

SUMMONS

(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

SCRIPPS MERCY HOSPITAL SAN DIEGO; and DOES 1 through 50

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

ROBERTO HERRERA, an individual, for the real party in interest, the State of California, and on behalf of other current and former employees

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/26/2020 at 08:36:05 PM

Clerk of the Superior Court
By Yvette Mapula, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Diego Superior Court, Central Div.

330 W. Broadway
San Diego, CA 92101

CASE NUMBER:

(Número del Caso): 37-2020-00017515-CU-06-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Alex Asil Mashiri, 11251 Rancho Carmel Drive #500694, San Diego, CA 92150; Tel: 858-348-4938

DATE: 05/29/2020
(Fecha)

Clerk, by
(Secretario)

Ym
Y. Mapula

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):

(SEAL)



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7074	
PLAINTIFF(S) / PETITIONER(S): Roberto Herrera	
DEFENDANT(S) / RESPONDENT(S): Scripps Mercy Hospital San Diego	
HERRERA VS SCRIPPS MERCY HOSPITAL SAN DIEGO [IMAGED]	
NOTICE OF CASE ASSIGNMENT and CASE MANAGEMENT CONFERENCE	CASE NUMBER: 37-2020-00017515-CU-OE-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: Ronald L. Styn

Department: C-74

COMPLAINT/PETITION FILED: 05/26/2020

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	01/22/2021	10:00 am	C-74	Ronald L. Styn

Due to the COVID-19 pandemic, all hearings will be conducted remotely until further notice. Absent an order of the court, personal appearances at the hearing will not be allowed. For information on arranging telephonic or video appearances, contact CourtCall at (888)882-6878, or at www.courtcall.com. Please make arrangements with CourtCall as soon as possible.

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).



Superior Court of California County of San Diego

NOTICE OF ELIGIBILITY TO eFILE AND ASSIGNMENT TO IMAGING DEPARTMENT

This case is eligible for eFiling. Should you prefer to electronically file documents, refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases for rules and procedures or contact the Court's eFiling vendor at www.onelegal.com for information.

This case has been assigned to an Imaging Department and original documents attached to pleadings filed with the court will be imaged and destroyed. Original documents should not be filed with pleadings. If necessary, they should be lodged with the court under California Rules of Court, rule 3.1302(b).

On August 1, 2011 the San Diego Superior Court began the Electronic Filing and Imaging Pilot Program ("Program"). As of August 1, 2011 in all new cases assigned to an Imaging Department all filings will be imaged electronically and the electronic version of the document will be the official court file. The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and on the Internet through the court's website.

You should be aware that the electronic copy of the filed document(s) will be the official court record pursuant to Government Code section 68150. The paper filing will be imaged and held for 30 days. After that time it will be destroyed and recycled. **Thus, you should not attach any original documents to pleadings filed with the San Diego Superior Court. Original documents filed with the court will be imaged and destroyed except those documents specified in California Rules of Court, rule 3.1806.** Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant or petitioner to serve a copy of this notice with the complaint, cross-complaint or petition on all parties in the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words **"IMAGED FILE"** in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

Alex Asil Mashiri, Esq. (SBN 283798)
alexasmashiri@yahoo.com
MASHIRI LAW FIRM
A Professional Corporation
11251 Rancho Carmel Drive #500694
San Diego, CA 92150
Tel: (858) 348-4938
Fax: (858) 348-4939

Tamim Jami, Esq. (SBN 311351)
tamim@jamilaw.com
THE JAMI LAW FIRM P.C.
3525 Del Mar Heights Rd #941
San Diego, CA 92130
Tel: (858) 284-0248
Fax: (858) 284-0977

Attorneys for Plaintiff
ROBERTO HERRERA

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

ROBERTO HERRERA, an individual, for
the real party in interest, the State of
California, and on behalf of other current
and former employees

Plaintiff,

vs.

SCRIPPS MERCY HOSPITAL SAN
DIEGO; and DOES 1 through 50,

Defendants.

