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TANIA MENDOZA

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

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

Plaintiff,

vs.

JCPENNEY CORPORATION, INC.; and
DOES 1 through 50,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/26/2020 at 07:27:08 PM
Clerk of the Superior Court
By Yvette Mapula, Deputy Clerk

Case No.: 37-2020-00017557-CU-OE-CTL

REPRESENTATIVE ACTION

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

1 Plaintiff TANIA MENDOZA ("Plaintiff"), in her capacity as the State of California's
2 designated proxy under the Private Attorneys General Act, and on behalf of other current
3 and former California employees ("Represented Employees") alleges the following:

4 **NATURE OF THE ACTION**

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

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

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

20 4. Plaintiff seeks to recover the PAGA civil penalties through a representative
21 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.

22 **JURISDICTION AND VENUE**

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

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

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

1 PAGA.

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

5 **THE PARTIES**

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

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

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

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

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

27 14. Plaintiff is informed and believes, and based thereon alleges, that each
28 Defendant was acting partly within and partly without the scope and course of their
employment, and was acting with the knowledge, permission, consent, and ratification of
every other Defendant.

1 under the PAGA.

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

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

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

11 c. Plaintiff has satisfied the procedural requirements of Labor Code §
12 2699.3, as set forth above.

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

15 a. failure to provide accurate sick pay in violation of Labor Code section
16 246;

17 b. disciplining employees for using sick days in violation of Labor Code
18 sections 233, 234, and 246.5;

19 c. failure to provide accurate itemized wage statements in violation of
20 Labor Code sections 226, and 226.3;

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

22 e. failure to pay earned wages in violation of Labor Code sections 201,
23 202, and 203.

24 **FIRST CAUSE OF ACTION**

25 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section**
26 **246 against all Defendants)**

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

29 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 her employment, Plaintiff earned additional compensation such as nondiscretionary bonuses in the form of “Credit App InPay”.

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

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

32. 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.

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

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

35. 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 herself and the Represented Employees as alleged herein in an amount to be shown according to proof.

SECOND CAUSE OF ACTION
(Representative Claim for Penalties Under PAGA for violations of Labor Code sections 233 and 234 against all Defendants)

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

37. Under Labor Code section 233, “[a]n employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick

1 leave to attend to an illness or the preventive care of a family member, or for any other
2 reason specified in subdivision (a) of Section 246.5.

3 38. “An employer absence control policy that counts sick leave taken pursuant to
4 Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or
5 suspension is a per se violation of Section 233. An employee working under this policy is
6 entitled to appropriate legal and equitable relief pursuant to Section 233.”

7 39. Upon information and belief, Defendants disciplined Plaintiff and other
8 Represented Employees for using protected sick leave. Thus, Defendants have an absence
9 control policy that counts sick leave taken pursuant to section 233 as an absence that may
10 lead to or result in discipline, discharge, demotion or suspension in violation of Labor Code
11 sections 233 and 234.

12 40. Upon information and belief, Defendants had a policy to discharge, threaten to
13 discharge, demote, suspend, or in any manner discriminate against an employee for using, or
14 attempting to exercise the right to use, sick leave to attend to an illness or the preventive care
15 of a family member, or for any other reason specified in subdivision (a) of Section 246.5.

16 41. Plaintiff and Represented Employees seek to recover from Defendants, and
17 each of them civil penalties, and attorney’s fees and costs pursuant to Labor Code section
18 233 and 234.

19 42. Plaintiff and Represented Employees seek to recover from Defendants, and
20 each of them, civil penalties, injunctive relief, and attorney’s fees and costs pursuant to
21 Labor Code section 2699 (g)(1) (referred to as the PAGA action) in an amount to be
22 determined according to proof.

23 **THIRD CAUSE OF ACTION**
24 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section**
25 **226(a)(1) against all Defendants)**

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

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

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

5 47. 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 48. 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 49. 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 herself and the Represented Employees as alleged herein in an amount to be
16 shown according to proof.

17 50. 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 herself
19 and the Represented Employees as alleged herein in an amount to be shown according to
20 proof.

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

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

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

27 53. 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 54. PAGA imposes upon Defendants, and each of them, penalties for violating
3 Labor Code section 226(a)(2).

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

6 56. 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 57. 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 58. 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 herself and the Represented Employees as alleged herein in an amount to be
17 shown according to proof.

18 59. 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 herself
20 and the Represented Employees as alleged herein in an amount to be shown according to
21 proof.

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

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

27 61. 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.

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

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

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

9 66. 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 67. 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 68. 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 herself and the Represented Employees as alleged herein in an
20 amount to be shown according to proof.

21 69. 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 herself
23 and the Represented Employees as alleged herein in an amount to be shown according to
proof.

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

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

71. 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).

72. 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.

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

74. 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.

75. 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.

76. 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 herself and the Represented Employees as alleged herein in an amount to be shown according to proof.

77. 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 herself and the Represented Employees as alleged herein in an amount to be shown according to proof.

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

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

1 though set forth herein.

2 79. 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 80. 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 81. Defendants have failed to pay Plaintiff and Represented Employees all wages
13 due and owed.

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

16 83. 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 84. 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 herself and the Represented Employees as alleged herein in an amount to be
shown according to proof.

24 85. 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 herself
26 and the Represented Employees as alleged herein in an amount to be shown according to
27 proof.
28

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

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

87. 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.

88. 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.”

89. 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. ...”

90. 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.

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

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

93. 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.

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

95. 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 herself and the Represented Employees as alleged herein in an amount to be shown according to proof.

PRAYER FOR RELIEF

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

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

Dated: May 26, 2020

MASHIRI LAW FIRM
A Professional Corporation

By: 
 Alex Asil Mashiri
 Attorney for Plaintiff
 Tanya Mendoza