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CORY DIEBOLD

8
9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

11
12 **CORY DIEBOLD**, an individual, on behalf of
himself, all others similarly situated, and the
13 State of California,

14 Plaintiffs,

15 vs.

16 **RENEW HEALTH GROUP LLC; PACIFIC**
PARK HEALTHCARE CENTER LLC; and
17 **DOES 1-50,**

18 Defendants.
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Case No. **21GDCV01393**

**COMPLAINT FOR CIVIL PENALTIES
PURSUANT TO PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (LABOR CODE
§§ 2698 ET SEQ.)**

1 Plaintiff Cory Diebold (“PLAINTIFF”), on behalf of himself, all current and former
2 California employees of Defendants Renew Health Group LLC and Pacific Park Healthcare
3 Center LLC, and on behalf of the State of California, hereby complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a representative action by PLAINTIFF on behalf of himself, other
6 similarly situated California employees of Defendants and the State of California against Renew
7 Health Group LLC and Pacific Park Healthcare Center LLC and Doe Defendants 1-50
8 (collectively, “DEFENDANTS”), pursuant to the California Private Attorneys General Act,
9 Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties [75% payable to the Labor
10 & Workforce Development Agency (“LWDA”) and 25% payable to aggrieved employees] for
11 violations of California Labor Code sections 432.5, 923, and 925.

12 **JURISDICTION AND VENUE**

13 2. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to
14 PAGA.

15 3. Venue is proper in this Judicial district and the County of Los Angeles pursuant to
16 California Code of Civil Procedure § 395.5 because DEFENDANTS employed PLAINTIFF in
17 Glendale, California, within the County of Los Angeles, and the acts, omissions, and conduct
18 alleged by PLAINTIFF herein occurred in this county and throughout California.

19 **PARTIES**

20 4. Defendants Renew Health Group LLC is a California limited liability company
21 with its principal place of business in California. Renew Health Group LLC provides healthcare
22 services including skilled nursing, assisted living and senior living communities.

23 5. Defendant Pacific Park Healthcare Center LLC is a California limited liability
24 company with its principal place of business in California. Pacific Park Healthcare Center LLC
25 provides skilled nursing services at its facility, located in Glendale, California.

26 6. PLAINTIFF worked for DEFENDANTS as a full-time licensed administrator at
27 the Pacific Park Healthcare Center in Glendale, California from January 2020 into 2021.

1 7. PLAINTIFF is informed and believes that DOES 1 through 50 are corporations,
2 individuals, limited liability partnerships, limited liability companies, general partnerships, sole
3 proprietorships or are other business entities or organizations of a nature not currently known to
4 PLAINTIFF.

5 8. PLAINTIFF is unaware of the true names of Defendant DOES 1 through 50.
6 PLAINTIFF sues said Defendants by said fictitious name, and will amend this complaint when
7 the true names and capacities are ascertained or when such facts pertaining to liability are
8 ascertained, or as permitted by law or by the Court. PLAINTIFF is informed and believes that
9 each of the fictitiously named Defendants is in some manner responsible for the events and
10 allegations set forth in this complaint.

11 9. PLAINTIFF is informed and believes, and thereon alleges, that at all times herein
12 mentioned each Defendant, including all Defendants sued under fictitious names, was the
13 employee, or representative of each of the remaining Defendants, and in doing the things
14 hereinafter alleged, was at times acting within the course and scope of this employment, and at
15 other times, acting in his or her own individual capacity. In the alternative, each of the
16 individually named Defendants, acted in concert and in furtherance of a fraudulent plan and
17 scheme and each actively participated in the wrongful acts alleged in this complaint.

18 **FACTUAL BACKGROUND**

19 10. Facts Related to Violations of Labor Code Section 432.5: Labor Code Section
20 432.5 provides: “No employer, or agent, manager, superintendent, or officer thereof, shall
21 require any employee or applicant for employment to agree, in writing, to any term or condition
22 which is known by such employer, or agent, manager, superintendent, or officer thereof to be
23 prohibited by law.”

24 11. When DEFENDANTS hired PLAINTIFF, DEFENDANTS required PLAINTIFF
25 to sign a document entitled “Alternative Dispute Resolution Policy” (the “Arbitration
26 Agreement” attached as Exhibit A to Exhibit 1 hereto) as a condition of employment. Pages 5-6
27 of the Arbitration Agreement state in all caps, in relevant part:

1 IN CONSIDERATION FOR AND AS A MATERIAL CONDITION OF
2 EMPLOYMENT WITH THE COMPANY...IT IS AGREED THAT THE
3 ALTERNATIVE DISPUTE RESOLUTION POLICY ATTACHED
4 HERETO...IS THE EXCLUSIVE MEANS FOR RESOLVING COVERED
5 DISPUTES...