Case No.: 37-2020-00017515-CU-OE-CTL

REPRESENTATIVE ACTION

**COMPLAINT FOR VIOLATIONS OF
THE PRIVATE ATTORNEYS
GENERAL ACT (Labor Code Section
2698 *et seq.*)**

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/26/2020 at 08:38:05 PM
Clerk of the Superior Court
By Yvette Mapula, Deputy Clerk

1 Plaintiff ROBERTO HERRERA (“Plaintiff”), in his capacity as the State of
2 California’s designated proxy under the Private Attorneys General Act, and on behalf of
3 other current and former California employees (“Represented Employees”) alleges the
4 following:

5 **NATURE OF THE ACTION**

6 1. Pursuant to the Private Attorneys General Act (“PAGA”), incorporated in Labor
7 Code sections 2698, 2699 *et seq.*, Plaintiff brings this representative action against
8 Defendants SCRIPPS MERCY HOSPITAL SAN DIEGO (“SCRIPPS”) and DOES 1
9 through 50 (all defendants are hereinafter collectively referred to as “Defendants”) for wage
10 and hour violations of the California Labor Code and the applicable Industrial Welfare
11 Commission Wage Order (the “IWC Wage Order”).

12 2. Pursuant to Labor Code section 2699, any provision of the Labor Code that
13 provides for a civil penalty to be assessed and collected by the Labor and Workforce
14 Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards,
15 agencies or employees for violation of the code may, as an alternative, be recovered through
16 a civil action brought by an aggrieved employee on behalf of himself or herself and other
17 current or former employees pursuant to the procedures specified in Labor Code section
18 2699.3.

19 3. By this action, Plaintiff, who is an aggrieved employee, seeks civil penalties on
20 behalf of himself and other aggrieved employees pursuant to PAGA.

21 4. Plaintiff seeks to recover the PAGA civil penalties through a representative
22 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*
(2009) 46 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

23 **JURISDICTION AND VENUE**

24 5. Pursuant to Article VI, section 10 of the California Constitution, subject matter
25 jurisdiction is proper in the Superior Court of California, County of San Diego, State of
26 California because Plaintiff alleges claims arising under California law.

27 6. This Court has jurisdiction over Defendants because each is believed to be an
28 association, corporation, business entity, or individual that conducts substantial business in
the State of California, County of San Diego.

1 7. This Court has jurisdiction over Plaintiff's claims for civil penalties under
2 PAGA.

3 8. Pursuant to California Code of Civil Procedure section 395, venue is proper in
4 the Superior Court of California for the County of San Diego because this is where Plaintiff
5 was employed and where the wrongful misconduct alleged herein occurred.

6 **THE PARTIES**

7 9. The State of California is the real party in interest in a PAGA action. (*Kim v.*
8 *Reins Int'l California, Inc.* (2020) 9 Cal.5th 73, 81. [The "government entity on whose
9 behalf the plaintiff files suit is always the real party in interest."].)

10 10. Plaintiff is an "aggrieved employee" because he was employed by Defendants
11 and had one or more of the alleged violations committed against him, and therefore is
12 properly suited to act on behalf of the Represented Employees, who are also aggrieved
13 employees as defined by subdivision (c) of Labor Code section 2699.

14 11. Defendants do business in the County of San Diego, State of California.

15 12. The true names and capacities, whether individual, corporate, associate or
16 otherwise of the Defendant named herein as DOES 1 through 50, are unknown to Plaintiff at
17 this time. Plaintiff therefore sues said Defendants by such fictitious names pursuant to
18 California Code of Civil Procedure section 474. Plaintiff will seek leave to amend the
19 operative complaint ("Complaint") to allege the true names and capacities of DOES 1
20 through 50 when their names are ascertained. Plaintiff is informed and believes, and based
21 thereon allege, that each of the DOE Defendants is in some manner liable to Plaintiff for the
22 events and actions alleged herein.

23 13. Plaintiff is informed and believes, and based thereon allege, that at all times,
24 each Defendant was acting as an agent, joint venturer, integrated enterprise and/or alter ego
25 for each of the other defendants and each were co-conspirators with respect to the acts and
26 the wrongful conduct alleged herein so that each is responsible for the acts of the other in
27 connection with the conspiracy and in proximate connection with the other defendants.

28 14. Plaintiff is informed and believes, and based thereon alleges, that each
Defendant was acting partly within and partly without the scope and course of their

1 employment, and was acting with the knowledge, permission, consent, and ratification of
2 every other Defendant.

3 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

4 15. Defendants are the owner and operator of multiple hospitals throughout
5 California.

6 16. Plaintiff worked for Defendants during which time he was paid hourly and
7 considered non-exempt.

8 17. Plaintiffs bring this PAGA claim as the state's designated proxy, suing on
9 behalf of all affected employees.

