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YURALIS PENA

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

YURALIS PENA, an individual, for the
real party in interest, the State of
California,

Plaintiff,

vs.

SOUTH COUNTY ORAL
MAXILLOFACIAL SURGERY;
EASTLAKE SURGERY CENTER; and
DOES 1 through 50,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/25/2020 at 10:28:34 AM
Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

Case No.: 37-2020-00029759-CU-OE-CTL

REPRESENTATIVE ACTION

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

1 Plaintiff YURALIS PENA ("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 SOUTH COUNTY ORAL MAXILLOFACIAL SURGERY ("SOUTH
8 COUNTY" and EASTLAKE SURGERY CENTER ("EASTLAKE") and DOES 1 through
9 50 (all defendants are hereinafter collectively referred to as "Defendants") for wage and
10 hour violations of the California Labor Code and the applicable Industrial Welfare
Commission 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 allege 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.

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 North County of San Diego because this is where
5 Plaintiff were 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 she was employed by Defendants
11 and had one or more of the alleged violations committed against her, 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. Defendant SOUTH COUNTY and Defendant EASTLAKE are acting as joint
16 employers.

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

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

1 15. Plaintiff is informed and believes, and based thereon alleges, that each
2 Defendant was acting partly within and partly without the scope and course of their
3 employment, and was acting with the knowledge, permission, consent, and ratification of
4 every other Defendant.

5 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

6 16. Defendants are joint employers.

7 17. Defendants are the owners and operators of surgery centers in the state of
8 California.

9 18. Plaintiff worked for Defendants during which time she was paid hourly and
10 considered non-exempt.

11 19. Plaintiff brings this PAGA claim as the state's designated proxy, suing on
12 behalf of all affected employees.

13 **PAGA REPRESENTATIVE ACTION CLAIMS**

14 20. On information and belief, current and former employees of Defendants were
15 subject to wage and hour violations by Defendants, specifically by Defendants' violations of
16 Labor Code sections 201, 202, 203, 204, 226, 226(c), 226(a)(1)-(a)(9), 226.3, 227.3, 510, 558,
17 1194, 1197, 2802 and 2699 et seq.

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

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

25 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

26 23. As to penalty claims under PAGA, on June 21, 2020, Plaintiff, via counsel,
27 sent the statutorily required notice to the LWDA, indicating that Plaintiff intend to pursue
28 claims against Defendants for violations of the Labor Code.

 24. On June 21, 2020, Plaintiff, via counsel, sent a copy of the June 21, 2020
notice to Defendant SOUTH COUNTY.

1 25. On June 21, 2020, Plaintiff, via counsel, sent a copy of the June 21, 2020
2 notice to Defendant EASTLAKE.

3 26. The statutory period expired since Plaintiff sent the June 21, 2020 notice to the
4 LWDA and LWDA did not serve Plaintiff with a notice of its intent to assume jurisdiction
5 over the applicable penalty claims and did not provide notice as set forth in Labor Code
6 section 2699.3(a)(2)(A).

7 27. Therefore, Plaintiff has exhausted the administrative requirements as required
8 under the PAGA.

9 28. Moreover, due to Defendants' delay in producing records in response to
10 Plaintiff's records request—as detailed in the Eighth Cause of Action—Plaintiff is entitled to
11 seek, and hereby does seek, penalties under PAGA going back one year from the date of her
12 initial letter requesting such records dated April 21, 2020.

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

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

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

22 c. Plaintiff has satisfied the procedural requirements of Labor Code §
23 2699.3, as set forth above.

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

26 a. failure to pay overtime in violation of Labor Code section 510;

27 b. failure to pay minimum wage in violation of Labor Code sections 1194
28 and 1197;

 c. failure to pay vacation time in violation of Labor Code section 227.3;

- 1 d. failure to provide accurate itemized wage statements in violation of
2 Labor Code sections 226, and 226.3;
3 e. failure to provide records in violation of Labor Code section 226(c);
4 f. failure to pay earned wages in violation of Labor Code section 204; and
5 g. failure to pay earned wages in violation of Labor Code sections 201,
6 202, and 203.

7 **FIRST CAUSE OF ACTION**
8 **(Representative Claims for Penalties under PAGA for Violation of Labor Code**
9 **Sections 510 against all Defendants)**

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

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

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

22 34. By way of example, Plaintiff regularly worked in excess of 40 hours during a
23 given workweek at both of Defendants'—Joint Employer's—surgery facilities, yet
24 Defendants failed to properly compensate such hours worked in excess of 40 hours in the
25 given workweek at the proper overtime rate pursuant to section 510. Instead, Defendants
26 would simply break up the hours worked at each surgery center, in what appears to be an
27 attempt to circumvent California's overtime mandates.

