

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

8/16/2024 3:12:07 PM

Clerk of the Superior Court
By S. Felix ,Deputy Clerk

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Marta Manus (SBN 260132)

mmanus@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

BACKSTROM LABOR LAW

Karin Backstrom (SBN 163306)

karin@backstromlaborlaw.com

3990 Old Town Ave., Suite #C-107

San Diego, CA 92110

Telephone: (619) 851-7274

Attorneys for Plaintiff Arturo Jacob,
on behalf of himself and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ARTURO JACOB, on behalf of himself and
all others similarly situated and aggrieved,

Plaintiff,

v.

CSL PLASMA INC., a Delaware
Corporation; and DOES 1 Through 10,
inclusive,

Defendants.

Case No. 24CU006340C

**CLASS ACTION AND PRIVATE
ATTORNEYS GENERAL ACT ("PAGA")
REPRESENTATIVE ACTION COMPLAINT**

1. UNLAWFUL WAGE DEDUCTIONS
2. FAILURE TO PAY VESTED VACATION WAGES
3. FAILURE TO TIMELY PAY WAGES DUE UPON SEPARATION FROM EMPLOYMENT
4. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
5. VIOLATIONS OF THE UNFAIR COMPETITION LAW
6. PAGA CIVIL PENALTIES FOR UNLAWFUL WAGE DEDUCTIONS
7. PAGA CIVIL PENALTIES FOR FAILURE TO PAY VESTED VACATION WAGES
8. PAGA CIVIL PENALTIES FOR FAILURE TO TIMELY PAY WAGES DUE UPON SEPARATION FROM EMPLOYMENT
9. PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE ACCURATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ITEMIZED WAGE STATEMENTS
10. PAGA CIVIL PENALTIES FOR
FAILURE TO MAINTAIN ACCURATE
RECORDS
DEMAND FOR JURY TRIAL

1 Plaintiff ARTURO JACOB (“Plaintiff”), on behalf of himself and all others similarly
2 situated, and as a Representative of the State of California’s Labor and Workforce
3 Development Agency (“LWDA”), complains and alleges as follows:

4 I.

5 **INTRODUCTION**

6 1. Plaintiff brings this proposed Class Action pursuant to California Code of Civil
7 Procedure section 382 on behalf of himself and all other current and former non-exempt
8 Medical Staff Associates employed by Defendants CSL PLASMA INC., a Delaware
9 Corporation, and DOES 1-10 (collectively “Defendants”) in the State of California (“Class
10 Members”). Plaintiff brings this action for: unlawful deductions from wages; failure to pay all
11 vested vacation wages due; failure to timely pay all wages due upon separation from
12 employment; failure to provide accurate itemized wage statements; and restitution for unfair
13 business practices in violation of Business and Professions Code sections 17200, *et seq.*

14 2. Plaintiff also brings this Representative Action under the Private Attorneys
15 General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of himself and
16 all other aggrieved employees employed by Defendants in the State of California, for civil
17 penalties pursuant to the PAGA for Defendants’ alleged wage and hour violations.

18 3. Plaintiff gave written notice of these claims to the California Labor and
19 Workforce Development Agency (“LWDA”) on June 5, 2024 pursuant to Labor Code section
20 2699.3, and there has been no LWDA intervention within 65 days of this notice. Plaintiff seeks
21 civil penalties under the PAGA as a representative of the State of California and has standing
22 as an aggrieved employee. Plaintiff seeks to represent all Defendants’ non-exempt Medical
23 Staff Associates in the State of California who suffered one or more of the violations alleged
24 (“aggrieved employees”) during the “PAGA Period” (from the date of the filing of this
25 complaint until the start of trial). Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

26 4. This Complaint challenges systemic illegal employment practices resulting in
27 violations of the California Labor Code and Business and Professions Code against employees
28 of Defendants.

6. Plaintiff is informed and believes and based thereon alleges that Defendants have engaged in, among other things a system of willful violations of the California Labor Code, Business and Professions Code, and applicable IWC Wage Order(s) by creating and maintaining policies, practices, and customs that knowingly deny employees the above stated rights and benefits.

