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

CLARISSA CABRERA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

AETNA INTERNATIONAL, INC., a
California Corporation; CVS PHARMACY,
INC., a Rhode Island Corporation; and DOES
1 through 20, inclusive;

Defendants.

Case No.: CVRI2305803
*[Assigned to Hon. Harold W. Hopp, Dept 1,
for all purposes]*

FIRST AMENDED COMPLAINT

**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 and/or Make
Available Meal Periods;
- (4) Failure to Provide Rest Periods;
- (5) Failure to Reimburse Business
Expenses;
- (6) Failure to Timely Pay Wages Each
Period;
- (7) Failure to Timely Pay Final Wages; and
- (8) Failure to Provide Accurate Itemized
Wage Statements.

Complaint filed: October 30, 2023

1 Plaintiff Clarissa Cabrera (“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 former employer, Defendants Aetna
6 International, Inc. and DOES 1 through 10, (collectively, the “Defendants”) on behalf of the
7 State of California, seeking civil penalties under PAGA for Labor Code violations committed
8 against all current and former nonexempt employees employed by Defendants in California
9 within the last one year and 65-days prior to the filing of this action (hereinafter, the “Aggrieved
10 Employees”). Such violations include, but are not limited to, failure to pay all wages owed,
11 including minimum, regular, overtime wages, failure to provide and/or make available meal
12 periods; failure to authorize and permit rest periods; failure to reimburse business expenses,
13 failure to timely pay final wages, and failure to provide accurate itemized wage statements.

14 2. Plaintiff Clarissa Cabrera was employed by Defendants as a non-exempt
15 employee from approximately May 2022 through August 21, 2023.

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

19 4. During the relevant statutory period, Plaintiff and the Aggrieved Employees who
20 worked remotely were required to start up their computer systems and to have all working
21 platforms and applications/software open prior to clocking in for work. This daily startup process
22 took Plaintiff and the Aggrieved Employees anywhere between 5 and 10 minutes. Moreover, at
23 the end of shifts, they were required to perform additional computer log out procedures after
24 clocking out. Nevertheless, this time spent starting up and logging off their systems, the platform
25 and applications they used was never recorded nor compensated by the Defendants, as Defendants
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”).

specifically mandated those tasks were to be performed *prior to clocking in or after clocking out*. This 5-to-10-minute startup process occurred at the beginning and end of every single shift, during the relevant statutory period.

5. At all relevant times, Defendants utilized a rounding policy and practice that routinely undercompensated the Aggrieved Employees and resulted in a net benefit to Defendants. In other words, Defendants' rounding policy was not neutral and systematically undercompensated Plaintiff and the Aggrieved Employees.

6. Moreover, throughout Plaintiff's employment she was subjected to Defendants' mandatory strict call quotas which had to be met. As a result of Defendants' mandatory quota policies, (imposed and daily supervised by managers and supervisors), Plaintiff and Aggrieved Employees routinely worked through or missed rest and meal break periods altogether. At no time did Plaintiff ever validly waive her meal break periods.

7. These missed and on-duty rest and meal breaks were not recorded nor compensated by Defendants. Defendants' operational priority and focus was/is on maintaining, tracking and recording their employees' quotas. Maintaining accurate records of the actual hours the Plaintiff and the Aggrieved Employees were working and paid was of far lesser concern, let alone the maintenance of accurate record keeping with regard to missed and non-compliant rest and meal breaks periods and premium pay they owed their employees in lieu thereof.

8. Despite Defendants' full knowledge that their operational policies and procedures effectively impeded their nonexempt employees from taking a rest break after working for four hours or a major fraction thereof, or from taking a duty-free meal break of 30 minutes after the fifth hour of labor worked, Defendants did not pay Plaintiff or the Aggrieved Employees, premium pay to which they were lawfully entitled each time they were not provided with their breaks. Nor did or have Defendants compensated them for every hour they actually worked during those rest and meal break periods.

9. The logistics of Plaintiff and the Aggrieved Employees job necessitated cell phone and internet function and services. However, Plaintiff and the Aggrieved Employees were daily using their personal cell phones and internet WI-FI services to log into Defendants'

1 computer platform, to communicate by telephone calls or texts with supervisors, colleagues and
2 account holders throughout the workday.

