

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Misty M. Lauby, Esq. [CSB No. 243009]
misty@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 RIVERSIDE

BEATRICE OLMOS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

BRISTOL HOSPICE – INLAND VALLEY,
LLC, a Delaware Limited Liability Company;
BRISTOL HOSPICE – CALIFORNIA, LLC,
a Utah Limited Liability Company; BRISTOL
HOSPICE – COACHELLA VALLEY, LLC,
a Delaware Limited Liability Company;
BRISTOL HOSPICE – INLAND EMPIRE,
LLC, a Delaware Limited Liability Company;
BRISTOL HOSPICE – SACRAMENTO,
LLC, a Utah Limited Liability Company;
BRISTOL HOSPICE – SAN DIEGO, LLC, a
Delaware Limited Liability Company;
BRISTOL HOSPICE – SAN JOSE, LLC, a
Delaware Limited Liability Company;
BRISTOL HOSPICE – SIMI VALLEY, LLC,
a Delaware Limited Liability Company;
BRISTOL HOSPICE – STOCKTON, LLC, a
Utah Limited Liability Company; and DOES
1 through 10, inclusive;

Defendants.

Case No.: ~~CVRI 2306712~~

**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 Timely Pay Wages Each Period;
- (7) Failure to Timely Pay Final Wages;
- (8) Failure to Provide Accurate Itemized Wage Statements; and

1 Plaintiff Beatrice Olmos (“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 her employers, Bristol Hospice – Inland Valley,
6 LLC, Bristol Hospice – California, LLC, Bristol Hospice – Coachella Valley, LLC; Bristol Hospice –
7 Inland Empire, LLC; Bristol Hospice – Sacramento, LLC; Bristol Hospice – San Diego, LLC, Bristol
8 Hospice – San Jose, LLC; Bristol Hospice – Simi Valley, LLC, Bristol Hospice – Stockton, LLC
9 and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of the State of
10 California, seeking civil penalties under PAGA for Labor Code violations committed against all
11 current and former nonexempt employees employed by Defendants in California within the last
12 one year and 65-days prior to the filing of this action (hereinafter, the “Aggrieved Employees”).
13 Such violations include, but are not limited to, Defendants’ failure to pay all wages owed,
14 including minimum, regular, and overtime wages, failure to provide meal periods, failure to
15 provide rest breaks, failure to reimburse business expenses, failure to timely pay wages each
16 period and upon separation of employment, and failure to provide accurate itemized wage
17 statements.

18 2. Plaintiff has been employed by Defendants from approximately November 2019
19 through present.

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

23 4. At all relevant times, Plaintiff and the Aggrieved Employees performed various
24 duties for Defendants as employees that provided nursing and/or medical services in patients’
25 homes or other facilities in California. However, Plaintiff and the Aggrieved Employees were
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 not provided all minimum and overtime wages due to Defendants' failure to accurately record
2 and compensate for all hours worked. For instance, at all relevant times, Plaintiff and the
3 Aggrieved Employees were subjected to violations for: (1) instances when Plaintiff and the
4 Aggrieved Employees did not receive minimum or regular wages for all hours worked, and (2)
5 instances when Plaintiff and the Aggrieved Employees worked in excess of 8 and/or 12 hours per
6 day and/or 40 hours per week yet were not paid proper overtime or double-time compensation.

7 5. 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 the Company, (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.

14 6. Defendants also failed to provide Plaintiff and the Aggrieved Employees with 10
15 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated
16 by California law. Defendants did not schedule rest breaks for Plaintiff and the Aggrieved
17 Employees, the Aggrieved Employees were not allowed freedom to be truly "off duty" for rest
18 breaks, and the Aggrieved Employees were often not authorized and/or permitted to take
19 mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on
20 occasions when Plaintiff and the Aggrieved Employees worked longer shifts, Defendants failed
21 to authorize and/or permit mandated third rest breaks.

22 7. Also, Defendants required Plaintiff and the Aggrieved Employees to incur
23 substantial business-related expenses and costs without reimbursement. For example,
24 Defendants required Plaintiff and the Aggrieved Employees to use personal cell phones to carry
25 out their duties for Defendants without reimbursement.