7. The policies, practices, and customs of Defendants described above and below have resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the California Labor Code and the California Business and Professions Code.

JURISDICTION AND VENUE

8. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure, section 395. Defendants conduct business in San Diego County, California and each Defendant is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged have a direct effect on Plaintiff and those similarly situated and aggrieved within the State of California and San Diego County. Defendants employ Plaintiff and numerous members of the Class in San Diego County. There is no federal question at issue, as the issues are based solely on California statutes and law, including the Labor Code, IWC Wage Order 4-2001, Code of Civil Procedure, Civil Code, and Business and Professions Code.

9. Business and Professions Code section 17203 provides that any person who engages in unfair competition may be enjoined in any court of competent jurisdiction. Business and Professions Code section 17204 provides that any person, acting on his own behalf, may

1 bring an action in a court of competent jurisdiction.

2 10. This class action is within the Court's jurisdiction under California Labor Code
3 sections 201-203, 218, 218.5, 221-224, 225.5, 227.3 246, 210, 226, California's Industrial
4 Welfare Commission's ("IWC") Wage Orders, and California's Unfair Competition Law (the
5 "UCL"), codified at California Business and Professions Code sections 17200, *et seq.*

6 11. No federal question is raised and the Class Action Fairness Act ("CAFA"), 28
7 U.S.C. section 1332(d), does not apply, or in the alternative, local case or controversy
8 exceptions apply and prohibit removal of this action. Based on his rate of pay, Plaintiff's
9 individual claims do not meet the amount in controversy to implicate traditional diversity
10 jurisdiction.

11 12. Further, as a representative action under the PAGA, the matter is not subject to
12 removal under 28 U.S.C. sections 1332(a)-(d) as PAGA civil penalty actions are not subject to
13 federal jurisdiction.

14 III.

15 PARTIES

16 13. Plaintiff ARTURO JACOB is, and at all relevant times, was a resident of San
17 Diego, California, and has been employed by Defendants in San Diego County as a non-
18 exempt employee in the position of Medical Staff Associates since approximately April 10,
19 2022.

20 14. Plaintiff is informed, believes, and thereon alleges that Defendant CSL
21 PLASMA INC. ("CSL") is a Delaware Corporation with its principal place of business located
22 in Boca Raton, Florida, and is registered to do business in California. CSL collects human
23 plasma and has collection centers located throughout the United States.

24 15. The true names and capacities, whether individual, corporate, associate, or
25 otherwise, of Defendants sued as DOES 1 through 10, inclusive, are unknown to Plaintiff, who
26 sues Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff
27 is informed and believes, and alleges, each DOE Defendant is legally responsible in some
28 manner for the unlawful acts alleged. Plaintiff will seek leave to amend this Complaint to

21. At times, Defendants failed to provide accurate itemized wage statements to Plaintiff, Class Members, and aggrieved employees since the wage statements provided did not include, among other things, the correct vested vacation time and paid sick leave. Because Defendants used vacation time instead of paid sick leave when Plaintiff, Class Members, and aggrieved employees were out sick, some itemized wage statements provided by Defendants to Plaintiff, Class Members, and aggrieved employees were inaccurate. As a result, some wage statements Defendants furnished to Plaintiff, Class Members, and aggrieved employees were incomplete and inaccurate and fail to comply with the requirements of Labor Code section 226(a).

22. Defendants' failure, at times, to: use paid sick leave when employees were out sick and instead deduct accrued vacation time; and provide accurate, itemized wage statements are the result of Defendants' centrally-devised and uniformly-implemented policies and practices.

23. In addition to other remedies, Plaintiff, on behalf of himself and members of the Class, seeks declaratory and injunctive relief, restitution, and disgorgement of all benefits obtained by Defendants as a result of violations alleged. Business and Professions Code §§ 17200, *et seq.*

V.