3 10. As stated, Plaintiff and a substantial number of the Aggrieved Employees were
4 never fully reimbursed (if at all) by Defendants for the personal cell phone and internet Wi-fi
5 expenses they necessarily incurred in the discharge of their job duties during the relevant statutory
6 period.

7 11. Plaintiff further alleges that Defendants engaged in the practice of failing to pay
8 all wages due and owing to Plaintiff and the Aggrieved Employees each pay period (Labor Code
9 § 204) and at the time employment ended with Defendants (Labor Code §§ 201 – 203),
10 including, but not limited to regular wages, minimum wages, overtime wages, among others.

11 12. Plaintiff also alleges that she and the Aggrieved Employees did not receive
12 accurate itemized wage statements that fully complied with the requirements of Labor Code §
13 226(a) due to violations including: failure to accurately state gross wages earned; failure to
14 accurately state total hours worked; failure to accurately state all deductions; failure to accurately
15 state net wages earned; and, failure to state all applicable hourly rates in effect during the pay
16 period and the corresponding number of hours worked at each hourly rate by the employee.

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

21 14. At all material times, Defendants and DOES 1 through 10 were and/or are
22 Aggrieved Employees' employers or persons acting on behalf of Aggrieved Employees'
23 employer, within the meaning of California Labor Code § 558, who violated or caused to be
24 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
25 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
26 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under
27 California law, including *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
28 Cal.App.4th 1112.

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

6 **II. JURISDICTION**

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

9 **III. VENUE**

10 17. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
11 Procedure §§ 395(a) and 395.5. Defendants transact business in Riverside County and the
12 unlawful acts alleged herein have a direct effect on Plaintiff and the Aggrieved Employees in
13 Riverside County. Furthermore, Defendants employed or employ Plaintiff and Aggrieved
14 Employees in Riverside County.

15 **IV. PARTIES**

16 **Plaintiff**

17 18. Plaintiff and Aggrieved Employee Clarissa Cabrera was employed by Defendants
18 from approximately May 2022 through August 2023 and performed work for Defendants in
19 Riverside County.

20 **Defendants**

21 19. Plaintiff is informed and believes and thereon alleges that Defendant Aetna
22 International, Inc., is a California company, is authorized to and doing business in Riverside
23 County, California, and is and/or was the legal employer of Plaintiff and the Aggrieved
24 Employees during the applicable statutory periods.

25 20. Plaintiff is informed and believes and thereon alleges that Defendant CVS
26 Pharmacy, Inc., is a Rhode Island corporation, is authorized to and doing business in Riverside
27 County, California, and is and/or was the legal employer of Plaintiff and the Aggrieved
28 Employees during the applicable statutory periods.

1 21. 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 22. Plaintiff is informed and believes and thereon alleges that she worked under the
9 joint direction and control of Defendants and that Defendants, and each of them, acted in all
10 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
11 business plan or policy in all respect pertinent hereto, and the acts of each Defendant are legally
12 attributable to the other Defendants. On information and belief, a unity of interest and ownership
13 between each Defendant exists such that all Defendants acted as a single employer of Plaintiff
14 and other similarly situated employees.

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

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

1 operations, and common ownership or financial control.

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

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

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

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

22 28. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
23 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
24 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
25 the facts and theories to support the alleged violations. Now that sixty-five (65) days have
26 elapsed since Plaintiff provided notice of the claims alleged herein without the LWDA assuming
27 jurisdiction over the claims alleged, Plaintiff has fully satisfied her administrative prerequisites
28 for bringing suit under the PAGA.

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 29. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 30. 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 31. At all relevant times, Plaintiff and the Aggrieved Employees were not provided
11 proper minimum wages due to Defendants' failure to accurately 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 32. In addition, Defendants utilized a rounding policy and practice that routinely
16 undercompensated the Aggrieved Employees and resulted in a net benefit to Defendants. In
17 other words, Defendants' rounding policy is not neutral and systematically undercompensates
18 Plaintiff and the Aggrieved Employees, leading to a failure to pay proper minimum wages.

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

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

25 35. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
26 Aggrieved Employees were entitled to be paid wages throughout the statutory period for each
27 hour worked, including proper minimum wages, yet Defendants chose not to pay them in
28 accordance thereto.

