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MARISSA GARCIA

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

MARISSA GARCIA, an individual, for the)
real party in interest, the State of)
California, and on behalf of other current)
and former employees)

Plaintiff,

vs.

COMMONWEALTH FINANCIAL)
NETWORK; and DOES 1 through 50,)

Defendants.)

Case No.: 37-2020-00020219-CU-OE-CTL

REPRESENTATIVE ACTION

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

1 Plaintiff MARISSA GARCIA (“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 COMMONWEALTH FINANCIAL NETWORK (“CFN”) and DOES 1 through
8 50 (all defendants are hereinafter collectively referred to as “Defendants”) for wage and
9 hour violations of the California Labor Code and the applicable Industrial Welfare
Commission Wage Order (the “IWC Wage Order”).

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

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

19 4. Plaintiff seeks to recover the PAGA civil penalties through a representative
20 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*
21 (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
California because Plaintiff alleges claims arising under California law.

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

28 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 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

2 15. Defendants are the owner and operator of a company that engages in the
3 business of providing investment advice throughout California.

4 16. Plaintiff worked for Defendants during which time she was paid hourly and
5 considered non-exempt.

6 17. Plaintiff brings these claims under the PAGA as the state's designated proxy,
7 suing on behalf of all affected current and former employees.

8 **PAGA REPRESENTATIVE ACTION CLAIMS**

9 18. On information and belief, current and former employees of Defendants were,
10 and currently are, subject to wage and hour violations by Defendants, specifically by
11 Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226(a)(1)-(a)(9),
12 226.3, 246, 256, 432.5, 510, 558, 1194, 1198, 2698, and 2699 et seq.

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

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

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 21. As to penalty claims under the PAGA, on April 10, 2020, Plaintiff, via
22 counsel, sent the statutorily required notice to the LWDA, indicating that Plaintiff intends to
23 pursue claims against Defendants for violations of the Labor Code.

24 22. On April 11, 2020, Plaintiff, via counsel, sent a copy of the April 10, 2020
25 notice to Defendant CFN.

26 23. The statutory period expired since Plaintiff sent the April 10, 2020 notice to
27 the LWDA and LWDA did not serve Plaintiff with a notice of its intent to assume
28 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

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. failure to provide overtime wages in violation of Labor Code sections
18 510, 1194, 1198, and the IWC Wage Order;

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; and

24 f. requiring an employee to agree, in writing, to terms in violation of
25 Labor Code section 432.5.

26 **FIRST CAUSE OF ACTION**
27 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section**
28 **246 against all Defendants)**

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

28 28. Under Labor Code section 246, employers in California must provide

1 employees with paid sick leave to be paid at a specified rate of pay which must factor in
2 additional earnings during a given pay period wherein such leave is used.

3 29. During her employment, Plaintiff earned additional nondiscretionary
4 compensation, such as, for example, incentive payments in the form of bonuses.

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

8 31. By way of one example, Plaintiff made use of her sick leave entitlements
9 during the following pay periods: 6/11/2018 to 6/24/2018; 7/9/2018 to 7/22/2018;
10 12/24/2018 to 1/6/2019; 1/21/2019 to 2/3/2019; 2/4/2019 to 2/17/2019; 2/18/2019 to
11 3/3/2019. During these pay periods, Plaintiff also received corresponding incentive
12 payments in the form of bonuses that were not appropriately factored into the rate of pay for
13 each sick leave hour Defendants were obligated to compensate her for as required by and
14 articulated in Labor Code section 246

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

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

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

25 35. Plaintiff is seeking penalties against Defendants under Labor Code sections
26 2699(f), 248.5, and any other applicable statute allowing recovery of penalties under PAGA
27 on behalf of herself and the Represented Employees as alleged herein in an amount to be
28 shown according to proof.

36. 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

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

3 **SECOND CAUSE OF ACTION**
4 **(Representative Claims for Penalties Under PAGA for Violation of Labor Code**
5 **Sections 510 and 1194 against all Defendants)**

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

8 38. Eight hours of labor constitutes a day's work, and any work in excess of 8
9 hours in 1 workday, any work in excess of 40 hours in any one workweek, and for the first 8
10 hours worked on the 7th consecutive day of work in a workweek, shall be compensated at the
11 rate of no less than one and one half times the regular rate of pay for an employee. Any
12 work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
13 the regular rate of pay for an employee. (Labor Code § 510 and Applicable IWC Wage
14 Orders § 3(A).)