CLASS ACTION ALLEGATIONS

24. Plaintiff seeks to represent and certify a Class of:

Class

All Defendants' California-based non-exempt employees at any time during the four years before the filing of this Complaint through the date of trial.

25. Plaintiff seeks to certify a subclass of employees defined as:

Unlawful Wage Deduction Subclass

All members of the Class who took sick leave and whose vested vacation time was used to compensate the employee instead of available sick leave.

26. Plaintiff seeks to certify a subclass of employees defined as:

Vacation Wages Subclass

All members of the Class who earned vacation wages and were not paid

all vested vacation wages.

27. Plaintiff seeks to certify a subclass of employees defined as:

Waiting Time Subclass

All members of the Class whose employment ended any time during the three years preceding the filing of this Complaint.

28. Plaintiff seeks to certify a subclass of employees defined as:

Wage Statement Subclass

All members of the Class who received one or more itemized wage statements during the one year preceding the filing of this Complaint.

29. Plaintiff seeks to certify a subclass of employees defined as:

UCL Subclass

All Class and Subclass Members who were subject to Defendants' unlawful or unfair business acts or practices.

30. Plaintiff reserves the right to amend or modify the Class or subclass descriptions, including by division into further subclasses or limitation to particular issues. California Rule of Court 3.765(b).

31. **Commonality**: This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

32. **Ascertainable Class**: The proposed Class and Subclasses are ascertainable because they can be identified and located using Defendants' payroll and personnel records.

33. **Numerosity**: The potential members of the Class and Subclasses as defined are so numerous that joinder of all members would be unfeasible and impractical. The disposition of their claims through this class action will benefit the parties and this Court. The number of members of the Class and Subclasses is unknown to Plaintiff, but is estimated to be in excess of 100 individuals. The number and identity of members can be readily ascertained using Defendants' records.

34. **Typicality**: The claims of Plaintiff are typical of the claims of all members of the Class and Subclasses because all members of the Class and Subclasses sustained similar injuries and damages caused by Defendants' common course of conduct in violation of law.

35. **Adequacy**: Plaintiff is an adequate representative of the Class and Subclasses,

1 will fairly protect the interests of the Class and Subclass Members and has no interests
2 antagonistic to them, and will vigorously pursue this suit. Plaintiff's attorneys are competent,
3 skilled, and experienced in litigating large employment law class actions.

4 36. **Superiority**: A class action is superior to other available means for the fair and
5 efficient adjudication of this controversy. Individual joinder of all Class Members is not
6 practicable, and questions of law and fact common to the Class predominate over questions
7 affecting only individual Class Members. A Class action will allow those similarly situated to
8 litigate their claims in the most efficient and economical manner for the parties and the judicial
9 system. Plaintiff is unaware of any difficulties likely to be encountered in the management of
10 this action that precludes its maintenance as a class action.

11 37. The predominating common questions of law and fact include:

- 12 a. Whether Defendants have a policy or practice of deducting accrued
13 vacation time to account for sick leave instead of using available paid
14 sick leave;
- 15 b. Whether Defendant have a policy or practice of failing to pay all vested
16 vacation and PTO wages to employees upon separation from
17 employment;
- 18 c. Whether Defendants have a policy or practice of failing to provide, at
19 times, accurate itemized wage statements;
- 20 d. Whether some Waiting Time Subclass Members are entitled to waiting
21 time penalties under Section 203;
- 22 e. Whether Defendants violated Sections 17200, *et seq.* of the Business and
23 Professions Code; and
- 24 f. Whether the Plaintiff Class and Subclasses are entitled to equitable relief
25 pursuant to Business and Professions Code, sections 17200, *et seq.*

26 ///

27 ///

28 ///

VI.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Unlawful Wage Deductions

(By Plaintiff and each Member of the Wage Deduction Subclass against all Defendants)

38. Plaintiff incorporates the preceding paragraphs of this Complaint.

39. California Labor Code sections 221 and 224 provide that an employer may only lawfully withhold amounts from an employee's wages when (1) required or empowered to do so by state or federal law; (2) when a deduction is expressly authorized in writing by the employee to cover insurance premiums, benefit plan contributions, or other deductions not amounting to a rebate on the employee's wages; or (3) when a deduction to cover health, welfare or pension contributions is expressly authorized by a wage or collective bargaining agreement.

