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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

MAY 02 2024

BY MARIAH MORA
MARIAH MORA, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

ELIZABETH RAMIREZ, on behalf of all
Aggrieved Employees and the State of
California;

Plaintiff,

vs.

AVDC, LLC, an Ohio Limited Liability
Company; and DOES 1 through 20, inclusive;

Defendants.

CASE NO.:

CIV SB 2412419

**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 Timely Pay Wages;
- (6) Failure to Timely Pay Final Wages; and
- (7) Failure to Provide Accurate Itemized Wage Statements.

JURY TRIAL DEMANDED

1 Plaintiff Elizabeth Ramirez (“Plaintiff”), on behalf of herself and all other similarly
2 Aggrieved Employees and the State of California. hereby brings this Private Attorneys General
3 Act (“PAGA”) Representative Action Complaint (“Complaint”) against Defendants, as follows.¹

4 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

5 1. Plaintiff brings this action against her former employer, Defendants AVDC, LLC
6 and/or DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all current and
7 former non-exempt employees employed by Defendants in California within the last one year
8 and 65-days prior to the filing of this action (hereinafter, the “Aggrieved Employees”) and who
9 were subjected to violations of the California Labor Code stemming from Defendants’ failure to
10 pay minimum, regular, and overtime wages, failure to provide compliant meal periods and rest
11 breaks, failure to pay vested vacation upon separation of employment, failure to timely pay
12 wages each period, failure to timely pay final wages, and failure to provide accurate itemized
13 wage statements.

14 2. Plaintiff was employed by Defendants from approximately February 2022
15 through October 2023.

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

19 4. Plaintiff and the Aggrieved Employees were not provided all minimum, regular,
20 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
21 worked. As one such example, Defendants required Plaintiff and the Aggrieved Employees to
22 undergo mandatory security check screenings prior to clocking in for payroll purposes.
23 However, because this time was spent under Defendants’ control but before being allowed to
24 clock in, it was uncompensated in violation of California law and led to minimum and overtime
25 wage violations. *See Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law
26 “do[es] not allow employers to require employees to routinely work for minutes off the clock
27

28 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”).

without compensation”); see also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company’s control and where the tasks served the employer’s interests).

5. Also, at all relevant times, Defendants paid Plaintiff and the Aggrieved Employees on an hourly basis plus additional compensation in the form of shift differentials, nondiscretionary bonuses, and other payments. However, on the occasions when Plaintiff and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional nondiscretionary compensation during the workweek, Defendants failed to properly include these amounts in the calculations for the regular rate of pay. Therefore, Defendants failed to pay proper overtime compensation for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

6. Plaintiff and the Aggrieved Employees were also denied 30-minute off-duty meal periods, as mandated by California law, during their employment with Defendants. 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 Defendants, (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 a mandated second meal period on shifts in excess of 10 hours.

7. Similarly, Plaintiff and the Aggrieved Employees were not provided with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and Plaintiff and the Aggrieved Employees, Plaintiff and the Aggrieved Employees were unable to leave the premises for rest breaks, and Plaintiff and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break. As such, Plaintiff and other Aggrieved Employees were not provided rest period premiums for their missed or non-complaint rest periods

1 8. Moreover, on the occasions when Plaintiff and the Aggrieved Employees were
2 denied compliant meal periods and rest breaks, Defendants failed to pay the “premium” required
3 under Labor Code § 226.7.

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

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

12 11. At all material times, Defendants and DOES 1 through 20 were and/or are the
13 employer of Plaintiff and the Aggrieved Employees or were persons acting on behalf of said
14 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
15 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
16 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
17 subject to penalties for each underpaid employee as set forth in Labor Code § 558.

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

23 **II. JURISDICTION**

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

26 **III. VENUE**

27 14. Venue as to each Defendant is proper in this Court, pursuant to Code of Civil
28 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful

1 acts alleged herein have a direct effect on Plaintiff and the Aggrieved Employees in San
2 Bernardino County. Furthermore, Defendants employed or employ the Aggrieved Employees in
3 San Bernardino County and alleged violations therefore occurred in San Bernardino County.
4 Thus, venue is proper in San Bernardino County. See *Crestwood Behavioral Health, Inc. v.*
5 *Superior Court* (2021) 60 Cal.App.5th 1069, 1075 (“venue is proper in any county in which an
6 aggrieved employee worked and Labor Code violations allegedly occurred.”).

