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

11 ESTEBAN DE LA CRUZ ORTIZ, on behalf
12 of all Aggrieved Employees and the State of
13 California;

14 Plaintiff,

15 vs.

16 TORRES GENERAL, INC., a California
17 Corporation; and DOES 1 through 20,
18 inclusive;

19 Defendants.

CASE NO.: 24CU025492C

**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 Pay Vested Vacation;
- (6) Failure to Reimburse Business Expenses;
- (7) Failure to Timely Pay Wages; and
- (8) Failure to Provide Accurate Itemized Wage Statements.

JURY TRIAL DEMANDED

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

4 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

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

14 2. Plaintiff was employed by Defendants from approximately December 2023
15 through September 2024.

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

19 4. Plaintiff and the Aggrieved Employees were not provided all minimum, regular,
20 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
21 worked, which led to frequent and reoccurring unpaid compensable time. These practices violate
22 California law. *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es]
23 not allow employers to require employees to routinely work for minutes off the clock without
24 compensation”); *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when
25 employee is under company’s control and where the tasks served the employer’s interests).

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

1 5. Additionally, Plaintiff and the Aggrieved Employees often worked more than 8
2 hours per day and/or 40 hours per week yet did not receive all required overtime compensation
3 on such occasions. Also, at all relevant times, Plaintiff and the Aggrieved Employees were
4 compensated on an hourly basis plus additional earned compensation. However, when the
5 Aggrieved Employees worked overtime and earned additional compensation during the same
6 workweek, Defendants failed to include these amounts in the calculations for the regular rate of
7 pay – in violation of California law.

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

15 7. Defendants also failed to provide Plaintiff and the Aggrieved Employees with 10
16 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated
17 by California law. Defendants did not schedule rest breaks for Plaintiff and the Aggrieved
18 Employees and the Aggrieved Employees were often not authorized and/or permitted to take
19 mandated rest breaks due to being overwhelmed by their hectic workload. Defendants also
20 frequently required Plaintiff and the Aggrieved Employees to combine rest breaks together rather
21 than taking them separately “in the middle of each work period” as required by California law.
22 Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked longer shifts,
23 Defendants failed to authorize and/or permit additional mandated rest breaks.

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

27 9. Moreover, at all relevant times, Defendants required Plaintiff and the Aggrieved
28 Employees to incur necessary business-related expenses and costs without reimbursement,

1 including, but not limited to, substantial costs to purchase, maintain, and provide tools and
2 equipment to perform their tasks for Defendants, such as power tools, framing gun(s), air
3 compressor(s), saws, levels, among other tools and equipment.

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

12 11. Plaintiff further alleges that he and the Aggrieved Employees were not paid all
13 wages due and owing upon separation of employment within the time required by Labor Code §§
14 201 – 203. Plaintiff further alleges that Defendants engaged in the practice of failing to pay all
15 wages due and owing to Plaintiff and the Aggrieved Employees at the time their employment
16 ended with Defendants, including, but not limited to minimum, regular, and overtime wages,
17 wage premiums, vacation and sick wages, among others.

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

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

26 14. Plaintiff brings this lawsuit on behalf of all Aggrieved Employees and the State of
27 California, as the real party in interest, to recover all applicable and available PAGA remedies
28 for the violations of the California Labor Code alleged herein, as well as attorneys’ fees, costs,

1 and/or other damages as permitted by PAGA. Plaintiff reserves the right to name additional
2 representatives throughout the State of California.

3 **II. JURISDICTION**

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

6 **III. VENUE**

7 16. Venue as to each Defendant is proper in this Court, pursuant to Code of Civil
8 Procedure § 395(a). Defendants transact business in San Diego County and the unlawful acts
9 alleged herein have a direct effect on Plaintiff and the Aggrieved Employees in San Diego
10 County. Furthermore, Defendants employed or employ the Aggrieved Employees in San Diego
11 County and alleged violations therefore occurred in Riverside County. Thus, venue is proper in
12 Riverside County. See *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60
13 Cal.App.5th 1069, 1075 (“venue is proper in any county in which an aggrieved employee worked
14 and Labor Code violations allegedly occurred.”).

15 **IV. PARTIES**

16 **Plaintiff**

17 17. Plaintiff and PAGA Representative Esteban De La Cruz was employed by
18 Defendants as a nonexempt employee from approximately December 2023 through September
19 2024.

