

1 Alex Asil Mashiri, Esq. (SBN 283798)
alex mashiri@yahoo.com
2 **MASHIRI LAW FIRM**
A Professional Corporation
3 11251 Rancho Carmel Drive #500694
4 San Diego, CA 92150
Tel: (858) 348-4938
5 Fax: (858) 348-4939

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

11 Attorneys for Plaintiff
12 LESLIE G. MARTINEZ

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN DIEGO-NORTH COUNTY**

16 LESLIE G. MARTINEZ, an individual, for
the real party in interest, the State of
17 California,

18 Plaintiff,

19 vs.

20
21 ALTMAN SPECIALTY PLANTS LLC;
22 ALTMAN SPECIALTY PLANTS INC.;
and DOES 1 through 50; and DOES 1
23 through 50,

24
25
26 Defendants.
27
28

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Veronica Navarro, Deputy Clerk

Case No. 37-2021-00001167-CU-OE-NC

REPRESENTATIVE ACTION

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

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

5 **NATURE OF THE ACTION**

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

13 2. Pursuant to Labor Code section 2699, any provision of the Labor Code that
14 provides for a civil penalty to be assessed and collected by the Labor and Workforce
15 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
16 agencies or employees for violation of the code may, as an alternative, be recovered through
17 a civil action brought by an aggrieved employee on behalf of himself or herself and other
18 current or former employees pursuant to the procedures specified in Labor Code section
19 2699.3.

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

22 4. Through this representative action, Plaintiff seeks to recover civil penalties
23 under the PAGA. No class certification is required. (*Arias v. Superior Court* (2009) 46
24 Cal.4th 969.)

25 **JURISDICTION AND VENUE**

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

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

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

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

THE PARTIES

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

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

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

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

13. Plaintiff is informed and believes, and based thereon allege, that at all times, each Defendant was acting as an agent, joint venturer, integrated enterprise and/or alter ego

1 for each of the other defendants and each were co-conspirators with respect to the acts and
2 the wrongful conduct alleged herein so that each is responsible for the acts of the other in
3 connection with the conspiracy and in proximate connection with the other defendants.

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

8 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

9 15. Defendants are the owner and operator of multiple nursery fields throughout
10 California.

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

13 17. Plaintiff brings this action under the PAGA on behalf of the state, who is the
14 real party in interest.

15 **PAGA REPRESENTATIVE ACTION CLAIMS**

16 18. On information and belief, current and former employees of Defendants were
17 subject to wage and hour violations by Defendants, specifically by Defendants' violations of
18 Labor Code sections 201, 202, 203, 204, 226, 226(a)(1)-(a)(9), 226.3, 226.3, 226.7, 227.3,
19 246, 510, 1198, and 2699 et seq.

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

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

27 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

28 21. On November 10, 2020, Plaintiff, via counsel, sent the statutorily required

1 notice to the LWDA, indicating that Plaintiff intends to pursue claims against Defendants for
2 violations of the Labor Code.

3 22. On November 10, 2020, Plaintiff, via counsel, sent a copy of the November
4 10, 2020 notice to Defendants ALTMAN LLC and ALTMAN INC.

5 23. The statutory period expired since Plaintiff sent the November 10, 2020 notice
6 to the LWDA and LWDA did not serve Plaintiff with a notice of its intent to assume
7 jurisdiction over the applicable penalty claims and did not provide notice as set forth in
8 Labor Code section 2699.3(a)(2)(A).

9 24. Therefore, Plaintiff has exhausted the administrative requirements under the
10 PAGA.

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

- 13 a. Their action involves allegations of violations of provisions of the California
14 Labor Code that provide for a civil penalty to be assessed and collected by the
15 LWDA or any departments, divisions, commissions, boards, agencies or
16 employees;
- 17 b. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the
18 alleged violator and had one or more of the alleged violations committed
19 against her; and
- 20 c. Plaintiff has satisfied the procedural requirements of Labor Code section
21 2699.3, as set forth above.