7 **IV. PARTIES**

8 **Plaintiff**

9 15. Plaintiff and PAGA Representative Elizabeth Ramirez was employed by
10 Defendants as a nonexempt employee from approximately February 2022 through October 2023.

11 **Defendants**

12 16. Plaintiff is informed and believes and thereon alleges that Defendant AVDC, LLC
13 is an Ohio limited liability company authorized to and doing business in San Bernardino County,
14 California, and is and/or was the legal employer of Plaintiff and the Aggrieved Employees
15 during the applicable statutory periods.

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

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

1 and other similarly situated employees.

2 19. Furthermore, Plaintiff is informed and believes and thereon alleges that
3 Defendants, and each of them, are joint employers for all purposes of Plaintiff and the Aggrieved
4 Employees and are an integrated enterprise and should be treated as a single employer because
5 these entities share an interrelation of operations, with common human resources and personnel
6 policies and shared common offices and facilities. Additionally, Defendants also have a shared
7 website, common management, a centralized control of labor operations, and common ownership
8 or financial control.

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

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

26 22. Additionally, Defendants DOES 11 through 20 are liable for PAGA civil penalties
27 under Labor Code § 558 as “other person(s)” who caused the wage violations among other
28 claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a

finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws or ‘pays or causes to be paid to any employee’ less than minimum wage, then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”) (internal citations omitted); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same).

V. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION
(Labor Code §§ 2698 – 2699.5)

23. Plaintiff is an “aggrieved employee” under the PAGA as she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil action filed on behalf of himself and all other similarly situated current and former aggrieved employees against whom one or more of the alleged violations was committed.

24. 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.

25. Pursuant to Labor Code § 2699.3(a), on or about February 14, 2024, 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)

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

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

4 28. At all relevant times, Plaintiff and the Aggrieved Employees were not provided
5 proper minimum wages due to Defendants' failure to accurately record and compensate for all
6 hours worked.

7 29. As one such example, Defendants required Plaintiff and the Aggrieved
8 Employees to undergo mandatory security check screenings prior to clocking in for payroll
9 purposes. However, because this time was spent under Defendants' control but before being
10 allowed to clock in, it was uncompensated in violation of California law and led to minimum and
11 overtime wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829
12 (California law "do[es] not allow employers to require employees to routinely work for minutes
13 off the clock without compensation"); see also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks
14 are compensable when employee is under company's control and where the tasks served the
15 employer's interests).

16 30. As a result of Defendants' policies or practices described above, Plaintiff and the
17 Aggrieved Employees were required to perform off-the-clock work that Defendants either knew
18 or should have known they were performing.

19 31. 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 32. 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 33. 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.

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

4 **SECOND CAUSE OF ACTION**

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

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

7 35. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
8 alleged herein.

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

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

17 38. At all relevant times, Plaintiff and the Aggrieved Employees were required by
18 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
19 the reasons discussed herein, Plaintiff and the Aggrieved Employees did not receive proper
20 overtime compensation.

21 39. At all relevant times, Plaintiff and the Aggrieved Employees were not provided
22 proper overtime wages due to Defendants' failure to accurately record and compensate for all
23 hours worked.

24 40. As one such example, Defendants required Plaintiff and the Aggrieved
25 Employees to undergo mandatory COVID-19 screening prior to clocking in for payroll purposes.
26 However, because this time was spent under Defendants' control but before being allowed to
27 clock in, it was uncompensated in violation of California law and led to minimum and overtime
28 wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law

1 “do[es] not allow employers to require employees to routinely work for minutes off the clock
2 without compensation”); see also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are
3 compensable when employee is under company’s control and where the tasks served the
4 employer’s interests).