6 12. Among other things, the Arbitration Agreement contains several sections that
7 expressly prohibit PLAINTIFF from asserting representative/private attorney general actions.
8 The section entitled "Class Action Waiver" states: "I understand and agree this ADR program
9 prohibits me from joining or participating in a class action or representative action or otherwise
10 consolidating a covered claim with the claim of others." (Arbitration Agreement, p. 2 ["Class
11 Action Waivers"]). Page 4 of the Arbitration Agreement provides that, in relevant part: "...I
12 agree this ADR Policy prohibits me from joining or participating in a class action or
13 representative action, acting as a private attorney general or representative of others, or otherwise
14 consolidating a covered claim with the claims of others." (Arbitration Agreement, p. 4). Finally,
15 page 5 of the Arbitration Agreement states, in relevant part: "...IN ADDITION, I
16 UNDERSTAND I AM PROHIBITED FROM JOINING OR PARTICIPATING IN A CLASS
17 ACTION OR REPRESENTATIVE ACTION, ACTING AS A PRIVATE ATTORNEY
18 GENERAL OR REPRESENTATIVE OF OTHERS, OR OTHERWISE CONSOLIDATING A
19 COVERED CLAIM WITH THE CLAIM OF OTHERS." (Arbitration Agreement, p. 5). On
20 information and belief, the form Arbitration Agreement was presented to all of Defendants'
21 employees to sign as a condition of their employment.

22 13. The Arbitration Agreement's purported waiver of PLAINTIFF's right to bring
23 any claim related to his employment on a representative basis, including under California's
24 Private Attorneys General Act of 2004, Labor Code Section 2698 et seq. ("PAGA"), is unlawful
25 and unenforceable as a matter of settled California law.

26 14. Before DEFENDANT required PLAINTIFF to sign the Arbitration Agreement, it
27 was well settled that agreements purporting to waive an employee's right to a trial of PAGA
28 claims is contrary to California law and unenforceable. *See Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 384; *Juarez v. Wash Depot Holdings, Inc.* (2018) 24 Cal.

App. 5th 1197, 1202–03; *Lawson v. ZB, N.A.* (2017) 18 Cal. App. 5th 705, 725, as modified (Dec. 21, 2017) (same).

15. Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 86-87 (“There is no individual component to a PAGA action because ‘every PAGA action ... is a representative action on behalf of the state.’”)

16. DEFENDANTS knew or should have known that the Alternative Dispute Resolution Policy contains an unlawful PAGA waiver as *Iskanian* has been the law since 2014.

17. By continuing to require their employees to sign mandatory arbitration agreements that DEFENDANTS know contains an unlawful PAGA waiver, DEFENDANTS have violated and continue to violate Labor Code § 432.5. In doing so, DEFENDANTS deter their employees from pursuing PAGA claims that they otherwise are entitled to pursue in court.

18. Facts Related to Violations of Labor Code Section 923: Labor Code Section 923 provides, in full with italics added:

Negotiation of terms and conditions of labor should result from voluntary agreement between employer and employees. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers, the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in *self-organization or in other concerted activities* for the purpose of collective bargaining or *other mutual aid or protection*.

19. “Clearly, the declared purpose of [] section 923 is to guarantee to individual employees full freedom of self-organization and of association with others ‘for the purpose of *collective* bargaining or other *mutual aid* or protection,’ free from interference or coercion by their employers.” *Gelini v. Tishgart*, 77 Cal. App. 4th 219, 224 (1999) (citing *Petri Cleaners*,

1 *Inc. v. Automotive Employees etc., Local No. 88*, 53 Cal.2d 455, 470 (1960) (italics added); *Levy*
2 *v. Superior Court*, 15 Cal.2d 692, 704 (1940).

3 20. By requiring PLAINTIFF and other aggrieved employees to sign an arbitration
4 agreement that contains an unlawful PAGA waiver (as discussed above), DEFENDANTS have
5 interfered, restrained and coerced PLAINTIFF and other aggrieved employees from self-
6 organization and other concerted activities for the purpose of mutual aid and protection in
7 violation of Labor Code § 923. PAGA actions through which employees seek to hold employers
8 accountable to all aggrieved employees for Labor Code violations is clearly a form of concerted
9 activity for the purpose of mutual aid and protection.

10 21. Facts Related to Violations of Labor Code Section 923: Labor Code Section
11 925(a), in relevant part, prohibits an employer from requiring “an employee who primarily
12 resides in California, as a condition of employment, to agree to a provision that would ... (2)
13 Deprive the employee of the substantive protection of California law with respect to a
14 controversy arising in California.”