15 39. Upon information and belief, Defendants failed to properly provide Plaintiff
16 and the Represented Employees with overtime pay for hours worked in excess of eight hours
17 in a workday and/or hours worked in excess of 40 hours in one workweek.

18 40. Plaintiff and Represented Employees would regularly receive nondiscretionary
19 bonuses.

20 41. Plaintiff and Represented Employees were not paid proper overtime when they
21 worked overtime hours because Defendants failed to include all compensation earned during
22 a given period when determining the regular rate of pay.

23 42. By way of one example, for the period of 6/24/2019 to 7/7/2019, Plaintiff
24 worked overtime hours yet was not paid at the appropriate rate of pay under Labor Code
25 section 510 because Defendants failed to incorporate the \$250.00 bonus earned during such
26 period.

27 43. By way of another example, Defendants would include the rest periods in the
28 total number of hours actually worked and include the aggregate number in the divisor when
calculating the regular rate of pay. Because the rest breaks is time that the employee is not
required to work and thereby does not contribute towards production and bonus, the rest
break time should not be included in the divisor of the regular rate of pay calculation.

44. Upon information and belief, during all times relevant to this action, Defendants violated Labor Code sections 510, 558, 1194, 1198, and the Applicable IWC Wage Order section 3(A).

45. 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.

46. Pursuant to Labor Code section 558, any employer or other person acting on behalf of an employer who violates, or causes to be violated, Labor Code sections 500 to 558.1 or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty. Specifically, Labor Code section 558 imposes upon Defendants, and each of them, penalties of fifty hundred dollars (\$50) per pay period, per aggrieved employee for initial violations, and one hundred dollars (\$100) per pay period, per aggrieved employee for subsequent violations.

47. Plaintiff is seeking penalties against Defendants under Labor Code sections 2699(f), 558, the Applicable IWC Wage Order, and any other applicable statute allowing recovery of civil penalties under the PAGA on behalf of herself and the Represented Employees as alleged herein in an amount to be shown according to proof.

48. Pursuant to Labor Code section 1194, Plaintiff seeks to recover attorney's fees, costs, interest, and civil penalties on behalf of herself and the Represented Employees as alleged herein in an amount to be shown according to proof.

49. 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.

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

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

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

52. 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 failed to include the proper amounts of gross wages because it failed to include the proper amount of sick pay and overtime wages.

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

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

55. 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.

56. 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.

57. Plaintiff is seeking penalties against Defendants under Labor Code sections 2699(f), 226.3, 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.

58. 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.

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

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

1 though set forth herein.

2 60. Labor Code section 226(a)(5) requires that the wage statements accurately
3 state the net wages earned.

4 61. Defendants failed to accurately state the proper net on the wage statements in
5 violation of Labor Code section 226(a)(5). By way of one example, the wage statements
6 failed to include the proper amounts of gross wages because it failed to include the proper
7 amount of sick pay and overtime wages.

8 62. All other claims alleged in this complaint have also resulted in a derivative
9 claim of an inaccurate itemized wage statement.

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

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

17 65. With respect to violations of Labor Code section 226, Labor Code section
18 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for
19 each employee for each pay period, and one thousand dollars (\$1000) for each subsequent
20 violation for each employee for each pay period.

21 66. Plaintiff is seeking penalties against Defendants under Labor Code sections
22 2699(f), 226.3, 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
24 shown according to proof.

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

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

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

69. Labor Code section 226(a)(9) requires that the employer's wage statements 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.

70. Defendants failed to provide the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code section 226(a)(9).

71. By way of one example, the rate for sick and overtime pay is not properly listed because it is inaccurate.

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

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

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 penalties under PAGA on behalf of herself and the Represented Employees as alleged herein in an amount to be shown according to proof.