28 35. By way of another example, Plaintiff worked in excess of 8 hours in a single
shift, and in excess of 40 hours in a single workweek, yet Defendants failed to properly
compensate such hours worked at the proper overtime rate.

1 36. Labor Code section 2699(f) imposes upon Defendants, and each of them,
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 37. Pursuant to Labor Code section 558, any employer or other person acting on
7 behalf of an employer who violates, or causes to be violated, Labor Code sections 500 to
8 558.1 or any provision regulating hours and days of work in any order of the Industrial
9 Welfare Commission shall be subject to a civil penalty. Specifically, Labor Code section
10 558 imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$50)
11 per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$100)
per pay period, per aggrieved employee for subsequent violations.

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

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

20 **SECOND CAUSE OF ACTION**
21 **(Representative Claims for Penalties Under PAGA for Violation of Labor Code Section**
22 **1197 and the Applicable IWC Wage Order against all Defendants)**

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

25 41. Under Labor Code section 1197, an employer must pay its employees the
26 proper minimum wages.

27 42. Upon information and belief, Defendants failed to properly provide Plaintiff
28 and the Represented Employees with minimum wages for all hours worked. Plaintiff is
informed and believes and based thereon allege that during all times relevant to this action,
there were several occasions in which Plaintiff and other employees had to commute from

1 one surgical facility to another yet were not compensated for such time commuting at
2 minimum wage.

3 43. PAGA imposes upon Defendants, and each of them, penalties for violating
4 Labor Code sections 1197.

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

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

13 **THIRD CAUSE OF ACTION**
14 **(Representative Claims for Penalties Under PAGA for violation of Labor Code section**
15 **227.3 against all Defendants)**

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

18 47. Under Labor Code section 227.3, "whenever a contract of employment or
19 employer policy provides for paid vacations, and an employee is terminated without having
20 taken off his vested vacation time, all vested vacation shall be paid to her as wages at his
21 final rate in accordance with such contract of employment or employer policy respecting
22 eligibility or time served [...]."

23 48. Defendants violated Labor Code section 227.3. Plaintiff and the Represented
24 Employees did not receive payment for all vested vacation time—as accrued consistent with
25 the employee handbook—upon termination or separation of employment.

26 49. PAGA imposes upon Defendants, and each of them, penalties for violating
27 Labor Code section 227.3.

28 50. 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

1 subsequent violations for all Labor Code provisions for which a civil penalty is not
2 specifically provided.

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

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

11 **FOURTH CAUSE OF ACTION**
12 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section**
13 **226(a)(1) against all Defendants)**

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

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

18 55. Defendants failed to accurately state the proper gross on the wage statements
19 in violation of Labor Code section 226(a)(1). By way of one example, the wage statements
20 failed to include the proper amounts of gross wages because it failed to include the proper
21 amount of overtime wages. Other examples of such failures exist.

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

24 57. 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.

58. 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

1 violation for each employee for each pay period.

2 59. Plaintiff is seeking penalties against Defendants under Labor Code sections
3 2699(f), 226.3, or any other applicable statute allowing recovery of penalties under PAGA
4 on behalf of herself and the Represented Employees as alleged herein in an amount to be
5 shown according to proof.

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

10 **FIFTH CAUSE OF ACTION**
11 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section**
12 **226(a)(5) against all Defendants)**

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

15 62. Labor Code section 226(a)(5) requires that the wage statements accurately
16 state the net wages earned.

17 63. Defendants failed to accurately state the proper net on the wage statements in
18 violation of Labor Code section 226(a)(5). By way of one example, the wage statements
19 failed to include the proper amounts of net wages because it failed to include the proper
20 amount of overtime wages. Other examples of such failures exist.

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

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

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

67. 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

1 each employee for each pay period, and one thousand dollars (\$1000) for each subsequent
2 violation for each employee for each pay period.

3 68. Plaintiff is seeking penalties against Defendants under Labor Code sections
4 2699(f), 226.3, or any other applicable statute allowing recovery of penalties under PAGA
5 on behalf of herself and the Represented Employees as alleged herein in an amount to be
6 shown according to proof.

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

11 **SIXTH CAUSE OF ACTION**
12 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section**
13 **226(a)(9) against all Defendants)**

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

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

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

22 73. By way of one example, the wage statements failed to include the applicable
23 hours worked and proper rate of pay for all overtime hours. Other examples of such failures
24 exist.