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

- 24 a. failure to provide accurate sick pay in violation of Labor Code section 246;
- 25 b. failure to provide overtime wages in violation of Labor Code sections 510,
26 1194, 1198, and the IWC Wage Order;
- 27 c. failure to provide accurate itemized wage statements in violation of Labor
28 Code sections 226, 226.2, and 226.3;

- d. failure to pay earned wages in violation of Labor Code section 204;
- e. failure to pay earned wages in violation of Labor Code sections 201, 202, and 203;
- f. failure to accrue vacation in violation of Labor Code sections 227.3; and
- g. failure to produce itemized wage statements in violation of Labor Code section 226(b).

FIRST CAUSE OF ACTION

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

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

28. Under Labor Code section 246(l), 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 nondiscretionary compensation, such as, for example, incentive pay.

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

1 Employees as alleged herein in an amount to be shown according to proof.

2 34. Plaintiff is seeking penalties against Defendants under Labor Code sections
3 2699(f), 248.5, and 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 35. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to 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 **SECOND CAUSE OF ACTION**

11 **(Representative Claims for Penalties Under PAGA for Violation of Labor Code** 12 **Sections 510 and 1194 against all Defendants)**

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

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

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

25 39. Plaintiff and Represented Employees would regularly receive
26 nondiscretionary bonuses, including incentives.

27 40. Plaintiff and Represented Employees were not paid proper overtime when
28 they worked overtime hours because Defendants failed to include all compensation earned

1 during a given period when determining the regular rate of pay.

2 41. By way of one example, Defendants would include the rest periods in the
3 total number of hours actually worked and include the aggregate number in the divisor when
4 calculating the regular rate of pay. Because rest breaks are considered time that the
5 employee is not required to work and thereby is not time that contributes towards production
6 and bonus, the rest break times are not to be included in the divisor of the regular rate of pay
7 calculation. (*See DLSE Manual.*)

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

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

16 44. Pursuant to Labor Code section 558, any employer or other person acting
17 on behalf of an employer who violates, or causes to be violated, Labor Code sections 500 to
18 558.1 or any provision regulating hours and days of work in any order of the Industrial
19 Welfare Commission shall be subject to a civil penalty. Specifically, Labor Code section
20 558 imposes upon Defendants, and each of them, penalties of fifty hundred dollars (\$50) per
21 pay period, per aggrieved employee for initial violations, and one hundred dollars (\$100) per
22 pay period, per aggrieved employee for subsequent violations.

23 45. Plaintiff is seeking penalties against Defendants under Labor Code sections
24 2699(f), 558, the Applicable IWC Wage Order, and any other applicable statute allowing
25 recovery of civil penalties under the PAGA on behalf of herself and the Represented
26 Employees as alleged herein in an amount to be shown according to proof.

27 46. Pursuant to Labor Code section 1194, Plaintiff seeks to recover attorney's
28 fees, costs, interest, and civil penalties on behalf of herself and the Represented Employees

1 as alleged herein in an amount to be shown according to proof.

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

6 **THIRD CAUSE OF ACTION**

7 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section**
8 **226(a)(1) against all Defendants)**

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

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

13 50. Defendants failed to accurately state the proper gross on the wage
14 statements in violation of Labor Code section 226(a)(1). By way of one example, the wage
15 statements failed to include the proper amounts of gross wages because it failed to include
16 the proper amount of sick pay and overtime wages. Other examples of such failures exist.

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

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

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

28 54. Plaintiff is seeking penalties against Defendants under Labor Code sections

1 2699(f), 226.3, and any other applicable statute allowing recovery of penalties under PAGA
2 on behalf of herself and the Represented Employees as alleged herein in an amount to be
3 shown according to proof.

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

8 **FOURTH CAUSE OF ACTION**

9 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section** 10 **226(a)(5) against all Defendants)**

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

13 57. Labor Code section 226(a)(5) requires that the wage statements accurately
14 state the net wages earned.