15 22. As alleged above, DEFENDANTS required PLAINTIFF to sign an arbitration
16 agreement as a condition of employment. The Arbitration Agreement included an unlawful
17 PAGA waiver that expressly prohibited a PAGA action. *See* Arbitration Agreement, p. 4 (“...I
18 agree this ADR Policy prohibits me from joining or participating in a class action or
19 representative action, acting as a private attorney general or representative of others, or otherwise
20 consolidating a covered claim with the claims of others.”). In doing so, DEFENDANTS deprived
21 PLAINTIFF and other aggrieved employees of the substantive protection of California law and
22 deterred their employees from pursuing PAGA claims for controversies arising in California that
23 they otherwise are entitled to pursue in court, in violation of Labor Code § 925.

24 **COMPLIANCE WITH NOTIFICATION REQUIREMENTS**

25 23. On October 7, 2021, PLAINTIFF, through his counsel, submitted online a letter
26 to the California Labor and Workforce Development Agency (“LWDA”) informing it that
27 DEFENDANTS violated the provisions of Labor Code §§ 432.5, 923 and 925, providing the
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1 facts and theories that supported the alleged violations (the “PAGA Letter”). Attached hereto
2 as **Exhibit 1** is a true and correct copy of the October 7, 2021 PAGA Letter which was also
3 sent via certified mail to DEFENDANTS at the offices of their Agents for Service of Process.
4 Because the PAGA Letter alleged violations of Labor Code sections listed in Labor Code §
5 2699.5 (e.g., sections 432.5 and 923), PLAINTIFF was required to give 65 days’ notice before
6 filing her Complaint. To date, more than 65 days after the October 7, 2021 PAGA Letter was
7 submitted, the LWDA has not responded.

8 24. Because Labor Code § 925 is not listed in Section 2699.5, Plaintiff was required
9 to give DEFENDANTS 33 days from the postmark date of the notice to cure the violation.
10 Lab. Code § 2699.3(c)(2)(A). DEFENDANTS did not give written notice pursuant to Section
11 2699.3(c) within that period of time by certified mail to PLAINTIFF or his representative or by
12 online filing with the LWDA that the alleged violation is cured.

13 25. The PAGA Letter outlined PLAINTIFF’s claims for violations of the California
14 Labor Code and the applicable wage orders on behalf of herself, the State of California and
15 other aggrieved employees.

16 26. Accordingly, PLAINTIFF exhausted administrative remedies as required by
17 Labor Code § 2699.3.

18 **FIRST CAUSE OF ACTION**

19 **CIVIL PENALTIES UNDER PAGA**

20 **(By PLAINTIFF, State of California and Aggrieved Employees against DEFENDANTS)**

21 27. PLAINTIFF incorporates all of the foregoing paragraphs of this complaint as if
22 fully alleged herein.

23 28. At all times relevant to this action, PLAINTIFF and other Aggrieved Employees
24 were “aggrieved employees” within the meaning of Labor Code Section 2699.

25 29. Under the Private Attorneys General Act, Labor Code §§ 2698-99 (“PAGA”),
26 private parties may recover civil penalties for violations of the California Labor Code, including
27 sections 432.5, 923 and 925. PAGA civil penalties are in addition to any other relief available
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under the Labor Code.

30. DEFENDANTS' conduct as described herein, arising from DEFENDANTS' requirement to sign as a condition of employment arbitration agreements that contained unlawful PAGA waivers, constitute violations of Labor Code Sections 432.5, 923 and 925.

31. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf of himself, other current or former employees and the State of California, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3.

32. As set forth above, DEFENDANTS violated the California Labor Code by consistently failing to employ PLAINTIFF and similarly employed individuals in compliance with California law.

33. Pursuant to Labor Code Section 2699(g), PLAINTIFF is entitled to an award of reasonable attorney's fees and costs in connection with his claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, on behalf of himself and all other current and former California employees of DEFENDANTS who signed the same or similar Arbitration Agreement as a condition of their employment, and the State of California, prays for relief and judgment against DEFENDANTS as follows:

1. Civil penalties under Labor Code section 2699 (75% payable to the LWDA and 25% payable to aggrieved employees);
2. Costs;
3. Reasonable attorney's fees; and
4. Such other and further relief as this Court may deem just and proper.

Dated: December 15, 2021

MOSS BOLLINGER LLP

By: 
Jeremy F. Bollinger
Attorneys for Plaintiff CORY DIEBOLD

Exhibit 1

to

Complaint

Diebold v. Renew Health Group LLC et al.



