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10 CASSONDRA JACKSON

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

13 CASSONDRA JACKSON, an individual, for
14 the real party in interest, the State of California,

15 Plaintiff,

16 vs.

17 FIVE BELOW INC.; and DOES 1 through 50;
18
19
20 Defendants.
21

Case No. 37-2021-00044698-CU-OE-CTL

REPRESENTATIVE ACTION

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
10/20/2021 at 12:13:08 PM
Clerk of the Superior Court
By Malka Manneh, Deputy Clerk

1 Plaintiff CASSONDRA JACKSON (“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 and former
3 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 Code
6 sections 2698, 2699 *et seq.*, Plaintiff brings this representative action against Defendant FIVE
7 BELOW INC. (“Five Below”) and DOES 1 through 50 (all defendants are hereinafter collectively
8 referred to as “Defendants”) for wage and hour violations of the California Labor Code and the
9 applicable Industrial Welfare Commission Wage Order (the “IWC Wage Order”).

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

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

18 **JURISDICTION AND VENUE**

19 4. Pursuant to Article VI, section 10 of the California Constitution, subject matter
20 jurisdiction is proper in the Superior Court of California, County of San Diego, State of California
21 because Plaintiff alleges claims arising under California law.

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

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

26 7. This Court has jurisdiction over Plaintiff’s claim for civil penalties under PAGA.

27 8. Pursuant to California Code of Civil Procedure section 395, venue is proper in the
28 Superior Court of California for the County of San Diego because this is where Plaintiff was employed

1 and where the wrongful misconduct alleged herein occurred.

2 **THE PARTIES**

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

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

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

12 12. Defendants are the owner and operator of specialty discount stores throughout
13 California.

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

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

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

1 16. At all material times, Defendants were and/or are Represented Employees' employers
2 or persons acting on behalf of Represented Employees' employer, under California law, the IWC
3 Wage Order, and Labor Code sections 558 and 558.1 and thus are jointly and severally liable for the
4 violations alleged herein and any amounts awarded and/or recoverable as a result of this action.

5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6 17. On August 16, 2021, Plaintiff, via counsel, sent the statutorily required notice to the
7 LWDA, indicating that Plaintiff intends to pursue claims against Defendants for violations of the
8 Labor Code.

9 18. On August 16, 2021, Plaintiff, via counsel, sent a copy of the August 16, 2021 notice
10 to Defendant Below Five.

11 19. The statutory period expired since Plaintiff sent the August 16, 2021 notice to the
12 LWDA and LWDA did not serve Plaintiff with a notice of its intent to assume jurisdiction over the
13 applicable penalty claims and did not provide notice as set forth in Labor Code section
14 2699.3(a)(2)(A).

15 20. Therefore, Plaintiff has exhausted the administrative requirements under the PAGA.

16 **THE PAGA REPRESENTATIVE ACTION CLAIMS**

17 21. On information and belief, current and former employees of Defendants were subject
18 to wage and hour violations by Defendants, specifically by Defendants' violations of Labor Code
19 sections 201, 202, 203, 204, 226, 226(a)(1)-(a)(9), 226.7, 227.3, 246, 246(l), 510, 512, 1194, 1197.1,
20 1198, 2698, and 2699 et seq.

21 22. California law provides that an aggrieved employee may file a representative action
22 under the PAGA against an employer for civil penalties in connection with violations of the Labor
23 Code and IWC Wage Order.

24 23. Plaintiff brings this representative action against Defendants under the PAGA on behalf
25 of the state, who is the real party in interest.

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

28 a. Their action involves allegations of violations of provisions of the California Labor

Code that provide for a civil penalty to be assessed and collected by the LWDA or any departments, divisions, commissions, boards, agencies or employees;

- b. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against her; and
- c. Plaintiff has satisfied the procedural requirements of Labor Code section 2699.3, as set forth above.

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

- a. failure to provide accurate sick pay wages in violation of Labor Code section 246, 1197, 1197.1;
- b. failure to provide overtime wages in violation of Labor Code sections 510, 1194, 1198, and the IWC Wage Order;
- c. failure to provide accurate itemized wage statements in violation of Labor Code sections 226(a), 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9);
- d. failure to provide meal periods in violation of Labor Code sections 512, 226.7, and IWC Wage Order;
- e. failure to pay meal premiums at the regular rate of pay in violation of Labor Code sections 226.7, 226.7(c);
- f. failure to pay earned wages in violation of Labor Code section 204;
- g. failure to pay earned wages in violation of Labor Code sections 201, 202, and 203; and
- h. failure pay all vacation hours in violation of Labor Code sections 227.3.