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

1 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Aggrieved
2 Employees at the time their employment ended with Defendants, including, but not limited to
3 minimum, regular, and overtime wages, wage premiums, sick wages, among others.

4 9. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
5 statements that as required by and in compliance with the requirements of Labor Code § 226(a).

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

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

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

21 **II. JURISDICTION**

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

24 **III. VENUE**

25 14. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
26 Procedure § 395(a). Defendants transact business in Riverside County and the unlawful acts
27 alleged herein have a direct effect on Plaintiff and the Aggrieved Employees in Riverside
28 County. Furthermore, Defendants employed or employ Plaintiff and/or Aggrieved Employees in

1 Riverside County.

2 **IV. PARTIES**

3 **Plaintiff**

4 15. Plaintiff and Aggrieved Employee Beatrice Olmos was employed by Defendants
5 from approximately November 2019 through present and performed work for Defendants in
6 California.

7 **Defendants**

8 16. Plaintiff is informed and believes and thereon alleges that Defendant Bristol
9 Hospice – Inland Valley, LLC is a Utah corporation with its principal executive office in Salt
10 Lake City, Utah and is and/or was the legal employer of Plaintiff and the Aggrieved Employees
11 during the applicable statutory periods.

12 17. Plaintiff is informed and believes and thereon alleges that Defendant Bristol
13 Hospice – California, LLC is a Utah corporation with its principal executive office in Merced,
14 California, and is and/or was the legal employer of Plaintiff and the Aggrieved Employees
15 during the applicable statutory periods.

16 18. Plaintiff is informed and believes and thereon alleges that Defendant
17 Bristol Hospice – Coachella Valley, LLC: is a Delaware corporation with its principal executive
18 office in Rancho Mirage, California, and is and/or was the legal employer of Plaintiff and the
19 Aggrieved Employees during the applicable statutory periods.

20 19. Plaintiff is informed and believes and thereon alleges that Defendant Bristol
21 Hospice – Sacramento, LLC is a Utah corporation with its principal executive office in Salt Lake
22 City, Utah, and is and/or was the legal employer of Plaintiff and the Aggrieved Employees
23 during the applicable statutory periods.

24 20. Plaintiff is informed and believes and thereon alleges that Defendant Bristol
25 Hospice – San Diego, LLC is a Delaware corporation with its principal executive office in Salt
26 Lake City, Utah, and is and/or was the legal employer of Plaintiff and the Aggrieved Employees
27 during the applicable statutory periods.

1 21. Plaintiff is informed and believes and thereon alleges that Defendant Bristol
2 Hospice – San Jose, LLC is a Delaware corporation with its principal executive office in Salt
3 Lake City, Utah, and is and/or was the legal employer of Plaintiff and the Aggrieved Employees
4 during the applicable statutory periods.

5 22. Plaintiff is informed and believes and thereon alleges that Defendant Bristol
6 Hospice – Simi Valley, LLC is a Delaware corporation with its principal executive office in Salt
7 Lake City, Utah, and is and/or was the legal employer of Plaintiff and the Aggrieved Employees
8 during the applicable statutory periods.

9 23. Plaintiff is informed and believes and thereon alleges that Defendant Bristol
10 Hospice – Stockton, LLC is a Utah corporation with its principal executive office in Pleasanton,
11 California, and is and/or was the legal employer of Plaintiff and the Aggrieved Employees
12 during the applicable statutory periods.

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

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

27 26. Furthermore, Plaintiff is informed and believes and thereon alleges that
28 Defendants, and each of them, are an integrated enterprise and should be treated as a single

1 employer because these entities share an interrelation of operations, with common human
2 resources and personnel policies and shared common offices and facilities. Additionally,
3 Defendants also have a shared website, common management, centralized control of labor
4 operations, and common ownership or financial control.

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

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

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

23 29. Plaintiff is an “aggrieved employee” under the PAGA as she was employed by
24 Defendants during the applicable statutory period and suffered one or more of the Labor Code
25 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
26 action filed on behalf of the State of California and for violations committed against the
27 Aggrieved Employees.
28

30. 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 she, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

31. 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. Now that sixty-five (65) days have elapsed since Plaintiff provided notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged, Plaintiff has fully satisfied her administrative prerequisites for bringing suit under the PAGA.