40. Defendants' conduct as alleged herein has violated Cal. Labor Code sections 221-224 insofar as Defendants deducted vested vacation wages to account for sick leave instead of using available paid sick leave.

41. Pursuant to Cal. Labor Code sections 218, 218.5, and 218.6, Plaintiff and members of the Wage Deduction Subclass are entitled to payment of unpaid wages or compensation, including interest thereon, as well as reasonable attorney's fees, and costs of suit.

SECOND CAUSE OF ACTION

Failure to Pay Vested Vacation Wages

(By Plaintiff each Member of the Vacation Wages Subclass against all Defendants)

42. Plaintiff incorporates the preceding paragraphs of this Complaint.

43. Labor Code section 227.3 provides: "Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply

1 the principles of equity and fairness.”

2 44. As set forth herein, Defendants failed to pay all accrued vacation wages earned
3 and vested to employees upon termination of their employment, in violation of Labor Code
4 section 227.3. Plaintiff and Class Members accrued vacation wages on the total hours worked.
5 Due to Defendants’ policy of using vested vacation when Plaintiff and Class Members took
6 sick leave, the vacation wages paid to Plaintiff and Class Members were underpaid and
7 resulted in a forfeiture of vested vacation wages. Additionally, Defendants’ practice resulted in
8 a forfeiture of vested vacation/PTO wages at the time of separation from employment. Thus,
9 Defendants failed to pay all vested vacation and PTO wages to employees upon separation
10 from employment.

11 45. As a result of the unlawful acts of Defendants, Plaintiff and the Vacation Wages
12 Subclass Plaintiff seeks to represent have been deprived of vacation wages in amounts to be
13 determined at trial, and are entitled to recovery of such amounts, plus interest thereon,
14 attorneys’ fees, and costs to the fullest extent permitted by law.

15 46. Plaintiff, and the Vacation Wages Subclass he seeks to represent, request relief
16 as described below.

17 **THIRD CAUSE OF ACTION**

18 **Failure to Timely Pay Wages Due Upon Separation**
19 **(By Plaintiff and each Member of the Waiting Time Subclass)**

20 47. Plaintiff incorporates the preceding paragraphs of this Complaint.

21 48. An employer who discharges an employee must pay all compensation due to
22 that employee immediately upon discharge. Labor Code § 201(a). An employer must pay all
23 compensation due to an employee who quits within 72 hours. Labor Code § 202(a).

24 49. If an employer willfully fails to timely pay wages the employer must, as a
25 penalty, continue to pay the subject employee’s wages until paid or until an action is
26 commenced. Labor Code § 203(a). As a result of Defendants’ policy of using vested vacation
27 when Plaintiff and Class Members took sick leave, Defendants failed to pay all Plaintiff and
28 Class Members all wages that were due and owing to them, including vested vacation wages
within the required upon separation of employment.

1 50. Waiting Time Subclass Members are no longer employed by Defendants.

2 51. As a direct result of Defendants' violations alleged herein, Plaintiff and
3 members of the Waiting Time Subclass have suffered and continue to suffer substantial losses
4 related to the use and enjoyment of such wages, including lost interest on such monies and
5 expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligation
6 under state law, all to their respective damage in amounts according to proof at trial and within
7 the jurisdictional limitations of this Court.

8 52. Plaintiff seeks to recover in a civil action all remedies to the fullest extent
9 permissible including those permitted pursuant to Labor Code section 203 and Code of Civil
10 Procedure 1021.5.

11 **FOURTH CAUSE OF ACTION**

12 **Failure to Provide Accurate Itemized Wage Statements**
13 **(By Plaintiff and each Member of the Wage Statement Subclass)**

14 53. Plaintiff incorporates the preceding paragraphs of this Complaint.