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

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

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

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

62. 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.

63. 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.

64. 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.

FIFTH CAUSE OF ACTION

(Representative Claim for Penalties Under PAGA for violations of Labor Code section 226(a)(2) against all Defendants)

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

66. Labor Code section 226(a)(2) requires that the wage statements accurately state the total hours worked.

67. Defendants failed to accurately state the total hours worked on the wage statements in violation of Labor Code section 226(a)(2). By way of one example, the wage statements inaccurately listed total hours worked. This was due to the systemic and inaccurate double-counting of the itemization for rest and recovery periods which is paid separately as both a premium and a base hourly rate included with the regular hours worked. Defendants' systemic failure resulted in an inaccurate and overinflated total hours worked itemization on the wage statements issued to its employees.

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

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 77. By way of one example, the rate for sick pay is not properly listed because
4 it is inaccurate as described above.

5 78. By way of another example, the rate for the rest and recovery periods are
6 not properly listed and make it appear as though the employee is being compensated at a rate
7 that is below minimum wage for such time. Other examples of such failures exist.

8 79. Labor Code section 226.2 also requires that rest and recovery periods be
9 paid and itemized separately for such employees to reflect both the hours and rates paid for
10 such rest and recovery periods. Defendants failures to do so also resulted in violations of
11 this counterpart to 226(a)(9).

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

14 81. PAGA imposes upon Defendants, and each of them, penalties for violating
15 Labor Code section 226(a)(9) and 226.2.

16 82. Labor Code section 2699(f) imposes upon Defendants, and each of them,
17 civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for
18 initial 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 83. With respect to violations of Labor Code section 226, Labor Code section
22 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for
23 each employee for each pay period, and one thousand dollars (\$1000) for each subsequent
24 violation for each employee for each pay period.

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

85. 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 226(a) against all Defendants)

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

87. 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).

88. 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 as described herein and in the aforementioned paragraphs.

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

90. 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.

91. 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.

92. 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.

93. 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.

EIGHTH CAUSE OF ACTION

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

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

95. Pursuant to Labor Code section 204, Wages must be paid at least twice monthly on days designated in advance by the employer. Wages earned between the 1st and the 15th of each month must be paid by no later than the 26th of that month. (Labor Code § 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.*)

96. 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, Plaintiff and Represented Employees were not paid proper wages because Defendants failed to appropriately compensate Plaintiff and the Represented Employees for the use of their leave pursuant to the correct rate mandated in Labor Code section 246. By way of another example, Plaintiff was owed overtime wages, which Defendants failed to compensate Plaintiff at the appropriate regular rate of pay due to its failure to incorporate all incentive compensation earned during a given pay period. This resulted in the underpayment of wages.

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

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

99. 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.

100. Plaintiff is seeking civil 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.

101. 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

Sections 201, 202, and 203 against all Defendants)

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

103. 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.

104. 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

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.”

3 105. 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
7 wages shall not continue for more than 30 days. ...”

8 106. Upon information and belief, Plaintiff and the Represented Employees did
9 not receive all wages upon termination or separation of employment. By way of example,
10 Plaintiff was owed wages for sick leave. To this date, Defendants have not paid Plaintiff
11 those wages. By way of another example, Plaintiff was owed overtime wages, which
12 Defendants failed to compensate Plaintiff at the appropriate regular rate of pay due to its
13 failure to incorporate all incentive compensation earned during a given pay period.

14 107. Defendants have failed to pay Plaintiff and Represented Employees all
15 wages due and owed.

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

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

23 110. Plaintiff is seeking penalties against Defendants under Labor Code section
24 2699(f), and any other applicable statute allowing recovery of civil penalties under PAGA
25 on behalf of herself and the Represented Employees as alleged herein in an amount to be
26 shown according to proof.

