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NOV 27 2024

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

RAUL SANTOS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

JONBEC CARE, INC., a California
Corporation; JONATHAN JOSEPH, an
individual; BECKY JOSEPH, an individual;
and DOES 1 through 10, inclusive;

Defendants.

Case No.: CIVSB2412398
[Assigned to Hon. Jay H. Robinson, Dept
S35, 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 Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Timely Pay Wages Each Period;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements; and

Action Filed: May 2, 2024

1 Plaintiff Raul Santos (“Plaintiff”) brings this Private Attorneys General Act (“PAGA”) Representative Action First Amended Complaint (“FAC”), on behalf of the State of California as
2 the real party in interest,¹ against Defendants as follows.

3
4 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

5 1. Plaintiff brings this action against his employers, Jonbec Care, Inc., Jonathan
6 Joseph, Becky Joseph, and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf
7 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 within the last one year and 65-days prior to the filing of this action (hereinafter, the
10 “Aggrieved Employees”). Such violations include, but are not limited to, Defendants’ failure to
11 pay all wages owed, including minimum, regular, and overtime wages, failure to provide meal
12 periods, failure to provide rest breaks, failure to reimburse business expenses, failure to timely
13 pay wages each period and upon separation of employment, and failure to provide accurate
14 itemized wage statements.

15 2. Plaintiff has been employed by Defendants from approximately July 2023 through
16 present.

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

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

4 5. Plaintiff and the Aggrieved Employees were also denied 30-minute off-duty meal
5 periods, as mandated by California law. As a result of Defendants' policies and practices, the
6 Aggrieved Employees were subjected to meal period violations when they were: (1) unable to
7 take a meal period due to workload, (2) forced to take an on-duty meal period while under the
8 control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal
9 period after the 5th hour of work, and (5) not provided mandated second meal periods for shifts
10 in excess of 10 hours.

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

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

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

27 9. Plaintiff alleges that Defendants' violations of the wage and hour components of
28 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their

1 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
2 its competitors.

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

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

14 **II. JURISDICTION**

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

17 **III. VENUE**

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

23 **IV. PARTIES**

24 **Plaintiff**

25 14. Plaintiff and Aggrieved Employee Raul Santos was employed by Defendants
26 from approximately July 2023 through present and performed work for Defendants in California.

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1 **Defendants**

2 15. Plaintiff is informed and believes and thereon alleges that Defendant Jonbec Care,
3 Inc. is a California corporation with its principal executive office in Redlands, California and is
4 and/or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable
5 statutory periods.

6 16. Plaintiff is informed and believes and thereon alleges that Defendant Jonathan
7 Joseph is an individual with his principal office in Redland, California, and is and/or was the
8 legal employer of Plaintiff and the Aggrieved Employees during the applicable statutory periods.

9 17. 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 18. Plaintiff is informed and believes and thereon alleges that he 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 19. 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, centralized control of labor
28 operations, and common ownership or financial control.

1 20. 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 21. 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 1. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
20 Defendants during the applicable statutory period and suffered one or more of the Labor Code
21 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
22 action filed on behalf of the State of California and for violations committed against the
23 Aggrieved Employees.

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

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

FIRST CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

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

Against All Defendants

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

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

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

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

8. Furthermore, Plaintiff was not provided proper minimum and overtime wages due to the Company's failure to accurately record and compensate for all hours worked. For instance, the Company utilized a policy and practice of automatically deducting 30 minutes from the hours and corresponding wages of Plaintiff for meal periods, even on the occasions when she did not receive an off-duty meal period. On other occasions where the time records reflected noncompliant meals, the Company would alter time punches to reflect a full 30 minute off-the-clock lunch. Therefore, this resulted in unpaid minimum wages and overtime wages on each such

1 occasion.

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

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

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

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

16 **SECOND CAUSE OF ACTION**

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

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

19 *Against All Defendants*

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

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

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

1 in one workday shall be compensated at twice the regular rate of pay for an employee.

2 16. At all relevant times, Plaintiff and the Aggrieved Employees were required by
3 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
4 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
5 Aggrieved Employees did not receive proper overtime compensation.

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

9 18. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
10 Aggrieved Employees for all overtime hours worked.

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

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

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

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

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PAGA ASSESSMENT FOR FAILURE TO PROVIDE MEAL PERIODS

PAGA ASSESSMENT FOR FAILURE TO PROVIDE MEAL PERIODS

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

Against All Defendants

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

24. 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.

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

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

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

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

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

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

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

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

18 **FOURTH CAUSE OF ACTION**

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

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

21 *Against All Defendants*

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

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

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

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

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

9 38. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
10 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
11 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
12 Aggrieved Employees, the Aggrieved Employees were unable to leave the premises for breaks,
13 and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest
14 breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when the
15 Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit
16 mandated third rest breaks.

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

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

24 41. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
25 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
26 all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
27 one additional hour of compensation in lieu thereof.
28

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

FIFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

Against All Defendants

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

44. 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.

45. 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.

46. 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.”

47. 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.

48. 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 FINAL WAGES

(Labor Code §§ 201 – 203)

Against All Defendants

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

50. 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.

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

52. 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.

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

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

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

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

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

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Against All Defendants

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

59. 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 provision of accurate itemized wage statements.

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

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

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

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

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

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

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

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

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1 **VI. PRAYER FOR RELIEF**

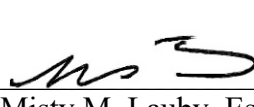
2 WHEREFORE, Plaintiff, on behalf of the State of California as the real party in interest,
3 prays for judgment and relief against Defendants, jointly and severally, as follows:

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

7
8 Dated: November 15, 2024

LAUBY, MANKIN & LAUBY LLP

9
10 BY:


Misty M. Lauby, Esq.
Attorneys for Plaintiff

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, CA 92504.

On November 26, 2024, I caused to be served the foregoing document(s) described as follows:

FIRST AMENDED COMPLAINT

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.

☒ **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.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 26, 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.



Tracie Chiarito, Declarant

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