10 **PAGA REPRESENTATIVE ACTION CLAIMS**

11 18. On information and belief, current and former employees of Defendants were
12 subject to wage and hour violations by Defendants, specifically by Defendants' violations of
13 Labor Code sections 201, 202, 203, 204, 226, 226(a)(1)-(a)(9), 226.3, 246, and 2699 et seq.

14 19. California law provides that an aggrieved employee may file an action against
15 an employer for penalties in connection with violations of the Labor Code and Wage Order
16 provided the aggrieved employee file an action on behalf of himself or herself and other
17 current and former employees.

18 20. At all material times, Defendants were and/or are Represented Employees'
19 employers or persons acting on behalf of Represented Employees' employer, within the
20 meaning of California Labor Code sections 558 and 558.1.

21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22 21. As to penalty claims under PAGA, on January 23, 2020, Plaintiff, via counsel,
23 sent the statutorily required notice to the LWDA, indicating that Plaintiff intends to pursue
24 claims against Defendants for violations of the Labor Code.

25 22. On January 24, 2020, Plaintiff, via counsel, sent a copy of the January 23,
26 2020 notice to Defendant SCRIPPS.

27 23. The statutory period expired since Plaintiff sent the January 23, 2020 notice to
28 the LWDA and LWDA did not serve Plaintiff with a notice of its intent to assume
jurisdiction over the applicable penalty claims and did not provide notice as set forth in
Labor Code section 2699.3(a)(2)(A).

24. Therefore, Plaintiff has exhausted the administrative requirements as required under the PAGA.

25. The Causes of Action alleged in this Complaint are appropriately suited for a Representative Action under the PAGA because:

a. Their action involves allegations of violations of provisions of the California Labor Code that provide for a civil penalty to be assessed and collected by the LWDA or any departments, divisions, commissions, boards, agencies or employees;

b. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against them; and

c. Plaintiff has satisfied the procedural requirements of Labor Code § 2699.3, as set forth above.

26. As a result of the acts alleged above, Plaintiff seeks to recover PAGA penalties for violations of the following Labor Code provisions.

a. failure to provide accurate sick pay in violation of Labor Code section 246;

b. failure to provide accurate itemized wage statements in violation of Labor Code sections 226, and 226.3

c. failure to pay earned wages in violation of Labor Code section 204; and

d. failure to pay earned wages in violation of Labor Code sections 201, 202, and 203.

FIRST CAUSE OF ACTION
(Representative Claim for Penalties Under PAGA for violations of Labor Code section 246 against all Defendants)

27. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though set forth herein.

28. Under Labor Code section 246, employers in California must provide employees with paid sick leave to be paid at a specified rate of pay which must factor in additional earnings during a given pay period wherein such leave is used.

29. During his employment, Plaintiff earned additional nondiscretionary

1 compensation, such as, for example, shift differentials.

2 30. Upon information and belief, Defendants failed to provide Plaintiff and
3 Represented Employees with the appropriate rate of pay when paying sick pay, as required
4 under Labor Code section 246.

5 31. PAGA imposes upon Defendants, and each of them, penalties for violating
6 Labor Code section 246.

7 32. Labor Code section 2699(f) imposes upon Defendants, and each of them,
8 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial
9 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for
10 subsequent violations for all Labor Code provisions for which a civil penalty is not
specifically provided.

11 33. Pursuant to Labor Code section 248.5(e), Plaintiff seeks to recover the relief
12 available under Labor Code section 248.5 on behalf of himself and the Represented
13 Employees as alleged herein in an amount to be shown according to proof.

14 34. Plaintiff is seeking penalties against Defendants under Labor Code sections
15 2699(f), 248.5, and any other applicable statute allowing recovery of penalties under PAGA
16 on behalf of himself and the Represented Employees as alleged herein in an amount to be
17 shown according to proof.

18 35. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
19 attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself
20 and the Represented Employees as alleged herein in an amount to be shown according to
21 proof.

22 **SECOND CAUSE OF ACTION**
23 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section**
24 **226(a)(1) against all Defendants)**

25 36. Plaintiff re-alleges and incorporate by reference the foregoing allegations as
26 though set forth herein.

27 37. Labor Code section 226(a)(1) requires that the wage statements accurately
28 state the gross wages earned.

38. Defendants failed to accurately state the proper gross on the wage statements
in violation of Labor Code section 226(a)(1). By way of one example, the wage statements

1 failed to include the proper amounts of gross wages because it failed to include the proper
2 amount of sick pay wages.