27 111. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to
28 recover attorney’s fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of

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

3 **TENTH CAUSE OF ACTION**

4 **(Representative Claims for Penalties Under PAGA for Violation of Labor Code Section**
5 **227.3 against all Defendants)**

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

8 113. Under Labor Code section 227.3, “whenever a contract of employment or
9 employer policy provides for paid vacations, and an employee is terminated without having
10 taken off his vested vacation time, all vested vacation shall be paid to him as wages at his
11 final rate in accordance with such contract of employment or employer policy respecting
12 eligibility or time served [...].”

13 114. Upon information and belief, Defendants provide vacation accrual to their
14 employees which accrues in proportion to the amount of hours worked on a pay period basis.

15 115. Defendants violated Labor Code section 227.3. By way of example,
16 Defendants failed to properly accrue vacation hours pursuant to its vacation policy which
17 resulted in Plaintiff and the Represented Employees receiving a lesser amount of vacation
18 than they were legally entitled to. Accordingly, Plaintiff and the Represented Employees
19 did not receive payment for all vested vacation time upon termination or separation of
20 employment, and also received inaccurate itemized wage statements as a result.

21 116. PAGA imposes upon Defendants, and each of them, penalties for violating
22 Labor Code section 227.3.

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

118. 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.

119. 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.

ELEVENTH CAUSE OF ACTION

(Representative Claim for Penalties Under PAGA for violations of Labor Code section 226(b) against all Defendants)

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

121. Labor Code section 226(b) requires, in pertinent part, that “An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.” (Labor Code § 226 subdivision (b).)

122. Subdivision (a) of Labor Code section 226 requires that an employer maintain a copy of the itemized wage statements it issues to its employees.

123. Labor Code section 226(c) requires, in pertinent part, that “An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a

1 violation of law, shall be an affirmative defense for an employer in any action alleging a
2 violation of this subdivision. An employer may designate the person to whom a request
3 under this subdivision will be made.” (Labor Code § 226 subdivision (c).)

4 124. On October 22, 2020, Plaintiff, through counsel, requested copies of her
5 payroll records from Defendant’s including but not limited to her itemized wage statements.

6 125. On November 12, 2020, Defendants produced some of Plaintiff’s payroll
7 records via electronic production.

8 126. On November 12, 2020, Plaintiff, through counsel, acknowledged receipt
9 of such payroll records from Defendant, and thereby simultaneously requested that
10 Defendants supplement such production with copies of the actual itemized wage statemetns
11 issued to Plaintiff and not simply the payroll summary produced in liue thereof.

12 127. On November 24, 2020, Plaintiff, through counsel, again followed up with
13 Defendants on his November 12, 2020 email requesting copies of the actual itemized wage
14 statements issued to Plaintiff.

15 128. On December 18, 2020, Plaintiff, through counsel, followed up with
16 Defendants on his November 12, 2020 and November 24, 2020 emails requesting copies of
17 the actual itemized wage statements issued to Plaintiff.

18 129. Finally, on January 5, 2021, Plaintiff, through counsel, followed up with
19 Defendants on his November 12, 2020 and November 24, 2020 emails requesting copies of
20 the actual itemized wage statements issued to Plaintiff.

21 130. As of the date of this filing, Plaintiff has not received a response to such
22 emails, nor the actual copies of the itemized wage statements requested from Defendants.

23 131. Upon information and belief, during all times relevant to this action,
24 Defendants failed to comply with Labor Code section 226 by failing to produced copies of
25 the itemized wage statements they issued to Plaintiff upon request.

26 132. PAGA imposes upon Defendants, and each of them, penalties for violating
27 Labor Code sections 226.

28 133. Labor Code section 2699(f) imposes upon Defendants, and each of them,

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

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

9 135. 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.

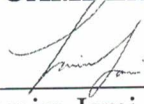
13 **PRAYER FOR RELIEF**

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

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

20 Dated: January 11, 2021

THE JAMI LAW FIRM P.C.

21 By: 
22 Tamim Jami
23 Attorney for Plaintiff
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