Moss Bollinger
LLP

JEREMY F. BOLLINGER
310.982.2984/fax: (818) 963-5954
jeremy@mossbollinger.com

October 7, 2021

VIA PAGA ONLINE FILING

Secretary Natalie Palugyai
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Renew Health Group LLC
c/o Elyssia Musolino, Esq.
1055 West Seventh Street, Ste. 2400
Los Angeles, CA 90017

Pacific Park Healthcare Center LLC
c/o Eugene Alkana
131 N. El Molino Ave., Ste. 310
Pasadena, CA 91101

Re: Notice pursuant to Labor Code Sections 2699.3
Private Attorney General Act ("PAGA")

Employer(s): Renew Health Group LLC and Pacific Park Healthcare Center LLC

Employee: Cory Diebold, on behalf of himself and on behalf of all similarly aggrieved
current and former employees of Renew Health Group LLC and Pacific Park
Healthcare Center LLC

Dear Secretary Palugyai:

Pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"), representative employee Cory Diebold ("Mr. Diebold" or "Plaintiff"), on behalf of himself and all other similarly aggrieved California employees, gives notice that his former employer, Renew Health Group LLC and Pacific Park Healthcare Center LLC (collectively, "Defendants") violated the California Labor Code throughout his employment and within the one year prior to the mailing of this letter as follows.

15300 Ventura Boulevard, Suite 207, Sherman Oaks, California 91403

THE PARTIES

Renew Health Group LLC is a California limited liability company with its principal place of business in California. Renew Health Group LLC provides healthcare services including skilled nursing, assisted living and senior living communities.

Pacific Park Healthcare Center LLC is a California limited liability company with its principal place of business in California. Pacific Park Healthcare Center LLC provides skilled nursing services at its facility, located in Glendale, California.

Plaintiff worked for Defendants as a full-time licensed administrator at the Pacific Park Healthcare Center in Glendale, California from January 2020 to sometime in 2021. As part of the onboarding process, Plaintiff and other similarly aggrieved employees were required to sign an arbitration agreement. Attached hereto as **Exhibit A** is a copy of Mr. Diebold's arbitration agreement.

THE CLAIMS

Violation of Labor Code Section 432.5

Unlawful Waiver of PAGA Actions

Labor Code Section 432.5 provides: "No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law."

When Defendants hired Plaintiff, they required Plaintiff to sign a document entitled "Alternate Dispute Resolution Policy" (the "Arbitration Agreement") as a condition of employment. Pages 5-6 of the Arbitration Agreement state in all caps, in relevant part:

**IN CONSIDERATION FOR AND AS A MATERIAL CONDITION OF
EMPLOYMENT WITH THE COMPANY...IT IS AGREED THAT THE
ALTERNATIVE DISPUTE RESOLUTION POLICY ATTACHED
HERETO...IS THE EXCLUSIVE MEANS FOR RESOLVING COVERED
DISPUTES...**

Among other things, the Arbitration Agreement contains several sections that expressly prohibit Plaintiff from asserting representative actions and private attorney general actions. The section entitled "Class Action Waiver" states: "I understand and agree this ADR program prohibits me from joining or participating in a class action or representative action or otherwise consolidating a covered claim with the claim of others." (Exhibit A, "Class Action Waivers" at p. 2). Page 4 of the Arbitration Agreement provides that, in relevant part: "...I agree this ADR Policy prohibits me from joining or participating in a class action or representative action, acting as a private attorney general or representative of others, or otherwise consolidating a covered claim with the claims of others." (Arbitration Agreement, p. 4). Finally, page 5 of the Arbitration Agreement states, in relevant part: "...**IN ADDITION, I UNDERSTAND I AM PROHIBITED FROM**

JOINING OR PARTICIPATING IN A CLASS ACTION OR REPRESENTATIVE ACTION, ACTING AS A PRIVATE ATTORNEY GENERAL OR REPRESENTATIVE OF OTHERS, OR OTHERWISE CONSOLIDATING A COVERED CLAIM WITH THE CLAIM OF OTHERS.” (Exhibit A at p. 5). On information and belief, the form Arbitration Agreement was presented to all of Defendants’ employees to sign as a condition of their employment.

The Arbitration Agreement’s purported waiver of Plaintiff’s right to bring any claim related to his employment on a representative basis, including under California’s Private Attorneys General Act of 2004, Labor Code Section 2698 et seq. (“PAGA”), is unlawful and unenforceable as a matter of settled California law.

In fact, at the time Defendants required Plaintiff and other aggrieved employees to sign the Arbitration Agreement containing the waiver of their right to a trial of PAGA claims, it was well-established that such PAGA waivers are contrary to California law and unenforceable. *See Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 384 (“We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”); *Juarez v. Wash Depot Holdings, Inc.* (2018) 24 Cal. App. 5th 1197, 1202–03 (“court properly concluded that the PAGA waiver set forth in the handbook is unenforceable as against public policy”); *Lawson v. ZB, N.A.* (2017) 18 Cal. App. 5th 705, 725, as modified (Dec. 21, 2017) (same).