5 41. Also, at all relevant times, Defendants paid Plaintiff and the Aggrieved
6 Employees on an hourly basis plus additional nondiscretionary compensation in the form of shift
7 differentials, bonuses, and other payments. However, on the occasions when Plaintiff and the
8 Aggrieved Employees worked in excess of 8 and/or 12 hours per day and/or 40 hours per week
9 and received additional nondiscretionary compensation during the workweek, Defendants failed
10 to properly include these amounts in the calculations for the regular rate of pay. Therefore,
11 Defendants failed to pay proper overtime compensation for the hours worked in excess of 8
12 and/or 12 per day and/or 40 per week.

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

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

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

23 **THIRD CAUSE OF ACTION**

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

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

26 45. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
27 alleged herein.
28

1 46. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
2 of Defendants who did not receive proper protections and benefits of the laws governing
3 mandatory meal periods.

4 47. Labor Code § 226.7 requires employers, including Defendants, to provide non-
5 exempt employees with meal periods as mandated by the Industrial Welfare Commission.

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

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

16 50. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
17 the 30-minute off-duty meal periods that they were entitled to under California law.

18 51. As a result of Defendants’ policies and practices, Plaintiff and the Aggrieved
19 Employees were subjected to meal period violations when they were: (1) unable to take a meal
20 period due to workload, (2) forced to take an on-duty meal period while under the control of
21 Defendants, (3) forced to take a shortened meal period, (4) forced to take a meal period after the
22 5th hour of work, and (5) not provided a mandated second meal period on shifts in excess of 10
23 hours.

24 52. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
25 Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff
26 and the Aggrieved Employees were not provided with all mandatory meal periods and
27 Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour of
28 compensation at the regular rate of pay in lieu thereof. *See Ferra v. Loews Hollywood Hotel,*

1 *LLC* (2021) 11 Cal.5th 858 (meal and rest premiums must be paid at the “regular rate”).

2 53. On information and belief, Plaintiff and the Aggrieved Employees did not
3 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
4 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
5 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
6 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
7 Employees to take meal periods in accordance with California law.

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

11 **FOURTH CAUSE OF ACTION**

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

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

14 55. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
15 alleged herein.

16 56. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
17 of Defendants who did not receive proper protections and benefits of the laws governing
18 mandatory rest breaks.

19 57. Labor Code § 226.7 requires employers, including Defendants, to provide rest
20 breaks to its non-exempt employees as mandated by Order of the Industrial Welfare
21 Commission.

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

27 59. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
28 Order, Defendants shall pay Plaintiff one additional hour of pay at her regular rate of

1 compensation for each day that the rest period is not provided.

2 60. At all relevant times, Plaintiff and the Aggrieved Employees were not provided
3 with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
4 mandated by California law. Defendants did not schedule rest breaks and Plaintiff and the
5 Aggrieved Employees, Plaintiff and the Aggrieved Employees were unable to leave the premises
6 for rest breaks, and Plaintiff and the Aggrieved Employees were often not authorized and/or
7 permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and
8 being overwhelmed by the hectic workload. Furthermore, on occasions when Plaintiff and the
9 Aggrieved Employees worked in excess of 10 hours in a shift, Defendants failed to authorize
10 and/or permit a third mandated rest break. As such, Plaintiff and other Aggrieved Employees
11 were not provided rest period premiums for their missed or non-complaint rest periods

12 61. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
13 Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff
14 and the Aggrieved Employees were not provided with all mandatory rest periods and Defendants
15 failed to pay Plaintiff and the Aggrieved Employees one additional hour of compensation in lieu
16 thereof at the regular rate of pay. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th
17 858 (meal and rest premiums must be paid at the “regular rate”).

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

21 **FIFTH CAUSE OF ACTION**

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

23 (Labor Code § 204)

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

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

65. 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.

66. 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.”

67. 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.

68. As a result of the unlawful employment practices alleged herein, Plaintiff 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

FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201–203)

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

70. 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.

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

72. 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.

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

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

7 75. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
8 wages due and owing to Plaintiff and the Aggrieved Employees upon separation of employment,
9 including, but not limited to, minimum, regular, and overtime wages, vacation wages, as well as
10 meal and rest period premiums.

11 76. Additionally, at all relevant times, Defendants failed to pay all mandated sick
12 wages owed to the Aggrieved Employees at the proper rate of pay.

