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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

JOSHUA TRCKA, on behalf of the State of
California as the Real Party In Interest;

Plaintiff,

vs.

ROTOCO, LLC, a California Limited
Liability Company; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: **CVRI 2306917**

**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;
- (7) Failure to Timely Pay Final Wages;
- (8) Failure to Provide Accurate Itemized Wage Statements; and
- (9) Failure to Maintain Records

1 Plaintiff Joshua Trcka (“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.

4 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

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

15 2. Plaintiff was employed by Defendants from approximately April through August 2023.

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

20 4. Plaintiff and the Aggrieved Employees were not provided all minimum, regular, and overtime wages due to Defendants’ failure to accurately record and compensate for all hours worked. As one specific example, Plaintiff and the Aggrieved Employees were paid on a commission-only basis. But, under this commission-only pay plan, Defendants failed to pay the Aggrieved Employees at no less than the minimum wage for unpaid, on-duty time and tasks performed for Defendants (*i.e.*, Aggrieved Employees did not receive any compensation for non-

27 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 commission-generating tasks or mandated paid rest breaks). And Defendants did not pay any
2 overtime compensation despite that the Aggrieved Employees frequently worked in excess of 8
3 hours per day and 40 hours per week.

4 5. Plaintiff and the Aggrieved Employees were also denied proper minimum,
5 regular, and overtime wages due to Defendants' other practices that violated California law,
6 including: (1) not paying the Aggrieved Employees for all compensable drivetime while
7 traveling between jobs during the workday, (2) subjecting the Aggrieved Employees to an "auto-
8 deduct" policy where Defendants altered timekeeping records to reflect a 30-minute meal period
9 for Aggrieved Employees despite that no such meal period was taken (thus illegally reducing
10 compensable time by the amount of time under the "auto-deduct" practice), (3) requiring the
11 Aggrieved Employees to remain on call and/or on controlled standby status between jobs during
12 the workday without any compensation, and (4) failing to pay required split shift premiums.

13 6. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
14 Aggrieved Employees. At all relevant times, Plaintiff and the Aggrieved Employees were paid
15 on an hourly basis plus additional earned nondiscretionary compensation. However, on the
16 occasions when Plaintiff and the Aggrieved Employees worked overtime hours and received
17 additional earned compensation during the same workweek, Defendants failed to include these
18 amounts in the calculations for the regular rate of pay – in violation of California law.

19 7. Plaintiff and the Aggrieved Employees were also denied 30-minute off-duty meal
20 periods, as mandated by California law. As a result of Defendants' policies and practices, the
21 Aggrieved Employees were subjected to meal period violations when they were: (1) unable to
22 take a meal period due to workload, (2) forced to take an on-duty meal period while under the
23 control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal
24 period after the 5th hour of work, and (5) not provided mandated second meal periods for shifts
25 in excess of 10 hours. Moreover, Defendants failed to record or keep accurate information
26 regarding when Plaintiff and the Aggrieved Employees took mandated meal periods, in violation
27 of the applicable IWC Wage Order § 7(A)(3).
28

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

12 9. Also, Defendants required Plaintiff and the Aggrieved Employees to incur
13 substantial business-related expenses and costs to carry out their duties for Defendants without
14 reimbursement without reimbursement. For example, Plaintiff and the Aggrieved Employees
15 were required to provide a cellular phone and their own tools to carry out their tasks for
16 Defendants, yet Defendants did not reimburse the Aggrieved Employees for such expenses.

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

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

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

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

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

12 **II. JURISDICTION**

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

15 **III. VENUE**

16 16. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
17 Procedure § 395(a). Defendants transact business in Riverside County, the unlawful acts alleged
18 herein have a direct effect on Plaintiff and the Aggrieved Employees in Riverside County, and
19 Defendants employed or employ Aggrieved Employees in Riverside County.

20 **IV. PARTIES**

21 **Plaintiff**

22 17. Plaintiff and PAGA Representative Joshua Trcka was employed by Defendants
23 from approximately April through August 2023 and worked for Defendants in Riverside County.

24 **Defendants**

25 18. Plaintiff is informed and believes and thereon alleges that Defendant RotoCo,
26 LLC, is a California limited liability company that maintains operations and employs the
27 Represented Employees throughout California, including Riverside County.
28

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

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

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

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

1 their remaining co-Defendants.

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

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

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

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

21 26. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
22 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
23 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
24 the facts and theories to support the alleged violations. Sixty-five (65) days have elapsed since
25 Plaintiff provided notice of the claims alleged herein without the LWDA assuming jurisdiction,
26 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 27. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 28. 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 29. 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 30. 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 31. 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 32. 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 33. 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 34. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 35. 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 36. Labor Code § 204 requires that the employer timely pay all overtime wages to its
10 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
11 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
12 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 37. 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 38. 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 39. 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 40. 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.

41. 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

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

43. 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.

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

45. 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.

46. 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.

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

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

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

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

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

18 **FOURTH CAUSE OF ACTION**

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

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

21 *Against All Defendants*

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

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

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

1 55. 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 56. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
7 Order, Defendants shall pay Plaintiff and the Aggrieved Employees one additional hour of pay at
8 their regular rate of compensation for each day that the rest period is not provided.

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

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 rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
14 one additional hour of compensation in lieu thereof.

15 59. 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 **FIFTH CAUSE OF ACTION**

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

21 (Labor Code § 2802)

22 *Against All Defendants*

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

25 61. 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 reimbursement of
27 business expenses.
28

62. 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.

63. At all relevant times herein mentioned, 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.

64. 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

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

66. 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.

67. 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.

68. 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."

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

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

9 **SEVENTH CAUSE OF ACTION**

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

11 (Labor Code §§ 201 – 203)

12 *Against All Defendants*

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

15 72. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
16 who did not receive proper protections and benefits of the laws governing the timing and
17 payment of wages.

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

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

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

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

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

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

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

10 80. 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 **EIGHTH CAUSE OF ACTION**

15 **PAGA ASSESSMENT FOR**

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

17 (Labor Code § 226)

18 *Against All Defendants*

19 81. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
20 alleged herein.

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

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

1 corresponding number of hours worked at each hourly rate by the employee.

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

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

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

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

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

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1 **NINTH CAUSE OF ACTION**

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

3 (Labor Code § 1174, *et seq.*; IWC Wage Order § 6(A) or § 7(A))

4 *Against All Defendants*

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

7 90. Labor Code § 1174 requires employers to keep payroll records showing the hours
8 worked daily by and the wages paid to each employee “for not less than three years.” And the
9 applicable IWC Wage Order, at either § 6(A) or § 7(A) [depending on which Order applies],
10 requires that employers keep “accurate information with respect to each employee” including,
11 but not limited to: time records showing when the employee begins and ends each work period,
12 whether an employee took a meal period and when it occurred, daily hours worked, total wages
13 paid each period, and total hours worked during the period and the applicable rates of pay.

14 91. Here, Defendants failed to maintain records for each Aggrieved Employee as
15 required by Labor Code § 1174.

16 92. 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 **VI. PRAYER FOR RELIEF**

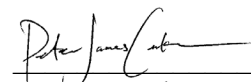
21 WHEREFORE, Plaintiff, on behalf of the State of California as the real party in interest,
22 prays for judgment and relief against Defendants, jointly and severally, as follows:

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

26 Dated: December 26, 2023

LAUBY, MANKIN & LAUBY LLP

27 BY:


Peter J. Carlson, Esq.
Attorneys for Plaintiff