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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

SANDRA IBARRA, on behalf of the State of
California as the Real Party in Interest;

Plaintiff,

vs.

ATI RESTORATION, LLC., a Delaware
Limited Liability Company; ATI PAYROLL
SERVICES LLC, an Entity Unknown; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CVRI2401891

*[Assigned to Hon. Harold Hopp, Dept 1, for
all purposes]*

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT [Private
Attorneys General Act of 2004 (“PAGA”),
Lab. Code § 2698, et seq.]**

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Reimburse Bus. Expenses;
- (6) Failure to Pay Vested Vacation;
- (7) Failure to Timely Pay Wages (§ 204);
- (8) Failure to Timely Pay Final Wages; and
- (9) Failure to Provide Accurate Itemized
Wage Statements

1 Plaintiff Sandra Ibarra (“Plaintiff”) brings this Private Attorneys General Act (“PAGA”)
2 representative action, on behalf of the State of California as the real party in interest,¹ against
3 Defendants as follows.

4 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

5 1. Plaintiff brings this action against her former employer(s), ATI Restoration, LLC,
6 ATI Payroll Services LLC, and DOES 1 through 20, inclusive, (collectively, “Defendants”) on
7 behalf of the State of California, seeking civil penalties under PAGA for Labor Code violations
8 committed against all current and former nonexempt employees employed by Defendants in
9 California since April 9, 2023 (hereinafter the “Aggrieved Employees”). Such violations include,
10 but are not limited to, Defendants’ failure to pay all wages owed, including minimum, regular,
11 and overtime wages, failure to provide meal periods, failure to provide rest breaks, failure to
12 reimburse business expenses, failure to pay all vested vacation owed upon separation of
13 employment, failure to timely pay wages each period and upon separation of employment, and
14 failure to provide accurate itemized wage statements.

15 2. Plaintiff has standing to bring these claims because she meets the only two
16 requirements for standing to bring PAGA claims, namely that she: (1) was employed by
17 Defendants during the applicable period, and (2) was subjected to one or more of the violations
18 alleged herein. *See Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1120 (these are
19 the only requirements for PAGA standing: “The plaintiff must allege that he or she is (1)
20 someone who was employed by the alleged violator and (2) someone against whom one or more
21 of the alleged violations was committed”) (internal quotations omitted).

22 3. Additionally, Plaintiff brings these claims on behalf of the State of California, as
23 the proxy or agent of the state (*Adolph*, 14 Cal.5th at 1116), and further only pursues the
24 “representative PAGA claims” while explicitly not bringing any “individual” claims, as is
25 permitted under the holding of *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th
26

27 ¹ Because a PAGA action is aimed at deterring and punishing violations of the Labor Code, the
28 State of California “is always the real party in interest in the suit.” *Iskanian v. CLS Transp. of Los Angeles, LLC* (2014) 59 Cal.4th 348, 360; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 185 (all PAGA claims “are brought on the state’s behalf”).

1 533, 536 (“an employee who does not bring an individual claim against her employer may
2 nevertheless bring a PAGA action for herself and other employees of the company”); *see also*
3 *Johnson v. Maxim Healthcare Services, Inc.* (2021) 66 Cal.App.5th 924 (employee need not
4 bring an individual claim against her employer to have standing to pursue a PAGA claim; it is
5 sufficient to allege the employee suffered a Labor Code violation).

6 4. Plaintiff alleges on information and belief that the Aggrieved Employees were
7 subjected to the same policies, working conditions, and corresponding wage and hour violations
8 to which Plaintiff was subjected during employment.

9 5. Plaintiff and the Aggrieved Employees were not provided all minimum, regular,
10 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
11 worked. As one specific example, Plaintiff and the Aggrieved Employees were frequently
12 required to participate in afterhours (and off-the-clock) phone calls, emails, and/or text messages
13 with Defendants, without compensation. Similarly, Plaintiff and the Aggrieved Employees were
14 often required to report to work but were only permitted to clock in (and begin receiving
15 compensation) once a supervisor instructed them as to their job for the day and the appropriate
16 job code to enter into the timekeeping system. And, at the end of shifts, Plaintiff and the
17 Aggrieved Employees were often instructed to clock out but to then finish their daily tasks while
18 off-the-clock. These examples, among other violations, led to frequent and reoccurring unpaid
19 compensable time. *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law
20 “do[es] not allow employers to require employees to routinely work for minutes off the clock
21 without compensation”); *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable
22 when employee is under company’s control and where the tasks served the employer’s interests).

23 6. Also, at all relevant times, Defendants utilized a rounding policy and practice that
24 routinely undercompensated the Aggrieved Employees and resulted in a net benefit to
25 Defendants and a net loss for the Aggrieved Employees. In other words, Defendants’ rounding
26 policy is not neutral and results in systematic undercompensation for the Aggrieved Employees,
27 in violation of California law. *See’s Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th
28 889, 903 (rounding policy is illegal where it is not “neutral, both facially and as applied”).