FIRST CAUSE OF ACTION
(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code Sections 246 and 246(l) against all Defendants)

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

27. Under Labor Code sections 246 and 246(l), employers in California must provide employees with paid sick leave.

28. Plaintiff and the Represented Employees were entitled to paid sick leave.

1 29. Upon information and belief, Defendants failed to properly provide Plaintiff and the
2 Represented Employees with paid sick leave.

3 30. Upon information and belief, Defendants failed to compensate Plaintiff and the
4 Represented Employees for use of their sick leave at the correct rate of pay as mandated by Labor
5 Code section 246(l)(1)-(3).

6 31. By way of example, Defendants failed to compensate sick leave at the correct rate of
7 pay under Labor Code section 246(l) because it failed to account for all compensation earned
8 including, but not limited to, incentives and/or nondiscretionary bonuses.

9 32. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
10 Labor Code section 246.

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

15 34. Plaintiff is seeking civil penalties against Defendants, including Labor Code section
16 2699(f) and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an
17 amount to be shown according to proof.

18 35. Pursuant to Labor Code section 248.5, if applicable herein, Plaintiff seeks to recover
19 attorney's fees, costs, equitable relief in the form of civil penalties, in an amount to be shown
20 according to proof.

21 36. Pursuant to Labor Code section 1197 and 1197.1, Plaintiff seeks to recover the
22 relief available under Labor Code section 1197.1 on behalf of himself and the Represented
23 Employees as alleged herein in an amount to be shown according to proof.

24 37. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
25 reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be
26 shown according to proof.

SECOND CAUSE OF ACTION
(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code Sections 510, 1194, and 1198 and IWC Wage Order against all Defendants)

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

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

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

41. Upon information and belief, Plaintiff and the Represented Employees would regularly receive additional compensation, including but not limited to, incentives and/or nondiscretionary bonuses.

42. Upon information and belief Plaintiff and the Represented Employees were not paid proper overtime when they worked overtime hours because Defendants failed to include all compensation earned during a given period when determining the regular rate of pay, resulting in the underpayment of overtime wages.

43. Upon information and belief, during all times relevant to this action, Defendants violated Labor Code sections 510, 1194, 1198, and the IWC Wage Order.

44. 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.

45. 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

1 provision regulating hours and days of work in any order of the Industrial Welfare Commission shall
2 be subject to a civil penalty. Specifically, Labor Code section 558 imposes upon Defendants, and each
3 of them, penalties of fifty hundred dollars (\$50) per pay period, per aggrieved employee for initial
4 violations, and one hundred dollars (\$100) per pay period, per aggrieved employee for subsequent
5 violations.

6 46. Plaintiff is seeking civil penalties against Defendants, including Labor Code
7 sections 2699(f), 558, the Applicable IWC Wage Order, and/or any other applicable statute allowing
8 recovery of civil penalties under the PAGA in an amount to be shown according to proof.

9 47. Pursuant to Labor Code section 1194, Plaintiff seeks to recover reasonable
10 attorney's fees, costs, interest, and civil penalties in an amount to be shown according to proof.

11 48. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to
12 recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an
13 amount to be shown according to proof.

14 **THIRD CAUSE OF ACTION**
15 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
16 **Section 226(a)(1) against all Defendants)**

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

19 50. Labor Code section 226(a)(1) requires that wage statements that an employer
20 issues to its employees accurately state the gross wages earned.

21 51. Defendants failed to accurately state the proper gross on the wage statements in
22 violation of Labor Code section 226(a)(1). By way of one example, the wage statements issued to
23 Plaintiff and the Represented Employees failed to include the accurate amount of gross wages because
24 it failed to include the proper amount of sick pay wages, overtime wages, and meal premium wages.

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

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

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

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

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

8 56. Plaintiff is seeking civil penalties against Defendants, including Labor Code
9 section 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under
10 the PAGA in an amount to be shown according to proof.

11 57. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to
12 recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an
13 amount to be shown according to proof.

14 **FOURTH CAUSE OF ACTION**
15 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
16 **Section 226(a)(5) against all Defendants)**

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

19 59. Labor Code section 226(a)(5) requires that wage statements that an employer
20 issues to its employees accurately state the net wages earned.