15 54. Labor Code section 226(a) states in pertinent part: "Every employer shall,
16 semimonthly or at the time of each payment of wages, furnish each of his or her employees,
17 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
18 separately when wages are paid by personal check or cash, an accurate itemized statement in
19 writing showing": (1) gross wages earned; (2) total hours worked by the employee, except for
20 any employee whose compensation is solely based on a salary and who is exempt from
21 payment of overtime under subdivision (a) of Section 515 or any applicable order of the
22 Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable
23 piece rate if the employee is paid on a piece-rate basis; (4) All deductions, provided that all
24 deductions made on written orders of the employee may be aggregated and shown as one item;
25 (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7)
26 the name of the employee and only the last four digits of his or her social security number or an
27 employee identification number other than a social security number; (8) the name and address
28 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the
pay period and the corresponding number of hours worked at each hourly rate by the

1 employee. The deductions made from payment of wages shall be recorded in ink or other
2 indelible form, properly dated, showing the month, day, and year, and a copy of the statement
3 and the record of the deductions shall be kept on file by the employer for at least three years at
4 the place of employment or at a central location within the State of California.

5 55. Labor Code section 246(i) states: in pertinent part “An employer shall provide
6 an employee with written notice that sets forth the amount of paid sick leave available, or paid
7 time off leave an employer provides in lieu of sick leave, for use on either the employee’s
8 itemized wage statement described in Section 226 or in a separate writing provided on the
9 designated pay date with the employee’s payment of wages.”

10 56. The Records Section of the applicable IWC Wage Order states in relevant part
11 that the employer shall keep accurate information regarding, “Total wages paid each payroll
12 period, including value of board, lodging, or other compensation actually furnished to the
13 employee.”

14 57. All employers must provide employees accurate, itemized wage statements
15 showing, among other things, the gross and net wages earned, and all deductions made. Labor
16 Code § 226(a).

17 58. Defendants knowingly failed to comply with Labor Code section 226 by, among
18 other things, failing to provide Plaintiff accurate itemized wage statements showing the correct
19 total wages earned due to Defendants’ policy of showing sick leave paid using vacation time
20 wages.

21 59. Labor Code section 226(e) states: “An employee suffering injury as a result of a
22 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
23 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in
24 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
25 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000),
26 and is entitled to an award of costs and reasonable attorneys’ fees.” Labor Code section
27 226(e)(2)(B) states: “An employee is deemed to suffer injury for purposes of this subdivision if
28 the employer fails to provide accurate and complete information as required by any one or

1 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
2 easily determine from the wage statement alone one or more of the following: (i) The amount
3 of gross wages or net wages paid to the employee during the pay period or any other
4 information required to be provided on the itemized wage statement pursuant to items (2) to
5 (4), inclusive, (6) and (9) of subdivision (a)..." Because Plaintiff's wage statements did not
6 include, among other things, an accurate accounting of gross wages earned, or the accurate
7 total hours worked, he is deemed to have suffered injury.

8 60. Labor Code section 226(h) states: "An employee may also bring an action for
9 injunctive relief to ensure compliance with this section and is entitled to an award of costs and
10 reasonable attorney's fees."

11 61. Labor Code section 226.3 states, in part: "Any employer who violates
12 subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred
13 fifty dollars (\$250) per employee per violation in an internal citation and one thousand dollars
14 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
15 to keep the records required in subdivision (a) of Section 226. The civil penalties provided for
16 in this section are in addition to any other penalty provided by law."

17 62. As a consequence of Defendants' knowing and intentional failure to comply
18 with Labor Code section 226(a), Plaintiff and members of the Wage Statement Subclass are
19 entitled to actual damages or penalties not to exceed \$4,000 for each employee pursuant to
20 Labor Code section 226(b), together with interest, attorneys' fees, and costs

21 **FIFTH CAUSE OF ACTION**
22 **Violation of the Unfair Competition Law**
23 **(By Plaintiff and each Member of the UCL Subclass)**

24 63. Plaintiff incorporates the preceding paragraphs of this Complaint.

