

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

FIVE BELOW INC.; and DOES 1 through 50

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

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

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

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

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Diego Superior Court, Central Div.

330 W. Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del caso): 37-2021-00044698-CU-0E-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Alex Asil Mashiri, 11251 Rancho Carmel Drive #500694, San Diego, CA 92150; Tel: 858-348-4938

DATE:
(Fecha) 10/21/2021

Clerk, by
(Secretario)


M. Manneh

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
DIVISION: Central	
TELEPHONE NUMBER: (619) 450-7064	
PLAINTIFF(S) / PETITIONER(S): Cassandra Jackson	
DEFENDANT(S) / RESPONDENT(S): Five Below Inc	
JACKSON VS FIVE BELOW INC [IMAGED]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE (CIVIL)	CASE NUMBER: 37-2021-00044698-CU-OE-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: John S. Meyer

Department: C-64

COMPLAINT/PETITION FILED: 10/20/2021

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	04/29/2022	10:00 am	C-64	John S. Meyer

Due to the COVID-19 pandemic, all Case Management Conferences (CMCs) are being conducted virtually unless there is a court order stating otherwise. Prior to the hearing date, visit the "virtual hearings" page for the most current instructions on how to appear for the applicable case-type/department on the court's website at www.sdcourt.ca.gov.

A Case Management Statement (JC Form #CM-110) must be completed by counsel for all parties and by all self-represented litigants and timely filed with the court at least 15 days prior to the initial CMC. (San Diego Superior Court (SDSC) Local Rules, rule 2.1.9; Cal. Rules of Court, rule 3.725).

All counsel of record and self-represented litigants must appear at the CMC, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of Alternative Dispute Resolution (ADR) options.

It is the duty of each plaintiff (and cross-complainant) to serve a copy of this Notice of Case Assignment and Case Management Conference (SDSC Form #CIV-721) with the complaint (and cross-complaint), the Alternative Dispute Resolution (ADR) Information Form (SDSC Form # CIV-730), a Stipulation to Use Alternative Dispute Resolution (ADR) (SDSC Form # CIV-359), and other documents on all parties to the action as set out in SDSC Local Rules, rule 2.1.5.

TIME FOR SERVICE AND RESPONSE: The following rules apply to civil cases except for collections cases under California Rules of Court, rule 3.740(a), unlawful detainer actions, proceedings under the Family Code, and other proceedings for which different service requirements are prescribed by law (Cal. Rules of Court, rule 3.110; SDSC Local Rules, rule 2.1.5):

- **Service:** The complaint must be served on all named defendants, and proof of service filed with the court within 60 days after filing the complaint. An amended complaint adding a defendant must be served on the added defendant and proof of service filed within 30 days after filing of the amended complaint. A cross-complaint against a party who has appeared in the action must be accompanied by proof of service on that party at the time it is filed. If it adds a new party, the cross-complaint must be served on all parties and proof of service on the new party must be filed within 30 days of the filing of the cross-complaint.
- **Defendant's appearance:** Unless a special appearance is made, each defendant served must generally appear (as defined in Code of Civ. Proc. § 1014) within 30 days of service of the complaint/cross-complaint.
- **Extensions:** The parties may stipulate without leave of court to one 15-day extension beyond the 30-day time period prescribed for the response after service of the initial complaint (SDSC Local Rules, rule 2.1.6). If a party fails to serve and file pleadings as required under this rule, and has not obtained an order extending time to serve its pleadings, the court may issue an order to show cause why sanctions shall not be imposed.

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Official Court Reporters are not normally available in civil matters, but may be requested in certain situations no later than 10 days before the hearing date. See SDSC Local Rules, rule 1.2.3 and Policy Regarding Normal Availability and Unavailability of Official Court Reporters (SDSC Form #ADM-317) for further information.

ALTERNATIVE DISPUTE RESOLUTION (ADR): The court discourages any unnecessary delay in civil actions; therefore, continuances are discouraged and timely resolution of all actions, including submitting to any form of ADR is encouraged. The court encourages and expects the parties to consider using ADR options prior to the CMC. The use of ADR will be discussed at the CMC. Prior to the CMC, parties stipulating to the ADR process may file the Stipulation to Use Alternative Dispute Resolution (SDSC Form #CIV-359).

NOTICE OF E-FILING REQUIREMENTS AND IMAGED DOCUMENTS

Effective April 15, 2021, e-filing is required for attorneys in represented cases in all limited and unlimited civil cases, pursuant to the San Diego Superior Court General Order: In Re Procedures Regarding Electronically Imaged Court Records, Electronic Filing and Access to Electronic Court Records in Civil and Probate Cases. Additionally, you are encouraged to review CIV-409 for a listing of documents that are not eligible for e-filing. E-filing is also encouraged, but not mandated, for self-represented litigants, unless otherwise ordered by the court. All e-filers are required to comply with the e-filing requirements set forth in Electronic Filing Requirements (Civil) (SDSC Form #CIV-409) and Cal. Rules of Court, rules 2.250-2.261.