21 60. Defendants failed to accurately state the proper net on the wage statements in
22 violation of Labor Code section 226(a)(5). By way of one example, the wage statements issued to
23 Plaintiff and the Represented Employees failed to include the accurate amount of net wages because
24 it failed to include the proper amount of sick pay wages, overtime wages, and meal premium wages.

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

27 62. The PAGA imposes upon Defendants, and each of them, civil penalties for
28 violating Labor Code section 226(a)(5).

63. 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.

64. 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.

65. Plaintiff is seeking civil penalties against Defendants, including Labor Code section 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

66. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

FIFTH CAUSE OF ACTION
**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Section 226(a)(9) against all Defendants)**

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

68. 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.

69. 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).

70. By way of one example, the rates for sick pay, overtime, and meal premiums are inaccurately itemized.

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

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

73. 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.

74. 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.

75. Plaintiff is seeking civil penalties against Defendants, including Labor Code section 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

76. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

SIXTH CAUSE OF ACTION
(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code Section 226(a) against all Defendants)

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

78. 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).

79. 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 accurate gross and net wages as well as all applicable hourly rates and corresponding hours worked as described herein and in the aforementioned paragraphs.

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

81. 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.

82. 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.

83. Plaintiff is seeking civil penalties against Defendants, including Labor Code section 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

84. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

SEVENTH CAUSE OF ACTION
(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code Sections 512, 226.7 and the IWC Wage Order against all Defendants)

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

86. Under Labor Code section 512 and the IWC Wage Order, an employer must provide a meal period of at least thirty minutes if the employee works more than five hours. California Labor Code section 512 “requires a first meal period no later than the end of an employee’s fifth hour of work [...]” (*Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004.)

87. Labor Code section 226.7 prohibits an employer from requiring an employee to work during a meal period and provides that an employee must be paid a wage for doing so.

88. Upon information and belief, during all times relevant to this action, Defendants failed to provide Plaintiffs and the Represented Employees with compliant meal periods in violation

1 of Labor Code sections 512, 226.7, and the IWC Wage Order.

2 89. The PAGA imposes upon Defendants, and each of them, civil penalties for
3 violating Labor Code sections 512, 226.7 and the IWC Wage Order.

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

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

15 92. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
16 2699(f), 226.7, 558, the IWC Wage Order, and/or any other applicable statute allowing recovery of
17 civil penalties under the PAGA as alleged herein in an amount to be shown according to proof.

18 93. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
19 reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties, in an amount to
20 be shown according to proof.

21 **EIGHTH CAUSE OF ACTION**
22 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
23 **Sections 226.7, 226.7(c), and the IWC Wage Order against all Defendants)**

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

26 95. Under Labor Code section 226.7(c), if an employer fails to provide an employee
27 with a proper meal period, the employer shall pay the employee one hour of pay at the employee's
28 regular rate of compensation for each workday that the meal period is not provided.

96. At minimum, Plaintiff and the Represented Employees should have been paid a meal break premium for each and every missed, delayed, or shortened meal period in an amount that was equivalent to their regular rate of pay for the pay period. Because Defendants failed to issue such meal premiums at the regular rate of pay for the pay period, Defendants violated Labor Code section 226.7(c). (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858.)

97. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code sections 226.7, 226.7(c) and the IWC Wage Order.

98. 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.

99. Plaintiff is seeking civil penalties against Defendants under Labor Code sections 2699(f), 226.7, the IWC Wage Order, and/or any other applicable statute allowing recovery of civil penalties under the PAGA as alleged herein in an amount to be shown according to proof.

100. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties, in an amount to be shown according to proof.

NINTH CAUSE OF ACTION
(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code Section 204 against all Defendants)

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

102. 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.*)

103. Defendants violated Labor Code section 204 because they failed to timely pay Plaintiff and the Represented Employees all earned wages during an applicable pay period.

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

105. 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.

106. Plaintiff is seeking civil penalties against Defendants under Labor Code section 2699(f), and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

107. Pursuant to the PAGA, Labor Code section 2699(g), or any other applicable statute, Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

TENTH CAUSE OF ACTION
(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code Sections 201, 202, and 203 against all Defendants)

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

109. 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.

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

111. Labor Code section 203 provides, in pertinent part: “If an employer willfully fails to pay, without abatement or reduction, ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days. ...”