3 39. PAGA imposes upon Defendants, and each of them, penalties for violating
4 Labor Code section 226(a)(1).

5 40. Labor Code section 2699(f) imposes upon Defendants, and each of them,
6 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial
7 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for
8 subsequent violations for all Labor Code provisions for which a civil penalty is not
specifically provided.

9 41. With respect to violations of Labor Code section 226, Labor Code section
10 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for
11 each employee for each pay period, and one thousand dollars (\$1000) for each subsequent
12 violation for each employee for each pay period.

13 42. Plaintiff is seeking penalties against Defendants under Labor Code sections
14 2699(f), 226.3, and any other applicable statute allowing recovery of penalties under PAGA
15 on behalf of himself and the Represented Employees as alleged herein in an amount to be
16 shown according to proof.

17 43. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
18 attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself
19 and the Represented Employees as alleged herein in an amount to be shown according to
20 proof.

21 **THIRD CAUSE OF ACTION**
22 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section**
23 **226(a)(5) against all Defendants)**

24 44. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
though set forth herein.

25 45. Labor Code section 226(a)(5) requires that the wage statements accurately
26 state the net wages earned.

27 46. Defendants failed to accurately state the proper net on the wage statements in
28 violation of Labor Code section 226(a)(5). By way of one example, the wage statements
failed to include the proper amounts of gross wages because it failed to include the proper

1 amount of sick pay wages.

2 47. PAGA imposes upon Defendants, and each of them, penalties for violating
3 Labor Code section 226(a)(2).

4 48. PAGA imposes upon Defendants, and each of them, penalties for violating
5 Labor Code section 226(a)(5).

6 49. Labor Code section 2699(f) imposes upon Defendants, and each of them,
7 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial
8 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for
9 subsequent violations for all Labor Code provisions for which a civil penalty is not
specifically provided.

10 50. With respect to violations of Labor Code section 226, Labor Code section
11 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for
12 each employee for each pay period, and one thousand dollars (\$1000) for each subsequent
13 violation for each employee for each pay period.

14 51. Plaintiff is seeking penalties against Defendants under Labor Code sections
15 2699(f), 226.3, and any other applicable statute allowing recovery of penalties under PAGA
16 on behalf of himself and the Represented Employees as alleged herein in an amount to be
17 shown according to proof.

18 52. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
19 attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself
20 and the Represented Employees as alleged herein in an amount to be shown according to
21 proof.

22 **FOURTH CAUSE OF ACTION**
23 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section**
24 **226(a)(9) against all Defendants)**

25 53. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
26 though set forth herein.

27 54. Labor Code section 226(a)(9) requires that the employer's wage statements
28 accurately state all applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate by the employee.

55. Defendants failed to provide the applicable hourly rates in effect during the

1 pay period and the corresponding number of hours worked at each hourly rate by the
2 employee in violation of Labor Code section 226(a)(9).

3 56. By way of one example, the rate for sick pay is not properly listed because it is
4 inaccurate.

5 57. All other claims alleged in this complaint have also resulted in a derivative
6 claim of an inaccurate itemized wage statement.

7 58. PAGA imposes upon Defendants, and each of them, penalties for violating
8 Labor Code section 226(a)(9).

9 59. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
10 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial
11 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for
12 subsequent violations for all Labor Code provisions for which a civil penalty is not
specifically provided.

13 60. With respect to violations of Labor Code section 226, Labor Code section
14 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for
15 each employee for each pay period, and one thousand dollars (\$1000) for each subsequent
16 violation for each employee for each pay period.

17 61. Plaintiff is seeking civil penalties against Defendants under Labor Code
18 sections 2699(f), 226.3, and any other applicable statute allowing recovery of penalties
19 under PAGA on behalf of himself and the Represented Employees as alleged herein in an
20 amount to be shown according to proof.

21 62. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
22 attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself
23 and the Represented Employees as alleged herein in an amount to be shown according to
proof.

24 **FIFTH CAUSE OF ACTION**
25 **(Representative Claims for Penalties Under PAGA for violation of Labor Code section**
26 **226(a) against all Defendants)**

27 63. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
28 though set forth herein.

64. Under Labor Code section 226(a) an employer must either keep a duplicate of the wage statement provided to an employee or a computer-generated record that accurately shows all of the information required under 226(a)(1) through (a)(9).

65. Upon information and belief, during all times relevant to this action, Defendants failed to keep records required under Labor Code section 226(a). By way of example, the copies of the wage statements that Defendants kept do not include the proper gross and net wages, total hours worked, all applicable hourly rates and corresponding hours worked.

66. PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 226(a).

67. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

68. With respect to violations of Labor Code section 226, Labor Code section 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each pay period.

69. Plaintiff is seeking civil penalties against Defendants under Labor Code sections 2699(f), 226.3, and any other applicable statute allowing recovery of civil penalties under PAGA on behalf of himself and the Represented Employees as alleged herein in an amount to be shown according to proof.

70. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself and the Represented Employees as alleged herein in an amount to be shown according to proof.

SIXTH CAUSE OF ACTION
(Representative Claims for Penalties Under PAGA for Violation of Labor Code section 204 Against all Defendants)

71. Plaintiff re-alleges and incorporates by reference the foregoing allegations as

1 though set forth herein.

2 72. Pursuant to Labor Code section 204, Wages must be paid at least twice
3 monthly on days designated in advance by the employer. Wages earned between the 1st and
4 the 15th of each month must be paid by no later than the 26th of that month. (Labor Code §
5 204.) Wages earned between the 16th and the last day of each month must be paid no later
6 than the 10th day of the following month. (*Id.*)

7 73. Defendants violated Labor Code section 204 because they failed to timely pay
8 Plaintiff and the Represented Employees all earned wages. By way of one example, Plaintiff
9 and Represented Employees were not paid proper wages because Defendants failed to
10 appropriately compensate Plaintiff and the Represented Employees for the use of their leave
11 pursuant to the correct rate mandated in Labor Code section 246. This resulted in the
underpayment of wages.

12 74. Defendants have failed to pay Plaintiff and Represented Employees all wages
13 due and owed.

14 75. PAGA imposes upon Defendants, and each of them, civil penalties for
15 violating Labor Code section 204.

16 76. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
17 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial
18 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for
19 subsequent violations for all Labor Code provisions for which a civil penalty is not
20 specifically provided.

21 77. Plaintiff is seeking civil penalties against Defendants under Labor Code
22 section 2699(f), and any other applicable statute allowing recovery of penalties under PAGA
23 on behalf of himself and the Represented Employees as alleged herein in an amount to be
shown according to proof.

24 78. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
25 attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself
26 and the Represented Employees as alleged herein in an amount to be shown according to
27 proof.
28

SEVENTH CAUSE OF ACTION
(Representative Claims for Penalties Under PAGA for Violation of Labor Code Sections 201, 202, and 203 against all Defendants)

79. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

80. Under Labor Code section 201, if an employee is discharged by his/her employer, the wages earned and unpaid at the time of discharge are due and payable immediately.

81. Under Labor Code section 202, if on the other hand, “an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

82. Labor Code section 203 provides, in pertinent part: “If an employer willfully fails to pay, without abatement or reduction, ... any wages of an employee who is discharged or who quits, the wages of the employee shall 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 30 days. ...”

83. Upon information and belief, Plaintiff and the Represented Employees did not receive all wages upon termination or separation of employment. By way of example, Plaintiff was owed wages for sick leave. To this date, Defendants have not paid Plaintiff those wages.

84. Defendants have failed to pay Plaintiff and Represented Employees all wages due and owed.

85. PAGA imposes upon Defendants, and each of them, penalties for violating Labor Code sections 201, 202, and 203.

86. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

1 87. Plaintiff is seeking penalties against Defendants under Labor Code section
2 2699(f), and any other applicable statute allowing recovery of civil penalties under PAGA
3 on behalf of himself and the Represented Employees as alleged herein in an amount to be
4 shown according to proof.

5 88. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
6 attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself
7 and the Represented Employees as alleged herein in an amount to be shown according to
8 proof.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for a judgment against Defendants as follows:

- 11 1. An award of civil penalties pursuant to PAGA and/or other applicable laws;
- 12 2. An award of reasonable attorneys' fees, costs, and filing fees paid to the LWDA
13 pursuant to California Labor Code section 2699(g) and/or other applicable law;
- 14 3. An award of reasonable attorneys' fees and costs pursuant to the California Labor
15 Code and/or other applicable law;
- 16 4. Post-judgment interest as provided by law; and
- 17 5. Such other and further relief that the Court may deem just and proper.

18 Dated: May 26, 2020

MASHIRI LAW FIRM
A Professional Corporation

19 By: 
20 Alex Asil Mashiri
21 Attorney for Plaintiff
22 Roberto Herrera
23
24
25
26
27
28