25 64. The California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code
26 sections 17200, *et seq.*, defines unfair competition to include any "unlawful," "unfair," or
27 "fraudulent" business act or practice. Cal. Bus. & Prof. Code § 17200.

28 65. Defendants' conduct as described above constitutes unlawful business practices
because Defendants violated: the California Labor Code, including but not limited to Sections

221 (Unlawful Deductions) and 227.3 (Vacation Wages).

66. Defendants' conduct as described above constitutes unfair business practices because their denial of lawfully earned wages outweighs any utility of such practices.

67. As a result of Defendants' unlawful and unfair conduct, Plaintiff and members of the UCL Subclass suffered injury in fact.

68. Plaintiff and members of the UCL Subclass seek declaratory and injunctive relief, restitution, and other appropriate equitable relief. Cal. Bus. & Prof. Code §§ 17203, 17204.

69. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiff and members of the UCL Subclass are entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

70. This cause of action is brought as a cumulative remedy and is intended as an alternative remedy for restitution for Plaintiff, and each member of the UCL Subclass, of some of them, for the four (4) year period before the filing of this Complaint, and as the primary remedy during the fourth year before the filing of this Complaint. Business and Professions Code § 17205.

SIXTH CAUSE OF ACTION
PAGA Civil Penalties for Unlawful Wage Deductions
(By Plaintiff and Aggrieved Employees)

71. Plaintiff incorporates the preceding paragraphs of this Complaint.

72. Labor Code § 221 provides, in pertinent part, "[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

73. California Labor Code section 223 states that "Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."

74. California Labor Code section 224 states: "The provisions of Sections 221, 222 and 223 shall in no way make it unlawful for an employer to withhold or divert any portion of an employee's wages when the employer is required or empowered so to do by state or federal

1 law or when a deduction is expressly authorized in writing by the employee to cover insurance
2 premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction
3 from the standard wage arrived at by collective bargaining or pursuant to wage agreement or
4 statute, or when a deduction to cover health and welfare or pension plan contributions is
5 expressly authorized by a collective bargaining or wage agreement.”

6 75. Upon information and belief, during the PAGA Period, Defendants made
7 unlawful deductions from Plaintiff and other aggrieved employees’ wages by deducting vested
8 vacation wages due and earned by Plaintiff and other aggrieved employees to account for sick
9 leave. Consequently, Plaintiff, on behalf of himself and other aggrieved employees, intends to
10 seek civil penalties pursuant to the PAGA for these alleged violations.

11 76. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
12 Labor Code for which there is no corresponding civil penalty, including Labor Code section
13 221. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation
14 for each underpaid employee. Labor Code § 2699(f)(2). In addition, Labor Code section 225.5
15 provides an independent and separate penalty for “violation of Section 212, 216, 221, 222, or
16 223” of the Labor Code of \$100 for any initial violation for each failure to an employee, and
17 \$200 for any subsequent violation for each failure to pay an employee.

18 77. Plaintiff, as a representative of the general public, will and does seek to recover
19 any and all civil penalties for each and every violation, in an amount according to proof, as to
20 those penalties that are otherwise only available in public agency enforcement actions. Civil
21 penalties recovered will be distributed in accordance with the PAGA, with 75% of civil
22 penalties recovered provided to the LWDA on behalf of the State of California.

23 **SEVENTH CAUSE OF ACTION**
24 **PAGA Civil Penalties for Failure to Pay Vested Vacation Wages**
25 **(By Plaintiff and Aggrieved Employees)**

26 78. Plaintiff incorporates the preceding paragraphs of this Complaint.

27 79. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
28 of civil penalties for violations of the labor code, to be recovered through a civil action brought
by an aggrieved employee on behalf of himself or herself and other current or former

employees pursuant to the procedures specified in Section 2699.3.