Despite knowing that the Arbitration Agreement contains an unlawful and unenforceable PAGA waiver, Defendants continued to require their employees to sign these arbitration agreements during the one-year period preceding Plaintiff’s submission of this notice letter.

By requiring Plaintiff and other aggrieved employees to sign mandatory arbitration agreements that Defendants knew contained an unlawful PAGA waiver, Defendants violated Section 432.5. In doing so, Defendants deterred their employees from pursuing PAGA claims that they otherwise are entitled to pursue in court.

Under California Labor Code § 2699(f)(2), civil penalties of one hundred dollars (\$100) per pay period for the first violation (i.e., pay period in which the unlawful provision was in effect) and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation are owed per Plaintiff and each employee of Defendants in California who was required to sign an arbitration agreement containing the same or similar illegal term in violation of California Labor Code § 432.5—that is, the term requiring the employee to waive his or her right to bring a representative action under PAGA—for as long as the Arbitration Agreement was in effect.

Violation of Labor Code Section 923

Labor Code Section 923 provides, in full with emphasis added:

Negotiation of terms and conditions of labor should result from voluntary agreement between employer and employees. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers, the individual unorganized

worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in *self-organization or in other concerted activities* for the purpose of collective bargaining or *other mutual aid or protection*.

“Clearly, the declared purpose of [] section 923 is to guarantee to individual employees full freedom of self-organization and of association with others ‘for the purpose of *collective* bargaining or other *mutual aid* or protection,’ free from interference or coercion by their employers.” *Gelini v. Tishgart*, 77 Cal. App. 4th 219, 224 (1999) (citing *Petri Cleaners, Inc. v. Automotive Employees etc., Local No. 88*, 53 Cal.2d 455, 470 (1960) (italics added); *Levy v. Superior Court*, 15 Cal.2d 692, 704 (1940).

By requiring Plaintiff and other aggrieved employees to sign an arbitration agreement that contains an unlawful PAGA waiver (as discussed above), Defendants have interfered, restrained and coerced Plaintiff and other aggrieved employees from self-organization and other concerted activities for the purpose of mutual aid and protection in violation of Labor Code § 923. PAGA actions through which employees seek to hold employers accountable to all aggrieved employees for Labor Code violations is clearly a form of concerted activity for the purpose of mutual aid and protection. As a result, Defendants are liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation (i.e., pay period in which the unlawful provision was in effect) and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

Violation of Labor Code Section 925

Labor Code Section 925(a), in relevant part, prohibits an employer from requiring “an employee who primarily resides in California, as a condition of employment, to agree to a provision that would ... (2) Deprive the employee of the substantive protection of California law with respect to a controversy arising in California.”

As discussed above, Defendants required Plaintiff to sign an arbitration agreement as a condition of employment. The Arbitration Agreement included an unlawful PAGA waiver that expressly prohibited a PAGA action, “...I agree this ADR Policy prohibits me from joining or participating in a class action or representative action, acting as a private attorney general or representative of others, or otherwise consolidating a covered claim with the claims of others.” (Exhibit A at p. 4). In doing so, Defendants deprived Plaintiff and other aggrieved employees of the substantive protection of California law and deterred their employees from pursuing PAGA claims for controversies arising in California that they otherwise are entitled to pursue in court, in violation of Labor Code Section 925. As a result, Defendants are liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation (i.e., pay period in which the unlawful provision was in effect) and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

CIVIL PENALTIES

As a result of the foregoing, Defendants are liable for civil penalties as provided for by California law. Consequently, Plaintiff and all other aggrieved employees of Defendants are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

CONCLUSION

Defendants violated and, on information and belief, continues to violate the Labor Code sections identified above. Plaintiff requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, if Defendants fail to cure those violations that are curable under Labor Code Section 2699.3 and the agency does not intend to investigate any of the alleged violations, Plaintiff requests that the agency inform him of its decision so that he may file a lawsuit with respect to the allegations discussed in this letter. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984, Ext. 6.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Bollinger', with a stylized flourish extending to the right.

Jeremy F. Bollinger
MOSS BOLLINGER LLP

Encl. (Exhibit A)

EXHIBIT A

ALTERNATIVE DISPUTE RESOLUTION POLICY

In any organization, employment disputes will arise, sometimes requiring resolution through a formal proceeding. Traditionally, this proceeding has been conducted through our court system. However, our court system too often has proven to be an exceedingly costly and time consuming process, thus failing to provide the parties involved with an acceptable resolution of the dispute.