Moreover, all underpayments caused by this rounding policy violate California law and lead to minimum, regular, and overtime wage violations under *Camp v. Home Depot U.S.A. Inc.*, (2022) 84 Cal. App. 5th 638, 660 (if an employer “can capture and has captured the exact time an employee has worked during a shift, the employer must pay the employee for ‘all the time’ worked”).

7. Additionally, Plaintiff and the Aggrieved Employees often worked more than 8 hours per day and/or 40 hours per week yet did not receive all required overtime compensation on such occasions. Further, Plaintiff and the Aggrieved Employees would often work at two or more base rates of pay in the same workweek. Yet, when the Aggrieved Employees worked overtime and worked at two or more base rates of pay in the same workweek, Defendants illegally paid overtime at the “rate-in-effect” method rather than using the correct “weighted average” method. See DLSE Manual § 49.2.6.2 (when an employee performs prevailing and non prevailing jobs during the same workweek, the company is required to pay overtime at the “weighted average” of the blended rate, averaging the normal base hourly rate and prevailing wage rate). Also, at all relevant times, Plaintiff and the Aggrieved Employees were compensated on an hourly basis plus additional earned compensation. However, on the occasions when the Aggrieved Employees worked overtime hours and received additional earned compensation during the same workweek, Defendants failed to properly include these amounts in the calculations for the regular rate of pay – in violation of California law.

8. Plaintiff and the Aggrieved Employees were also denied 30-minute off-duty meal periods, as mandated by California law. As a result of Defendants’ policies and practices, 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 mandated second meal periods for shifts in excess of 10 hours. And, for the instances when Defendants paid meal premiums for such violations, Defendants failed to pay them at the “regular rate” as required by Labor Code § 226.7. Moreover, Defendants failed to record or keep accurate information regarding when

1 Plaintiff and the Aggrieved Employees took mandated meal periods, in violation of the
2 applicable IWC Wage Order § 7(A)(3).

3 9. Defendants also failed to provide Plaintiff and the Aggrieved Employees with 10
4 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated
5 by California law. Defendants did not schedule rest breaks for Plaintiff and the Aggrieved
6 Employees, the Aggrieved Employees were unable to leave the job site for rest breaks, and the
7 Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks
8 due to being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff
9 and the Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit
10 additional mandated rest breaks.

11 10. Moreover, at all relevant times, Defendants required Plaintiff and the Aggrieved
12 Employees to incur necessary business-related expenses and costs without reimbursement,
13 including, but not limited to, cellular phone expenses and the cost to acquire and maintain
14 expensive tools to perform their tasks for Defendants, such as cordless power drills, along with
15 various other tools.

16 11. Also, at all relevant times, Defendants utilized a policy and practice through
17 which Plaintiff and the Aggrieved Employees accrued vacation and/or paid time off hours
18 (collectively, “vacation hours”). California law, specifically Labor Code § 227.3, requires
19 Defendants to pay all accrued and unused vacation hours upon separation of employment at the
20 final rate of pay. However, Defendants failed to pay all accrued and unused vacation hours to
21 the Aggrieved Employees upon separation of employment. And, for vacation hours that
22 Defendants *did* pay, Defendants failed to calculate and pay for said hours at the “final rate” of
23 pay as required by Labor Code § 227.3.

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

1 Employees at the time their employment ended with Defendants, including, but not limited to
2 minimum, regular, and overtime wages, wage premiums, vacation and sick wages, among others.

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

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

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

16 **II. JURISDICTION**

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

19 **III. VENUE**

20 17. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
21 Procedure § 395(a). Defendants transact business in Riverside County, the unlawful acts alleged
22 herein have a direct effect on Plaintiff and the Aggrieved Employees in Riverside County, and
23 Defendants employs/employed Aggrieved Employees in Riverside County. Notably, Plaintiff
24 performed work for Defendants in Moreno Valley, California, which is in Riverside County.

25 **IV. PARTIES**

26 **Plaintiff**

27 18. Plaintiff and PAGA Representative Sandra Ibarra was employed by Defendants
28 and performed work for Defendants in Riverside County.

1 **Defendants**

2 19. Plaintiff is informed and believes and alleges that Defendant ATI Restoration,
3 LLC, is a Delaware limited liability company authorized to and doing business in Riverside
4 County and is or was the legal employer of Plaintiff and the Aggrieved Employees during the
5 applicable periods.

6 20. Plaintiff is informed and believes and alleges that Defendant ATI Payroll Services
7 LLC, is an unknown entity authorized to and doing business in Riverside County and is or was
8 the legal employer of Plaintiff and the Aggrieved Employees during the applicable periods.

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

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

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

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

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

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

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

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

26 28. Plaintiff seeks to recover all applicable and available PAGA remedies (on a
27 representative, not individual basis) pursuant to Labor Code § 2699, as well as attorneys’ fees,
28 costs, and/or other damages as permitted by PAGA through a representative action pursuant to

1 the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969.
2 Therefore, Plaintiff is not required to, nor does she, seek class certification of the PAGA claims
3 under Code of Civil Procedure § 382.

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

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY MINIMUM WAGES**

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

14 *Against All Defendants*

15 30. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
16 as if fully alleged herein.