13 77. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees
14 must be “calculated in the same manner as the regular rate of pay for the workweek in which the
15 employee uses paid sick time, whether or not the employee actually works overtime in that
16 workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be
17 “calculated by dividing the employee’s total wages, not including overtime premium pay, by the
18 employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

19 78. Here, Plaintiff and the Aggrieved Employees were compensated on an hourly
20 basis plus additional compensation in the form of shift differentials and/or nondiscretionary
21 compensation. However, on the occasions that the Aggrieved Employees took sick time and
22 received paid sick leave, Defendants only paid sick time at the base rate of pay (not factoring in
23 the additional compensation as required by Labor Code §§ 246(l)(1-2)), leading to unpaid wages
24 at the time of separation of employment.

25 79. Plaintiff alleges that, at all times material to this action, Defendants had a planned
26 pattern and practice of failing to timely pay Plaintiff and the Aggrieved Employees all wages due
27 and owing upon separation of employment as required by Labor Code §§ 201 and 202.
28

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

4 **SEVENTH CAUSE OF ACTION**

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

6 (Labor Code § 226)

7 81. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
8 alleged herein.

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

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

18 84. Defendants violates Labor Code § 226(a) every pay period with respect to
19 Plaintiff and the Aggrieved Employees due to violations including: failure to accurately state
20 total hours worked (the wage statements failed to accurately reflect the compensable hours spent
21 in temperature checks); failure to accurately state gross wages earned; failure to accurately state
22 all deductions; failure to accurately state net wages earned; failure to state the applicable hourly
23 rates (including the accurate overtime rate of pay); and failure to accurately state the
24 corresponding number of hours worked at each hourly rate.

25 85. Additionally, Defendants' wage statements directly violated Labor Code §
26 226(a)(9) each period because they failed to accurately state the applicable hourly rates in effect
27 during the pay period and the corresponding number of hours worked at each rate. Specifically,
28 Plaintiff and the Aggrieved Employees often received shift differentials for every hour worked at

1 a set rate of pay. These shift differentials were indisputably an “applicable hourly rate” in effect
2 during the periods when they were earned, yet Defendants’ wage statements failed to provide
3 any information regarding the rate of pay or number of hours worked at the shift differential
4 hourly rate – in direct violation of Labor Code § 226(a)(9).

5 86. Therefore, at all relevant times, Defendants violate Labor Code §§ 226(a) every
6 pay period with respect to Plaintiff and each and every one of the Aggrieved Employees because
7 Defendants’ wage statements failed to accurately state all information required by § 226(a).
8 And, unlike class action claims, PAGA claims need not meet the “injury” and “knowing and
9 intentional” violation requirements of § 226(e). See *Lopez v. Friant & Associates, LLC* (2017)
10 15 Cal.App.5th 773, 788 (“a plaintiff seeking civil penalties under PAGA for a violation of
11 section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements
12 of section 226(e)(1)”); *Lawson v. ZB, N.A.* (2017) 18 Cal.App.5th 705, 722 (“the scienter
13 requirement [of § 226(e)] has no application in a PAGA claim for violation of [§ 226(a)]”).

14 87. As a result of the Defendants’ violations of Labor Code § 226(a)(9), Plaintiff
15 seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code §
16 2699, and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under
17 PAGA, including the \$250 penalty per violation specified by Labor Code § 226.3. See *Raines v.*
18 *Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 (“Section 226.3 provides
19 the civil penalty for failure to comply” with Labor Code § 226).

20 **VI. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment and relief against Defendants, jointly and
22 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.

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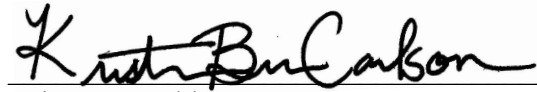
1 **VII. DEMAND FOR JURY TRIAL**

2 WHEREFORE, Plaintiff hereby demands a jury trial as to the First through Seventh
3 Causes of Action pled herein.
4

5 Dated: May 1, 2024

LAUBY. MANKIN & LAUBY LLP

6
7 BY:



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Attorneys for Plaintiff and Aggrieved
Employees