With this in mind, your employer has developed and implemented this Alternative Dispute Resolution Policy ("ADR Policy"). We believe that the procedures set forth in this ADR Policy will result in a fair and equitable means for resolving those types of employment disputes that all too often become unnecessarily protracted. These procedures ensure that all parties have an opportunity to meet and see if there is a mutually satisfactory basis for resolving their dispute. Failing to reach an amicable resolution, these procedures provide for a fair hearing before an impartial, objective individual who has been selected by both sides. The neutral arbitrator will have the full authority to resolve this matter protecting the rights of all parties.

We hope that you will never find the need to utilize these procedures and that your employment will be free of major disputes or issues. However, in the event a dispute should arise, these procedures are there to ensure that the dispute is handled fairly and efficiently.

WHO IS COVERED BY THE ADR POLICY

The ADR Policy will be mandatory for ALL DISPUTES ARISING BETWEEN EMPLOYEES, ON THE ONE HAND, AND YOUR EMPLOYER., AND/OR ITS EMPLOYEES AND OFFICERS (HEREINAFTER COLLECTIVELY THE "COMPANY"), ON THE OTHER HAND. Any disputes which arise and which are covered by the ADR Policy must be submitted to final and binding resolution through the procedures of the Company's ADR Policy.

For parties covered by this Alternative Dispute Resolution Policy, alternative dispute resolution, including final and binding arbitration, is the exclusive means for resolving covered disputes (as defined below); no other action may be brought in court or in any other forum. This agreement is a waiver of all rights to a civil court action for a covered dispute; only an arbitrator, not a Judge or Jury, will decide the dispute.

Nothing in this ADR Policy precludes the parties from discussing a mutually acceptable resolution of the dispute without the necessity of formal arbitration proceedings. Additionally, the parties may agree to engage in mediation prior to arbitration.

COVERED DISPUTES

Nothing in this Alternative Dispute Resolution Policy is intended to require arbitration of any claim or dispute which the courts of this jurisdiction have expressly held are not subject to mandatory arbitration.

Nothing in this agreement is designed to compel arbitration of any claims or causes of action expressly excluded by the provisions of the 2010 Defense Appropriations Act (H.R. 3326).

Covered disputes include any dispute arising out of or related to my employment, the terms and conditions of my employment and/or the termination of your employment, including, but not limited to, the following:

- Alleged violations of federal, state and/or local constitutions, statutes or regulations;
- Claims of unlawful harassment, discrimination, retaliation or wrongful termination that cannot be resolved by the parties or during an investigation by an administrative agency (such as the Equal Employment Opportunity Commission); Covered claims include, but are not limited to, claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act, and any other statutory scheme covering claims of discrimination or harassment on the

ALTERNATIVE DISPUTE RESOLUTION POLICY

basis of race, color, age, religious creed, national origin, ancestry, disability, sexual orientation, gender identity, sex or any other characteristic protected by law;

- Claims based on any purported breach of contract (including breach of the covenant of good faith and fair dealing, claims of wrongful termination or constructive termination);
- Claims of unfair demotion, transfer, reduction in pay, or any other change in the terms and conditions of employment;
- Claims alleging failure to compensate for all hours worked, failure to pay overtime, failure to pay minimum wage, failure to reimburse expenses, failure to pay wages upon termination, failure to provide accurate, itemized wage statements, failure to provide meal and/or rest breaks, entitlement to waiting time penalties and/or other claims involving employee wages, including, but not limited to, claims brought under the Fair Labor Standards Act and any other statutory scheme related to wages or working hours;
- Claims based on any purported breach of duty arising in tort, including alleged violations of public policy and for emotional distress;
- Claims of defamation, pre and post-termination; and
- Any claim the Company may enjoy against employees, regardless of the nature, arising from the employment relationship.

The following types of disputes are expressly excluded and are not covered by this ADR Policy:

- Disputes related to workers' compensation and unemployment insurance;
- Disputes or claims that are expressly excluded by statute or are expressly required to be arbitrated under a different procedure pursuant to the terms of a team member benefit plan.

If you, or the Company, file a lawsuit in court involving both claims that are subject to arbitration in accordance with this ADR Policy as well as claims that are not subject to arbitration, the court will stay, or place on hold, any litigation of the claims in the case that are not subject to arbitration and require arbitration of the claims that are subject to arbitration proceed before any litigation in court of claims that are not subject to arbitration. In that event, the arbitrator's decision as to the claims that are subject to arbitration, including any determinations as to disputed factual or legal issues, will be entitled to full force and effect, and be binding, in any later court proceedings related to claims that are not subject to arbitration.