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

20 32. As noted herein, Plaintiff and the Aggrieved Employees were not provided proper
21 minimum and regular wages due to Defendants’ failure to accurately record and compensate for
22 all hours worked. As a result of this policy and practice, Plaintiff and the Aggrieved Employees
23 were required to perform off-the-clock work that Defendants either knew or should have known
24 they were performing.

25 33. Consequently, Defendants violated California Labor Code laws and minimum
26 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
27 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).
28

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

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

36. 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

FAILURE TO PAY OVERTIME WAGES

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

Against All Defendants

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

38. 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.

39. 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.

40. 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, as a

1 result of the policies and practices described in this First Amended Complaint, Defendants failed
2 to pay Plaintiff and the Aggrieved Employees proper overtime for all overtime hours worked.

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

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

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

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

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PROVIDE MEAL PERIODS**

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

20 *Against All Defendants*

21 45. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
22 as if fully alleged herein.

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

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

27 48. Labor Code § 512(a), in part, provides that employers, including Defendants, may
28 not employ an employee for a work period of more than five hours per day without providing an

1 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
2 except that if the total work period per day of the employee is no more than six hours, the meal
3 period may be waived by mutual consent of both the employer and the employee. Employers
4 may not employ an employee for a work period more than 10 hours per day without providing
5 the employee with a second meal period of not less than 30 minutes.

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

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

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

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

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

25 54. 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.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 (Labor Code § 2802)

4 *Against All Defendants*

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

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

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

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

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

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO PAY VESTED VACATION**

22 (Labor Code § 227.3)

23 *Against All Defendants*

24 68. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
25 as if fully alleged herein.

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

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

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

10 72. As a result, Plaintiff and the Aggrieved Employees did not receive compensation
11 for all accrued but unused vacation hours as required by Labor Code § 227.3.

12 73. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
13 them, knowingly refused to perform their obligations to compensate the Aggrieved Employees
14 for all vested but unused vacation time and/or paid time off upon separation from employment.

15 74. 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 **SEVENTH CAUSE OF ACTION**

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

21 (Labor Code § 204)

22 *Against All Defendants*

23 75. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 76. Plaintiff and the Aggrieved Employees are and/or were "non-exempt" employees
26 of Defendants who did not receive proper protections and benefits of the laws regarding the
27 timing of payment of wages each period.
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1 77. Labor Code § 204(a) states that all wages earned by a person are due and payable
2 twice during each calendar month, and further states that wages earned during the first through
3 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
4 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
5 the following month.

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

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

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

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO TIMELY PAY FINAL WAGES**

19 (Labor Code §§ 201 – 203)

20 *Against All Defendants*

21 81. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
22 as if fully alleged herein.

23 82. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
24 who did not receive proper protections and benefits of the laws governing the timing and
25 payment of wages.

26 83. Labor Code § 201 requires that the employer immediately pay any wages, without
27 abatement or reduction, to any employee who is discharged.
28

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

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

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

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

14 88. Additionally, at all relevant times, Defendants failed to pay all mandated sick
15 wages owed to the Aggrieved Employees at the proper rate of pay under Labor Code § 246(l),
16 leading to a failure to pay all wages owed upon separation of employment.

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

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

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1 **NINTH CAUSE OF ACTION**

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

3 (Labor Code § 226)

4 *Against All Defendants*

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

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

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

16 94. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
17 and the Aggrieved Employees due to violations including: failure to accurately state total hours
18 worked (for example, the wage statements failed to accurately state total hours worked and/or
19 reflect the correct compensable hours); failure to accurately state gross wages earned, all
20 deductions, and net wages earned (due to, for example, the failure to pay all required minimum
21 and overtime wages); failure to state the applicable hourly rates (including the accurate overtime
22 rate of pay); failure to state the inclusive dates of the pay period; failure to accurately state the
23 name and address of the legal entity of the employer; and failure to accurately state the
24 corresponding number of hours worked at each hourly rate.

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

28 96. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect

1 to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement
2 to Plaintiff and the Aggrieved Employees that complied with the requirements of § 226(a).

3 97. Unlike class action claims, a PAGA plaintiff need not meet the “injury” and
4 “knowing and intentional” violation requirements of Labor Code § 226(e). See *Lopez v. Friant*
5 & Associates, LLC (2017) 15 Cal.App.5th 773, 788 (“a plaintiff seeking civil penalties under
6 PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and
7 intentional” requirements of section 226(e)(1)”).

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

12 **VI. PRAYER FOR RELIEF**

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

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

18 Dated: June 14, 2024

LAUBY, MANKIN & LAUBY LLP

19
20 BY:



Brian J. Mankin, Esq.
Peter J. Carlson, Esq.
Attorneys for Plaintiff

[illegible]

On June 14, 2024, I caused to be served the foregoing document(s) described as follows:

FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT [Private Attorneys General Act of 2004 (“PAGA”), Lab. Code § 2698, *et seq.*]

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.

[] **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

By Overnight Service I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

[X] By Email or Electronic Transmission: Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

[] By Certified Mail-Return Receipt Requested I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

By Personal Service I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

[X] State I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 14, 2024, Riverside, California.

[] **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.

Javi Chauri

Tracie Chiarito, Declarant

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