Labor Code § 204(a) states that all wages earned by a person are due and payable
24 twice during each calendar month, and further states that wages earned during the first through
25 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
26 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
27 the following month.
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1 82. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall
2 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
3 the wages are paid not more than seven calendar days following the close of the payroll period.”

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

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

12 **EIGHTH CAUSE OF ACTION**

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

14 (Labor Code §§ 201 – 203)

15 *Against All Defendants*

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

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

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

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

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

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

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

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

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

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

17 **NINTH CAUSE OF ACTION**

18 **PAGA ASSESSMENT FOR**

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

20 (Labor Code § 226)

21 *Against All Defendants*

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

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

27 97. Labor Code § 226(a) requires an employer to provide its employees with itemized
28 wage statements accurately stating gross wages earned, all deductions, net wages earned, the

1 inclusive dates of the pay period, the employee’s name and the last four digits of his or her
2 Social Security number (or employee identification number), the name and address of the legal
3 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee.

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

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

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

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

27 102. As a result of the unlawful employment practices alleged herein, Plaintiff, on
28 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.

VI. PRAYER FOR RELIEF

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

1. For the assessment of all remedies and/or penalties available under the PAGA;
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: October 16, 2023

LAUBY, MANKIN & LAUBY LLP

BY:



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