CLASS ACTION WAIVER

I understand and agree this ADR Program prohibits me from joining or participating in a class action or representative action or otherwise consolidating a covered claim with the claim of others.

INITIATING THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

In the event a dispute should arise and you wish to initiate these procedures, deliver a written request for alternative dispute resolution to the Company within the time limits which would apply to the filing of a civil complaint in court. The Company will deliver a written request to you for any claim it may wish to assert. If a request for an alternative dispute resolution is not submitted timely, the claim will be deemed to have been waived and forever released.

THE ARBITRATION

The dispute will be decided by a single decision-maker, called the arbitrator. The arbitrator will be mutually selected by the Company and the Employee. If the parties cannot mutually agree on an arbitrator, then a list of arbitrators will be obtained from the American Arbitration Association's ("AAA") Employment Panel. The

ALTERNATIVE DISPUTE RESOLUTION POLICY

arbitrator will be selected by the parties according to the method of selection specified by the AAA in its Employment Arbitration Rules and Mediation Procedures.

The arbitrator shall be bound by the provisions and procedures set forth in the Employment Arbitration Rules and Mediation Procedures of the AAA. The applicable substantive law shall be the law of the state in which you provide services or federal law. If both federal and state law speak to a cause of action, the party commencing the action shall have the right to elect his/her choice of law.

The parties shall cooperate to the greatest extent practicable in the voluntary exchange of documents and information to expedite the arbitration. After selection of the arbitrator, the parties shall have the right to take depositions and to obtain discovery regarding the subject matter of the action and to use and exercise all of the same rights, remedies and procedures, and be subject to all of the same duties, liabilities and objections as provided for in the civil discovery statutes of the state in which you provide services. The arbitrator shall have the authority to rule on motions (including the power to issue orders and determine appropriate remedies) regarding discovery and to issue any protective orders necessary to protect the privacy and/or rights of parties and/or witnesses.

The arbitrator shall have the same authority to award remedies and damages on the merits of the dispute as provided to a judge and/or jury under parallel circumstances. However, the arbitrator shall only be permitted to award those remedies in law or equity which are requested by the parties and which are supported by credible, relevant evidence. The arbitrator shall issue a written opinion and award. Nothing in this Agreement is intended to waive the right to seek punitive damages, where allowable by law.

Following the issuance of the arbitrator's decision, any party may petition a court to confirm, enforce, correct or vacate the arbitrator's opinion and award under the Federal Arbitration Act, 9 U.S.C. §§ 1-16, if applicable, and/or applicable state law.

FEEES AND COSTS

Fees and costs shall be allocated in the following manner:

- Each party will be responsible for its own attorneys' fees and expenses, except as otherwise provided by law, and the cost of a copy of the reporter's transcript of the proceedings, if desired.
- The Company shall bear the arbitrator's fee and expenses and any costs associated with the facilities for the arbitration.

SEVERABILITY

In the event that any provision of this ADR Policy is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable to any extent, such term or provision shall be enforced to the extent permissible under the law and all remaining terms and provisions of this ADR Policy shall continue in full force and effect.

Nothing in this Alternative Dispute Policy is intended to preclude any employee from filing a charge with the Equal Employment Opportunity Commission, the National Labor Relations Board or any similar federal or state agency seeking administrative resolution. However, any claim that cannot be resolved through administrative proceedings shall be subject to the procedures of this ADR Policy.

AGREEMENT TO BE BOUND BY ALTERNATIVE DISPUTE RESOLUTION POLICY

PLEASE NOTE: Nothing contained in this Agreement to Be Bound by Alternative Dispute Resolution Policy is intended to require arbitration of any matter or claim which the courts of this jurisdiction have expressly held are not subject to mandatory arbitration. Unlike the provisions of the Company Employee Handbook, the terms of this Agreement to Be Bound by Alternative Dispute Resolution Policy are contractual in nature.

I agree that in the event employment disputes arise between my employer or any of its employees or officers (herein collectively referred to as the "Company"), on the one hand, and me, on the other hand, I will be bound by the Company Alternative Dispute Resolution Policy (the "ADR Policy"), which provides for final and binding arbitration.

This ADR Policy is understood to apply to all disputes relating to my employment, the terms and conditions of my employment, including but not limited to my compensation, wages, claims alleging failure to compensate for all hours worked, failure to pay overtime, failure to pay minimum wage, failure to reimburse expenses, failure to pay wages upon termination, failure to provide accurate, itemized wage statements, failure to provide meal and/or rest breaks, entitlement to waiting time penalties and/or other claims involving employee wages, benefits, discipline, performance evaluations, promotions, transfers, and the termination of my employment, as defined in the ADR Policy materials. I agree this ADR Policy prohibits me from joining or participating in a class action or representative action, acting as a private attorney general or representative of others, or otherwise consolidating a covered claim with the claims of others.