20 **Defendants**

21 18. Plaintiff is informed and believes and thereon alleges that Defendant Torres
22 General, Inc. is a California corporation authorized to and doing business in San Diego County,
23 California, and is and/or was the legal employer of Plaintiff and the Aggrieved Employees
24 during the applicable statutory periods.

25 19. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
26 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
27 inclusive, but on information and belief alleges that those Defendants are legally responsible for
28 the payment of penalties and damages to Plaintiff and all Aggrieved Employees by virtue of

1 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
2 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
3 Defendants when ascertained.

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

11 21. Furthermore, Plaintiff is informed and believes and thereon alleges that
12 Defendants, and each of them, are joint employers for all purposes of Plaintiff and the Aggrieved
13 Employees and are an integrated enterprise and should be treated as a single employer because
14 these entities share an interrelation of operations, with common human resources and personnel
15 policies and shared common offices and facilities. Additionally, Defendants also have a shared
16 website, common management, a centralized control of labor operations, and common ownership
17 or financial control.

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

27 23. Plaintiff is further informed and believes that at all relevant times, Defendants
28 have been inadequately capitalized to conduct business, have failed to follow appropriate

1 corporate formalities, and have simply been a shell and instrumentality through which
2 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
3 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
4 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
5 separate existence of these corporate entities would permit abuse of the corporate privilege,
6 thereby sanctioning fraud and promoting injustice.

7 24. Additionally, Defendants DOES 11 through 20 are liable for PAGA civil penalties
8 under Labor Code § 558 as “other person(s)” who caused the wage violations among other
9 claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a
10 finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws
11 or ‘pays or causes to be paid to any employee’ less than minimum wage, then that party is liable
12 for certain civil penalties regardless of the identity or business structure of the employer”)
13 (internal citations omitted); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same).

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

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

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

26 27. Pursuant to Labor Code § 2699.3(a), on or about September 20, 2024, Plaintiff
27 gave written notice by online filing to the Labor and Workforce Development Agency
28 (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code

1 alleged to have been violated, including the facts and theories to support the alleged violations.
2 Now that sixty-five (65) days have elapsed since Plaintiff provided notice of the claims alleged
3 herein without the LWDA assuming jurisdiction over the claims alleged, Plaintiff has fully
4 satisfied her administrative prerequisites for bringing suit under the PAGA.

5 **FIRST CAUSE OF ACTION**

6 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

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

8 28. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
9 alleged herein.

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

13 30. At all relevant times, Plaintiff and the Aggrieved Employees were not provided
14 all minimum, regular, and overtime wages due to Defendants' failure to accurately record and
15 compensate for all hours worked, which led to frequent and reoccurring unpaid compensable
16 time. These practices violate California law. *Troester v. Starbucks Corporation* (2018) 5 Cal.5th
17 829 (California law "do[es] not allow employers to require employees to routinely work for
18 minutes off the clock without compensation"); *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks
19 are compensable when employee is under company's control and where the tasks served the
20 employer's interests).

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

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

27 33. Plaintiff is informed and believes and thereon alleges that Defendants
28 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved

1 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

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

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

9 **SECOND CAUSE OF ACTION**

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

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

12 36. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
13 alleged herein.

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

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

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

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

1 41. At all material times, Defendants DOES 1 through 20 were and/or are the
2 employer of Plaintiff and the Aggrieved Employees or were persons acting on behalf of said
3 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
4 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
5 Labor Code regulating hours and days of work respectively.

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

9 **THIRD CAUSE OF ACTION**

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

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

12 43. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
13 alleged herein.

14 44. Plaintiff and the Aggrieved Employees are and/or were "non-exempt" employees
15 of Defendants who did not receive proper protections and benefits of the laws governing
16 mandatory meal periods.

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

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

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

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

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

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

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

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

24 **FOURTH CAUSE OF ACTION**

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

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

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

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

4 55. Labor Code § 226.7 requires employers, including Defendants, to provide rest
5 breaks to its non-exempt employees as mandated by Order of the Industrial Welfare
6 Commission.

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

12 57. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
13 Order, Defendants shall pay Plaintiff one additional hour of pay at her regular rate of
14 compensation for each day that the rest period is not provided.

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

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

thereof at the regular rate of pay. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 (meal and rest premiums must be paid at the “regular rate”).

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

FIFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION

(Labor Code § 227.3)

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

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

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

64. At all relevant times, Defendants utilized a policy and practice through which Plaintiff and the Aggrieved Employees accrued vacation hours. However, on the occasions when Plaintiff and the Aggrieved Employees had accrued but unused vacation hours upon separation of employment, Defendants failed to pay for all accrued but unused vacation wages and, further, failed to for these earned wages at the “final rate” as required by Labor Code § 227.3.