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

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

76. 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

1 subsequent violations for all Labor Code provisions for which a civil penalty is not
2 specifically provided.

3 77. With respect to violations of Labor Code section 226, Labor Code section
4 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for
5 each employee for each pay period, and one thousand dollars (\$1000) for each subsequent
6 violation for each employee for each pay period.

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

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

15 **SEVENTH CAUSE OF ACTION**
16 **(Representative Claims for Penalties Under PAGA for violation of Labor Code section**
17 **226(a) against all Defendants)**

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

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

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

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

84. 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

1 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for
2 subsequent violations for all Labor Code provisions for which a civil penalty is not
3 specifically provided.

4 85. With respect to violations of Labor Code section 226, Labor Code section
5 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for
6 each employee for each pay period, and one thousand dollars (\$1000) for each subsequent
7 violation for each employee for each pay period.

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

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

16 **EIGHTH CAUSE OF ACTION**
17 **(Representative Claims for Penalties Under PAGA for violation of Labor Code section**
18 **226(c) against all Defendants)**

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

21 89. Labor Code section 226(c) requires that an employer who receives a
22 written or oral request to inspect or receive a copy of records pursuant to subdivision (b)
23 pertaining to a current or former employee shall comply with the request as soon as
24 practicable, but no later than 21 calendar days from the date of the request.

25 90. Plaintiff, through counsel, sent a letter dated April 21, 2020, to Defendants,
26 requesting Plaintiff's payroll records pursuant to subdivisions (b) and (c) of Labor Code
27 section 226. Defendants failed to provide Plaintiff with her payroll records upon request
28 within the time allotted by law.

91. Plaintiff, through counsel, sent a second letter, via certified mail, dated
May 29, 2020, to Defendants, requesting Plaintiff's payroll records be provided within 10
days, which also made reference to the first letter dated April 21, 2020. Defendants again

1 failed to provide Plaintiff with her payroll records within the time allotted by law.

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

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

9 94. Pursuant to Labor Code section 226(f), Plaintiff seeks to recover the relief
10 available on behalf of herself and the Represented Employees as alleged herein in an amount
11 to be shown according to proof.

12 95. Plaintiff is seeking penalties against Defendants under Labor Code sections
13 2699(f), 226, or any other applicable statute allowing recovery of penalties under PAGA on
14 behalf of herself and the Represented Employees as alleged herein in an amount to be shown
15 according to proof.

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

20 **NINTH CAUSE OF ACTION**
21 **(Representative Claims for Penalties Under PAGA for Violation of Labor Code section**
22 **204 Against all Defendants)**

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

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

99. Defendants violated Labor Code section 204 because they failed to timely
pay Plaintiff and the Represented Employees all earned wages. By way of one example,

1 Plaintiff and Represented Employees were owed overtime wages, which Defendants failed
2 to pay. This resulted in an underpayment of wages due and owed.

3 100. Defendants have failed to pay Plaintiff and Represented Employees all
4 wages due and owed.

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

7 102. Labor Code section 2699(f) imposes upon Defendants, and each of them,
8 civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for
9 initial 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.

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

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

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

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

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

26 107. Under Labor Code section 202, if on the other hand, "an employee not
27 having a written contract for a definite period quits his or her employment, his or her wages
28 shall become due and payable not later than 72 hours thereafter, unless the employee has

1 given 72 hours previous notice of his or her intention to quit, in which case the employee is
2 entitled to his or her wages at the time of quitting.”

3 108. Labor Code section 203 provides, in pertinent part: “If an employer
4 willfully fails to pay, without abatement or reduction, ... any wages of an employee who is
5 discharged or who quits, the wages of the employee shall continue as a penalty from the due
6 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. ...”

7 109. Upon information and belief, Plaintiff and the Represented Employees did
8 not receive all wages upon termination or separation of employment. By way of one
9 example, Plaintiff and Represented Employees were owed overtime wages, which
10 Defendants failed to pay. This resulted in an underpayment of wages due and owed upon
11 separation. To this date, Defendants have not paid Plaintiff all wages due and owed.

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

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

16 112. Labor Code section 2699(f) imposes upon Defendants, and each of them,
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
specifically provided.

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

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

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: August 25, 2020

MASHIRI LAW FIRM
A Professional Corporation

By: 
Alex Asil Mashiri
Attorneys for Plaintiff
Yuralis Pena