80. During the PAGA Period, as set forth herein, Defendants failed to provide all vested vacation wages in violation of Labor Code section 227.3.

81. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for civil penalties as required by Labor Code section 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs, all recoverable in an amount according to proof.

82. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

EIGHTH CAUSE OF ACTION

PAGA Civil Penalties for Failure to Timely Pay Wages Due Upon Separation (By Plaintiff and Aggrieved Employees)

83. Plaintiff incorporates the preceding paragraphs of this Complaint.

84. Labor Code sections 201-202 require the payment of final wages to terminated employees immediately and voluntarily separating employees within 72 hours. Labor Code section 203 provides for waiting time penalties.

85. Labor Code section 210(a) provides: "(a) In addition to, *and entirely independent and apart from*, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." [Emphasis added.]

86. California Labor Code section 256 states that a civil penalty shall be imposed "in an amount not exceeding 30 days' pay as waiting time under the terms of Section 203."

88. During the PAGA Period, as set forth herein, Defendants failed to pay all vacation wages owed to Plaintiff and other aggrieved employees within the time required by Cal. Labor Code sections 201-204. Defendants further failed to pay all waiting time penalties as required by Labor Code section 203.

89. As a result, Defendants violated the Labor Code sections 201-204 and are liable to Plaintiff, and other aggrieved employees, for penalties and restitution as required by Labor Code sections 210, 256, and 2699(a), or, in the alternative, section 2699(f)(2), and recoverable in an amount according to proof.

90. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

91. Plaintiff incorporates the preceding paragraphs of this Complaint.

92. Every employer must, semimonthly or at the time of each payment of wages, furnish each of its employees an accurate itemized statement in writing showing, among other things, the total gross wages earned, net wages earned, total hours worked, and all applicable hourly rates and the total number of hours worked at each rate. Labor Code § 226(a).

93. Defendants intentionally and willfully violated Section 226 by providing wage statements to employees that did not accurately reflect all required information, including but not limited to the gross and net wages earned, and all deductions made.

94. Labor Code section 226.3 provides for civil penalties for violations of Section

226. Plaintiff will seek civil penalties of \$250 for the initial violation and \$1,000 for each subsequent violation. Labor Code § 226.3.

95. Plaintiff, as a representative of the general public, will and does seek to recover any and all civil penalties for each and every violation, in an amount according to proof, as to those penalties that are otherwise only available in public agency enforcement actions. Civil penalties recovered will be distributed in accordance with the PAGA, with 75% of civil penalties recovered provided to the LWDA on behalf of the State of California.

TENTH CAUSE OF ACTION
PAGA Civil Penalties for Failure to Maintain Accurate Records
(By Plaintiff and Aggrieved Employees)

96. Plaintiff incorporates the preceding paragraphs of this Complaint.

97. Labor Code section 1174(d) states: “Every person employing labor in this state shall: Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but, in any case shall be kept on file for not less than three years.”

98. Labor Code section 1174.5 states “Any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject to a civil penalty of five hundred dollars.”

99. Section 7 of the applicable IWC Wage Order obligates an employer to keep accurate information of wages earned and paid including applicable overtime, rest period and gratuity wages. Section 7(A) states in pertinent part: “Every employer shall keep accurate information with respect to each employee including the following: ...(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.”

100. During the PAGA Period, Defendants failed to maintain accurate records showing the accurate amount of wages earned, including vested vacation wages, and all deductions made.

101. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for civil penalties as required by Labor Code section 1174(d) or, in the alternative, section 2699(f)(2).

102. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

103. Plaintiff, as a representative of the general public, will and does seek to recover any and all civil penalties for each and every violation, in an amount according to proof, as to those penalties that are otherwise only available in public agency enforcement actions. Civil penalties recovered will be distributed in accordance with the PAGA, with 75% of civil penalties recovered provided to the LWDA on behalf of the State of California.

VII.