112. Upon information and belief, Plaintiff and the Represented Employees did not receive all wages upon termination or separation of employment. By way of one example, Plaintiff and the Represented Employees were owed sick pay wages, overtime wages, and meal premium wages. To this date, Defendants have not paid those wages.

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

114. 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.

115. Plaintiff is seeking civil penalties against Defendants under Labor Code section 2699(f), and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

116. Pursuant to the PAGA, Labor Code section 2699(g), or any other applicable statute, Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

ELEVENTH CAUSE OF ACTION
(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code Section 227.3 against all Defendants)

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

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

119. Defendants violated Labor Code section 227.3. Upon information and belief, Defendant would provide Plaintiff and the Represented Employees with an accrual rate less than what

1 there were legally entitled to. As a result of such conduct, Plaintiff and the Represented Employees
2 did not receive all of their vested vacation hours upon cessation from employment.

3 120. The PAGA imposes upon Defendants, and each of them, civil penalties for
4 violating Labor Code section 227.3.

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

9 122. Plaintiff is seeking civil penalties against Defendants under Labor Code section
10 2699(f), and/or any other applicable statute allowing recovery of civil penalties under the PAGA in
11 an amount to be shown according to proof.

12 123. Pursuant to the PAGA, Labor Code section 2699(g), or any other applicable statute,
13 Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil
14 penalties in an amount to be shown according to proof.

15 **TWELFTH CAUSE OF ACTION**
16 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
17 **Sections 226(b), 1198.5, and 432 against all Defendants)**

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

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

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

1 127. Labor Code section 226(c) requires, in pertinent part, that “An employer who
2 receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to
3 a current or former employee shall comply with the request as soon as practicable, but no later than
4 21 calendar days from the date of the request. A violation of this subdivision is an infraction.
5 Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative
6 defense for an employer in any action alleging a violation of this subdivision. An employer may
7 designate the person to whom a request under this subdivision will be made.” (Labor Code § 226(c).)

8 128. Labor Code section 1198.5(b)(1) provides, in pertinent part: “The employer shall
9 make the contents of those personnel records available for inspection to the current or former
10 employee, or his or her representative, at reasonable intervals and at reasonable times, but not later
11 than 30 calendar days from the date the employer receives a written request.”

12 129. California Labor Code section 432 requires employers doing business in the State
13 of California to provide current and former employees copies of all written instruments they sign upon
14 request.

15 130. On August 13, 2021, Plaintiff, through counsel, sent a letter to Defendants,
16 requesting copies of her payroll and personnel records, including but not limited to, her itemized wage
17 statements and time records.

18 131. Defendants did not respond and failed to produce Plaintiff’s requested payroll and
19 personnel records by the statutory deadline.

20 132. On September 10, 2021, Plaintiff, through counsel, sent a follow up letter,
21 requesting her payroll and personnel records.

22 133. Yet again, Defendants failed to respond and produce Plaintiff’s requested payroll
23 and personnel records.

24 134. On September 30, 2021, Plaintiff, through counsel, sent another follow up letter
25 this time, via certified mail, requesting her payroll and personnel records.

26 135. As of the date of this filing, Plaintiff has not received a response to her three
27 requests for her payroll and personal records.

28 136. Upon information and belief, during all times relevant to this action, Defendants

1 failed to comply with Labor Code sections 226, 1198.5, and 432 by failing to produced Plaintiff's
2 payroll and personnel records and other documents covered by Labor Code sections 226, 1198.5 and
3 432.

4 137. PAGA imposes upon Defendants, and each of them, civil penalties for violating
5 Labor Code sections 226, 1198.5 and 432.

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

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

14 140. Plaintiff is seeking civil penalties against Defendants, including Labor Code
15 section 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under
16 the PAGA in an amount to be shown according to proof.

17 141. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to
18 recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an
19 amount to be shown according to proof.

20 **PRAYER FOR RELIEF**

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

- 22 1. An award of civil penalties pursuant to the PAGA and/or other applicable laws;
 - 23 2. An award of reasonable attorneys' fees, costs, and filing fees paid to the LWDA pursuant
24 to the PAGA, California Labor Code section 2699(g) and/or other applicable law;
 - 25 3. Post-judgment interest as provided by law; and
 - 26 4. Such other and further relief that the Court may deem just and proper.
- 27
28

1 Dated: October 20, 2021

MASHIRI LAW FIRM, APC

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4 By: 
5 Alex Asil Mashiri, Esq.
6 Attorney for Plaintiff
7 CASSONDRA JACKSON
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