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

5 **SIXTH CAUSE OF ACTION**
6 **(Representative Claims for Penalties Under PAGA for violation of Labor Code section**
7 **226(a) against all Defendants)**

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

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

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

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

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

25 83. With respect to violations of Labor Code section 226, Labor Code section
26 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for
27 each employee for each pay period, and one thousand dollars (\$1000) for each subsequent
28 violation for each employee for each pay period.

 84. 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

1 under PAGA on behalf of herself and the Represented Employees as alleged herein in an
2 amount to be shown according to proof.

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

7 **SEVENTH CAUSE OF ACTION**
8 **(Representative Claims for Penalties Under PAGA for Violation of Labor Code section**
9 **204 Against all Defendants)**

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

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

17 88. Defendants violated Labor Code section 204 because they failed to timely pay
18 Plaintiff and the Represented Employees all earned wages.

19 89. By way of one example, Plaintiff and the Represented Employees were not
20 paid proper wages because Defendants failed to appropriately compensate Plaintiff and the
21 Represented Employees for the use of their sick leave pursuant to the correct rate mandated
22 in Labor Code section 246. This resulted in the underpayment of wages.

23 90. By way of another example, Plaintiff and the Represented Employees were not
24 paid proper wages because Defendants failed to appropriately compensate Plaintiff and the
25 Represented Employees overtime wages as mandated in Labor Code section 510. This
26 resulted in the underpayment of wages.

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

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

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

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

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

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

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

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

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

27 99. Labor Code section 203 provides, in pertinent part: "If an employer willfully
28 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. ..."

100. 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 and overtime. To this date, Defendants have not paid Plaintiff those wages.

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

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

103. 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.

104. 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.

105. 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.

NINTH CAUSE OF ACTION
(Representative Claims for Penalties Under PAGA for Violation of Labor Code Section 432.5 against all Defendants)

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

107. Under Labor Code section 432.5, “[no] employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

1 108. Upon information and belief, Defendants violated Labor Code section 432.5
2 because the authorization form, entitled “Notification and Release”, Defendants use to
3 procure, or attempt to procure, a consumer report or/and Investigative Consumer Report,
4 violates the California’s Investigative Consumer Reporting Agencies Act’s (“ICRA”). By
5 way of example, Defendants’ Notification and Release form violates ICRA because it
6 includes a liability waiver. By way of another example, Defendants’ Notification and
7 Release form violates the “standalone document requirement” under the ICRA. Therefore,
8 by making Plaintiff and the Represented Employees sign the Notification and Release form,
9 Defendants violated Labor Code section 432.5 because the Notification and Release form is
unlawful and does not comply with the ICRA.

10 109. Upon information and belief, Defendants violated Labor Code section 432.5
11 because the Notification and Release form Defendants use to procure, or attempt to procure,
12 a consumer report or/and Investigative Consumer Report, violates the California Consumer
13 Credit Reporting Agencies Act (“CCRAA”). By way of one example, Defendants’
14 Notification and Release form violates the CCRAA, specifically California Civil Code
15 section 1785.20.5, because if failed to provide the proper notice specifying the basis under
16 Labor Code section 1024.5 for use of the report. Therefore, by making Plaintiff and
17 Represented Employees sign the Notification and Release form, Defendants violated Labor
18 Code section 432.5 because the Notification and Release form is unlawful and does not
comply with the CCRAA.

19 110. Defendants violated Labor Code section 432.5 because Defendants require
20 Plaintiff and the Represented Employees to sign a non-competiton clause, which is
21 prohibited by law.

22 111. PAGA imposes upon Defendants, and each of them, penalties for violating
23 Labor Code section 432.5.

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

113. Plaintiff is seeking penalties against Defendants under Labor Code section 2699(f) 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 at trial and within the jurisdictional limits of the Court.

114. 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.

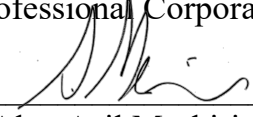
PRAYER FOR RELIEF

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: June 15, 2020

MASHIRI LAW FIRM
A Professional Corporation

By: 
Alex Asil Mashiri
Attorney for Plaintiff
Marissa Garcia