All Civil cases are assigned to departments that are part of the court's "Imaging Program." This means that original documents filed with the court will be imaged, held for 30 days, and then destroyed, with the exception of those original documents the court is statutorily required to maintain. The electronic copy of the filed document(s) will be the official court record, pursuant to Government Code § 68150. Thus, original documents should not be attached to pleadings filed with the San Diego Superior Court, unless it is a document for which the law requires an original be filed. Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant, or petitioner to serve a copy of this Notice of Case Assignment and Case Management Conference (Civil) (SDSC Form #CIV-721) with the complaint, cross-complaint, or petition on all parties to the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words "IMAGED FILE" in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and may be found on the court's website at www.sdcourt.ca.gov.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): Cassondra Jackson	
DEFENDANT(S): Five Below Inc	
SHORT TITLE: JACKSON VS FIVE BELOW INC [IMAGED]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2021-00044698-CU-OE-CTL

Judge: John S. Meyer

Department: C-64

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| ☐ Mediation (court-connected) | ☐ Non-binding private arbitration |
| ☐ Mediation (private) | ☐ Binding private arbitration |
| ☐ Voluntary settlement conference (private) | ☐ Non-binding judicial arbitration (discovery until 15 days before trial) |
| ☐ Neutral evaluation (private) | ☐ Non-binding judicial arbitration (discovery until 30 days before trial) |
| ☐ Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 10/21/2021

JUDGE OF THE SUPERIOR COURT



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2021-00044698-CU-OE-CTL

CASE TITLE: Jackson vs Five Below Inc [IMAGED]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

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3 San Diego, CA 92150
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4 Fax: (858) 348-4939

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

9 Attorneys for Plaintiff
10 CASSONDRA JACKSON

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

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

14 Plaintiff,

15 vs.

16 FIVE BELOW INC.; and DOES 1 through 50;

17 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

01/07/2022 at 08:31:00 AM

Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

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

REPRESENTATIVE ACTION

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

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. An amended notice was sent to the LWDA on October 29, 2021.

9 18. On August 16, 2021, Plaintiff, via counsel, sent a copy of the August 16, 2021 notice
10 to Defendant Below Five. A copy of the amended notice to the LWDA was mailed to Defendant
11 Below Five on October 29, 2021.

12 19. The statutory period expired since Plaintiff sent the statutory notices to the LWDA and
13 LWDA did not serve Plaintiff with a notice of its intent to assume jurisdiction over the applicable
14 penalty claims and did not provide notice as set forth in Labor Code section 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;
- h. failure pay all vacation hours in violation of Labor Code sections 227.3;
- i. failure to produce records in violation of Labor Code sections 226, 226(b), 226(c), 432, and 1198.5;
- j. failure to reimburse in violation of Labor Code section 2802.

FIRST CAUSE OF ACTION
(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code Sections 246, 246(l), and 1197 against all Defendants)

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

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

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

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

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

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

12 32. Defendants' violation of Labor Code sections 246 and 246(l) also resulted in a
13 violation of Labor Code section 1197.

14 33. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
15 Labor Code sections 246, 246(l), and 1197.

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

20 35. Plaintiff is seeking civil penalties against Defendants, including Labor Code sections
21 2699(f), 1197.1, and/or any other applicable statute allowing recovery of civil penalties under the
22 PAGA in an amount to be shown according to proof.

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

26 37. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
27 reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be
28 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).

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.

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.

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

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.

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

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

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

11 115. Plaintiff is seeking civil penalties against Defendants under Labor Code section
12 2699(f), and/or any other applicable statute allowing recovery of civil penalties under the PAGA in
13 an amount to be shown according to proof.

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

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

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

22 118. Under Labor Code section 227.3, "whenever a contract of employment or
23 employer policy provides for paid vacations, and an employee is terminated without having taken off
24 his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in
25 accordance with such contract of employment or employer policy respecting eligibility or time served
26 [...]."

27 119. Defendants violated Labor Code section 227.3. Upon information and belief,
28 Defendant would provide Plaintiff and the Represented Employees with an accrual rate less than what
there were legally entitled to. As a result of such conduct, Plaintiff and the Represented Employees

1 did not receive all of their vested vacation hours upon cessation from employment.

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

4 121. 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.

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

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

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

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

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

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

28 127. 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

1 a current or former employee shall comply with the request as soon as practicable, but no later than
2 21 calendar days from the date of the request. A violation of this subdivision is an infraction.
3 Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative
4 defense for an employer in any action alleging a violation of this subdivision. An employer may
5 designate the person to whom a request under this subdivision will be made.” (Labor Code § 226(c).)

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

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

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

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

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

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

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

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

26 136. Upon information and belief, during all times relevant to this action, Defendants
27 failed to comply with Labor Code sections 226, 1198.5, and 432 by failing to produced Plaintiff’s
28 payroll and personnel records and other documents covered by Labor Code sections 226, 1198.5 and

1 432.

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

4 138. 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.

8 139. 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.

11 140. 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 **THIRTEENTH CAUSE OF ACTION**
15 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
16 **Section 2802 against all Defendants)**

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

19 142. Labor Code section 2802, subdivision (a) states that an employer must reimburse
20 employees "for all necessary expenditures" incurred by the employee in "direct consequence of the
21 discharge of his or her duties."

22 143. Defendants violated Labor Code section 2802. By way of one example, there were
23 several occasions wherein Plaintiff was required to use her personal vehicle to drive to the bank in
24 order to make bank deposits (or obtain change) for the Defendants but Plaintiff was not reimbursed
25 for her travel expenses (e.g. gas and/or mileage). By way of another example, Plaintiff would
26 sometimes be required to use her cellular phone in order to communicate with management for work
27 related matter, but would not be compensated for such by Defendants.

28 144. Upon information and belief, Plaintiff believes that Defendants committed the
same violations against alleged in the prior paragraph against other Represented Employees.

1 145. PAGA imposes upon Defendants, and each of them, civil penalties for violating
2 Labor Code section 2802.

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

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

10 148. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to
11 recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an
12 amount to be shown according to 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 the PAGA and/or other applicable laws;
- 16 2. An award of reasonable attorneys' fees, costs, and filing fees paid to the LWDA pursuant
17 to the PAGA, 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 7, 2022

MASHIRI LAW FIRM, APC

21
22 By: 

Alex Asil Mashiri, Esq.
Attorney for Plaintiff
CASSONDRA JACKSON