FIRST CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

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

Against All Defendants

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

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

34. Plaintiff and the Aggrieved Employees were not provided proper minimum wages due to Defendants' failure to accurately record and compensate for all hours worked.

35. As a result of this policy and practice, Plaintiff and the Aggrieved Employees were required to perform off-the-clock work that Defendants either knew or should have known they were performing.

36. Furthermore, Plaintiff was not provided proper minimum and overtime wages due to the Company's failure to accurately record and compensate for all hours worked. For

1 instance, the Company utilized a policy and practice of automatically deducting 30 minutes from
2 the hours and corresponding wages of Plaintiff for meal periods, even on the occasions when she
3 did not receive an off-duty meal period. On other occasions where the time records reflected
4 noncompliant meals, the Company would alter time punches to reflect a full 30 minute off-the-clock
5 lunch. Therefore, this resulted in unpaid minimum wages and overtime wages on each such
6 occasion.

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

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

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

17 40. 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 **SECOND CAUSE OF ACTION**

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

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

24 *Against All Defendants*

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

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

1 43. 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 44. 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 45. Additionally, Defendants frequently required Plaintiff and the Aggrieved
12 Employees to work in excess of 8 and/or 12 hours per day and/or 40 hours per workweek
13 without paying proper overtime and double-time compensation.

14 46. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
15 Aggrieved Employees for all overtime hours worked.

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

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

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

26 50. As a result of the unlawful employment practices alleged herein, Plaintiff, on
27 behalf of the State of California, seeks the assessment of all applicable and available PAGA
28 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

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

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

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

54. 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.

55. 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.

56. 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 period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated second

1 meal periods for shifts in excess of 10 hours.

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

6 58. At all relevant times herein, Defendants failed to provide Plaintiff and the
7 Aggrieved Employees all mandated meal periods and failed to pay wage premiums in lieu of
8 mandated meal or rest periods, thereby receiving an economic benefit.

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

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

19 **FOURTH CAUSE OF ACTION**

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

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

22 *Against All Defendants*

23 61. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
24 alleged herein.

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

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

1 64. 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 65. 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 his regular rate of compensation for each day that the rest period is not provided.

9 66. 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.

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

21 68. At all relevant times herein, Defendants failed to provide Plaintiff and the
22 Aggrieved Employees all mandated rest breaks and failed to pay wage premiums in lieu of
23 mandated rest periods, thereby receiving an economic benefit.

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

70. 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.

FIFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

Against All Defendants

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

72. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing reimbursement of business expenses.

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

74. At all relevant times herein mentioned, as a condition of employment, Defendants required Plaintiff and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining a smart phone and related monthly data plan to communicate with Defendants via phone and text message.

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

76. At all relevant times herein, Defendants failed to reimburse the Aggrieved Employees, including Plaintiff, for expenses incurred while discharging duties to Defendants, thereby receiving an economic benefit.

77. 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.

SIXTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

Against All Defendants

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

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

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

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

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

83. 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.

SEVENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201 – 203)

Against All Defendants

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

85. 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 timing and payment of wages.

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

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

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

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

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

91. 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.

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

5 **EIGHTH CAUSE OF ACTION**

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

7 (Labor Code § 226)

8 *Against All Defendants*

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

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

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

20 96. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
21 and the Aggrieved Employees because Defendants failed to provide any document that could
22 constitute a wage statement within the meaning of Labor Code § 226.

23 97. Furthermore, Defendants violate Labor Code § 226(a) every pay period with
24 respect to Plaintiff and the Aggrieved Employees due to violations including: failure to
25 accurately state total hours worked (for example, the wage statements failed to accurately reflect
26 total compensable hours); failure to accurately state gross wages earned, all deductions, and net
27 wages earned (due to, for example, the failure to pay all required minimum and overtime wages);
28 failure to state the start and end dates of the pay period; failure to state the applicable hourly rates

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

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

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

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

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

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1 **VI. PRAYER FOR RELIEF**

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

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

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8 Dated: December 14, 2023

LAUBY, MANKIN & LAUBY LLP

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10 BY:

 

Brian J. Mankin, Esq.
Misty M. Lauby, Esq.
Attorneys for Plaintiff