I also acknowledge and agree that employment disputes arising out of or related to my employment, the terms and conditions of my employment, and the termination of my employment, all of which are also subject to the ADR Policy, include, but are not limited to, the following: (a) alleged violations of federal, state and/or local constitutions, statutes or regulations, (including but not limited to claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act of 1967, the Equal Pay Act, and any other statutory scheme encompassing claims of discrimination and harassment on the basis of race, color, age, religious creed, national origin, ancestry, disability, sexual orientation, gender identity, sex or any other characteristic protected by law); (b) claims based on any purported breach of contractual obligation, including breach of the covenant of good faith and fair dealing including but not limited to claims of wrongful termination or constructive termination; (c) claims based on any purported breach of duty arising in tort, including violations of public policy, for emotional distress and defamation; and (d) claims related to the payment or non-payment of my wages, expenses and/or the provisions of breaks as required by law, including, but not limited to, alleged violations of the Fair Labor Standards Act and any other statutory scheme governing wages or working hours.

IN CONSIDERATION FOR AND AS A MATERIAL CONDITION OF EMPLOYMENT WITH THE COMPANY, AND IN CONSIDERATION FOR THE COMPANY'S RETURN AGREEMENT TO BE BOUND BY THE COMPANY'S ADR PROGRAM AND HAVE ANY AND ALL CLAIMS ARISING OUT OF THE EMPLOYMENT RELATIONSHIP IT MAY ENJOY AGAINST ME RESOLVED IN THIS FORUM, AND PAY THE ARBITRATION FEES AS DESCRIBED THEREIN, IT IS AGREED THAT THE ALTERNATIVE DISPUTE RESOLUTION POLICY ATTACHED HERETO WHICH PROVIDES FOR FINAL AND BINDING ARBITRATION, IS THE EXCLUSIVE MEANS FOR RESOLVING COVERED DISPUTES; NO OTHER ACTION MAY BE BROUGHT IN COURT OR IN ANY OTHER FORUM. I UNDERSTAND THAT THIS AGREEMENT IS A WAIVER OF ALL RIGHTS TO A CIVIL COURT ACTION FOR ALL DISPUTES RELATING TO MY EMPLOYMENT, THE TERMS AND CONDITION OF MY EMPLOYMENT AND/OR THE TERMINATION OF MY EMPLOYMENT WHETHER BROUGHT BY ME OR THE COMPANY; ONLY AN

AGREEMENT TO BE BOUND BY ALTERNATIVE DISPUTE RESOLUTION POLICY

ARBITRATOR, NOT A JUDGE OR JURY, WILL DECIDE THE DISPUTE. IN ADDITION, I UNDERSTAND I AM PROHIBITED FROM JOINING OR PARTICIPATING IN A CLASS ACTION OR REPRESENTATIVE ACTION, ACTING AS A PRIVATE ATTORNEY GENERAL OR REPRESENTATIVE OF OTHERS, OR OTHERWISE CONSOLIDATING A COVERED CLAIM WITH THE CLAIM OF OTHERS.

I also acknowledge and agree that the following types of disputes are expressly excluded and not covered by this policy: (a) disputes related to workers' compensation and unemployment insurance; and (b) disputes or claims that are expressly excluded by federal or state statute or are expressly required to be arbitrated under a different procedure pursuant to the terms of an employee benefit plan. I also agree that if I file a lawsuit in court involving both claims that are subject to arbitration in accordance with this Agreement as well as claims that are not subject to arbitration, the court should and will stay, or place on hold, any litigation of the claims in the case that are not subject to arbitration and require arbitration of the claims that are subject to arbitration proceed before any litigation in court of claims that are not subject to arbitration. I also agree that the arbitrator's decision as to the claims that are subject to arbitration, including any determinations as to disputed factual or legal issues, will be entitled to full force and effect, and be binding in any later court proceedings related to claims that are not subject to arbitration. I also acknowledge and agree that nothing in this Agreement or the attached ADR Policy shall be construed as precluding any employee from filing a charge with a state or federal administrative agency, such as the U.S. Equal Employment Opportunity Commission ("EEOC") or the National Labor Relations Board. A state or federal administrative agency would also be free to pursue any appropriate action. However, any claim that is not resolved administratively through such an agency shall be subject to this agreement to arbitrate and the ADR Policy.

I also acknowledge that I have been provided a copy of the ADR Policy as well as a copy of the American Arbitration Association Employment Arbitration Rules and Mediation Procedures for me to keep.

Cory Diebold

1/7/2020

Print Name

Date



Employee Signature

By:

Company

Date