65. As a result, Plaintiff and the Aggrieved Employees did not receive compensation for all accrued but unused vacation hours at the “final rate” upon separation of employment – in violation of Labor Code § 227.3.

66. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,

1 and seeks to recover all attorneys' fees, costs, and any other damages permitted under the PAGA.

2 **SIXTH CAUSE OF ACTION**

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

4 (Labor Code § 2802)

5 67. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 68. 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 69. 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 70. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
14 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
15 consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.

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

19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO TIMELY PAY FINAL WAGES**

21 (Labor Code §§ 201–203)

22 72. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
23 alleged herein.

24 73. 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 the timing and
26 payment of wages.

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

1 75. 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 76. 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 77. 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 78. 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, vacation wages, as well as
13 meal and rest period premiums.

14 79. 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.

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

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

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

28 ///

1 **EIGHTH CAUSE OF ACTION**

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

3 (Labor Code § 226)

4 83. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
5 alleged herein.

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

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

15 86. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
16 and the Aggrieved Employees due to violations including: failure to accurately state total hours
17 worked (for example, the wage statements failed to accurately state total hours worked and/or
18 reflect the correct compensable hours); failure to accurately state gross wages earned, all
19 deductions, and net wages earned (due to, for example, the failure to pay all required minimum
20 and overtime wages); failure to state the applicable hourly rates (including the accurate overtime
21 rate of pay); failure to state the inclusive dates of the pay period; failure to accurately state the
22 name and address of the legal entity of the employer; and failure to accurately state the
23 corresponding number of hours worked at each hourly rate. The California Supreme Court
24 recently confirmed that these "derivative" violations violate Labor Code § 226. *See Naranjo v.*
25 *Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, 119 (approving of "derivative" wage
26 statement claims based on failure to pay all wages owed and holding that: (1) § 226 requires
27 employers to accurately report "all amounts earned and now owing, not just those amounts
28 actually paid," and (2) a "[wage] statement that conceals the amounts earned [including premium

1 pay for missed breaks], on the ground that they also were not paid, is not an accurate [wage]
2 statement, and it does not comply with [§ 226]”).

3 87. Moreover, Defendants’ wage statements directly violated Labor Code § 226(a)
4 each period due to the failure to pay and report premium wages for denied meal periods and rest
5 breaks under § 226.7.

6 88. Defendants violates Labor Code § 226(a) every pay period with respect to
7 Plaintiff and the Aggrieved Employees due to the failure to provide a wage statement to Plaintiff
8 and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a).

9 89. Therefore, at all relevant times, Defendants violate Labor Code §§ 226(a) every
10 pay period with respect to Plaintiff and each and every one of the Aggrieved Employees because
11 Defendants’ wage statements failed to accurately state all information required by § 226(a).
12 And, unlike class action claims, PAGA claims need not meet the “injury” and “knowing and
13 intentional” violation requirements of § 226(e). See *Lopez v. Friant & Associates, LLC* (2017)
14 15 Cal.App.5th 773, 788 (“a plaintiff seeking civil penalties under PAGA for a violation of
15 section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements
16 of section 226(e)(1)”); *Lawson v. ZB, N.A.* (2017) 18 Cal.App.5th 705, 722 (“the scienter
17 requirement [of § 226(e)] has no application in a PAGA claim for violation of [§ 226(a)]”).

18 90. As a result of the Defendants’ violations of Labor Code § 226(a)(9), Plaintiff
19 seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code §
20 2699, and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under
21 PAGA, including the \$250 penalty per violation specified by Labor Code § 226.3. See *Raines v.*
22 *Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 (“Section 226.3 provides
23 the civil penalty for failure to comply” with Labor Code § 226).

24 **VI. PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment and relief against Defendants, jointly and
26 severally, as follows:

- 27 1. For the assessment of all remedies and/or penalties available under the PAGA;
- 28 2. For reasonable attorneys’ fees and costs of suit to the extent permitted by law; and

1 3. For such other and further relief as the Court deems just and proper.

2 **VII. DEMAND FOR JURY TRIAL**

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

5
6 Dated: November 27, 2024

LAUBY. MANKIN & LAUBY LLP

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8 BY: 
9 Brian J. Mankin, Esq.
10 Kristina Bui Carlson, Esq.
11 Attorneys for Plaintiff and Aggrieved
12 Employees