PRAYER FOR RELIEF

Plaintiff prays for the following relief on behalf of himself and member of the Class against Defendants:

1. Class action certification;
2. Appointment of Plaintiff and Plaintiff's counsel to represent the Class;
3. Provision of Class notice;
4. A declaratory judgment that Defendants knowingly and intentionally violated:
 - a. Labor Code section 221 by making unlawful deductions from wages;
 - b. Labor Code section 227.3 by failing to pay all vested vacation wages;
 - c. Labor Code section 203 by failing to pay waiting time penalties;
 - d. Labor Code section 226 by failing to provide accurate itemized wage statements;
 - e. Business and Professions Code sections 17200, *et seq.* by engaging in unlawful or unfair business practices.
5. An order requiring Defendants restore all amounts owed to Plaintiff and members of the Class, according to proof, pursuant to Business and Professions Code section

1 17203;

2 6. For an award of unpaid wages, including vacation wages, to the extent
3 permissible by law to each affected person;

4 7. For penalties permitted pursuant to the Labor Code, and Orders of the Industrial
5 Welfare Commission including, but not limited to penalties under Labor Code section 226(e);

6 8. For pre- and post-judgment interest to the extent permitted by law including, but
7 not limited to, Labor Code section 218.6;

8 9. For recovery of civil penalties permitted by Labor Code section 226.3 for
9 violations of Labor Code 226, according to proof;

10 10. For recovery of civil penalties permitted by Labor Code section 256 for
11 violations of Labor Code sections 201-203, according to proof;

12 11. Compensatory damages according to proof;

13 12. Statutory damages as provided under the Labor Code;

14 13. Liquidated damages as provided under the Labor Code;

15 14. Pre-judgment interest on all sums collected;

16 15. That this action be maintained as a Representative Action under the PAGA, and
17 Plaintiff and his counsel be provided with all enforcement capability as if the action were
18 brought by the California Division of Labor Standards Enforcement;

19 16. For recovery of civil penalties permitted by Labor Code section 2699 for
20 unlawful wage deductions pursuant to Labor Code section 221, according to proof;

21 17. For recovery of civil penalties permitted by Labor Code section 2699 for unpaid
22 vacation wages pursuant to Labor Code sections 227.3, according to proof;

23 18. For recovery of civil penalties as permitted by Labor Code section 210 for
24 failing to pay wages timely during employment, according to proof;

25 19. For recovery of civil penalties permitted by Labor Code section 2699 for
26 inaccurate itemized wage statements pursuant to Labor Code sections 226 and 226.3, according
27 to proof;

28 20. For the Plaintiff to be recognized by the Court as serving as a Representative of

1 the LWDA, that he be deemed an “aggrieved employee,” and that he be awarded some form of
2 enhanced compensation for bringing this action should he prevail and provide benefit to the
3 State of California or other “aggrieved employees,” subject to the Court’s discretion;

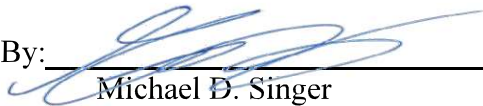
4 21. For reasonable attorneys’ fees and cost of suit and, to the extent permitted by
5 law, including pursuant to Labor Code sections 218.5, 226, 226(h), 2699.3, and Code of Civil
6 Procedure section 1021.5;

7 22. For injunctive relief; and

8 23. Such other relief as the Court may deem appropriate.

9 COHELAN KHOURY & SINGER

10
11 Dated: August 16, 2024

12 By: 
13 Michael D. Singer
14 Marta Manus
15 Attorneys for Plaintiff Arturo Jacob, on
16 behalf of himself and all others similarly situated
17 and aggrieved

18
19 **VIII.**

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff demands a jury trial of all claims triable as of right by jury.

22
23 COHELAN KHOURY & SINGER

24
25 Dated: August 16, 2024

26 By: 
27 Michael D. Singer
28 Marta Manus
Attorneys for Plaintiff Arturo Jacob, on
behalf of himself and all others similarly situated
and aggrieved