36. At all material times, Defendants DOES 1 through 10 were and/or are the employer of Plaintiff and the Represented Employees, or were persons acting on behalf of said employer(s), within the meaning of California Labor Code § 558, who violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California Labor Code regulating hours and days of work respectively.

37. 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.

SECOND CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

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

(Against All Defendants)

38. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

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

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

41. At all relevant times, Plaintiff and the Aggrieved Employees were required by Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to Defendants' failure to accurately record and compensate for all hours worked, as well as the non-neutral rounding policy described herein, Plaintiff and the Aggrieved Employees did not receive proper overtime compensation.

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

43. Plaintiff are informed and believe and thereon allege that Defendants intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

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

45. At all material times, Defendants DOES 1 through 10 were and/or are the employer of Plaintiff and the Aggrieved Employees or were persons acting on behalf of said employer(s), within the meaning of California Labor Code § 558, who violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California Labor Code regulating hours and days of work respectively.

46. 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)

47. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

48. 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.

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

3 50. Labor Code § 512(a), in part, provides that employers, including Defendants, may
4 not employ an employee for a work period of more than five hours per day without providing an
5 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
6 except that if the total work period per day of the employee is no more than six hours, the meal
7 period may be waived by mutual consent of both the employer and the employee. Employers
8 may not employ an employee for a work period more than 10 hours per day without providing
9 the employee with a second meal period of not less than 30 minutes.

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

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

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

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

27 55. On information and belief, Plaintiff and the Aggrieved Employees did not
28 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers

1 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
2 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
3 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
4 Employees to take meal periods in accordance with California law.

5 56. 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 **FOURTH CAUSE OF ACTION**

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

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

12 (*Against All Defendant*)

13 57. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
14 as if fully alleged herein.

15 58. 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 mandatory rest breaks.

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

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

24 61. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
25 Order, Defendants shall pay Plaintiff and the Aggrieved Employees one additional hour of pay at
26 his/her regular rate of compensation for each day that the rest period is not provided.

27 62. At all relevant times, Defendants also failed to provide Plaintiff and the
28 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major

1 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
2 Aggrieved Employees, the Aggrieved Employees were unable to leave the premises for breaks,
3 and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest
4 breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when the
5 Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit
6 mandated third rest breaks.

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

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

15 **FIFTH CAUSE OF ACTION**

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

17 (Labor Code § 2802)

18 (*Against All Defendants*)

19 65. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
20 as if fully alleged herein.

21 66. 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 reimbursement of
23 business expenses.

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

27 68. At all relevant times herein mentioned, as a condition of employment, Defendants
28 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.

69. 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.

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.

SIXTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

(Against All Defendants)

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

72. 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.

73. 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.

74. 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 75. 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 76. 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 77. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
14 as if fully alleged herein.

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

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

20 80. 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 81. 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 82. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
27 Employees with all wages due and owing upon separation of employment, including, but not
28 limited to, minimum, regular, overtime wages, as well as meal and rest period premiums, within

1 the time specified by Labor Code §§ 201 – 203.

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

6 **EIGHTH CAUSE OF ACTION**

7 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE**
8 **STATEMENTS**

9 (Labor Code § 226)

10 (*Against All Defendants*)

11 84. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
12 as if fully alleged herein.

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

16 86. Labor Code § 226(a) requires that employers furnish its employees with written
17 itemized wage statements, semimonthly or at the time of each payment of wages, that show the
18 gross wages earned, total hours worked, all deductions, net wages earned, and all applicable
19 hourly rates in effect during the pay period and the corresponding number of hours worked at
20 each hourly rate by the employee.

21 87. Defendants violates Labor Code § 226(a) every pay period with respect to
22 Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement to
23 Plaintiff and the Aggrieved Employees that complied with the requirements of Labor Code §
24 226(a) by failing to accurately state gross wages earned, failure to accurately state total hours
25 worked, failure to accurately state all deductions, failure to accurately state net wages earned,
26 and failure to state all applicable hourly rates in effect during the pay period and the
27 corresponding number of hours at each hourly rate by the employee.

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

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

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

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

18 **VI. PRAYER FOR RELIEF**

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

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

24
25 Dated: April 11, 2024

LAUBY, MANKIN & LAUBY LLP

26
27 BY: 

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

[illegible]

On April 18, 2024, I caused to be served the foregoing document(s) described as follows:

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[] Federal I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Tracie Chiarito, Declarant

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