

Alex Asil Mashiri, Esq. (SBN 283798)  
alex@mashirilawfirm.com  
**MASHIRI LAW FIRM, APC**  
11251 Rancho Carmel Drive #500694  
San Diego, CA 92150  
Tel: (858) 348-4938  
Fax: (858) 348-4939

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

Attorneys for Plaintiffs:  
ELSA GARCIA  
MARLON AYALA

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

ELSA GARCIA, an individual, MARLON  
AYALA, an individual, both for the real party  
in interest, the State of California,

Plaintiffs,

vs.

CITIBANK, NA; and DOES 1 through 50,

Defendants.

Case No. 37-2022-00005198-CU-OE-CTL

**REPRESENTATIVE ACTION  
COMPLAINT FOR:**

- 1. Violations of California's Healthy  
Workplaces Healthy Families Act,  
L.C. §§ 246, 246(l).**

1 Plaintiffs Elsa Garcia and Marlon Ayala (“Plaintiffs”), each in their capacity as the State of  
2 California’s designated proxy under the Private Attorneys General Act, and on behalf of other  
3 current and former California employees (“Represented Employees”) allege the following:

4 **NATURE OF THE ACTION**

5 1. Pursuant to the Private Attorneys General Act (“PAGA”), incorporated in Labor  
6 Code sections 2698, 2699 *et seq.*, Plaintiffs brings this representative action against Defendant  
7 Citibank, NA (“CITI”) and DOES 1 through 50 (all defendants are hereinafter collectively referred  
8 to as “Defendants”) for wage and hour violations of the California Labor Code and the applicable  
9 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  
13 employees for violation of the code may, as an alternative, be recovered through a civil action  
14 brought by an aggrieved employee on behalf of himself or herself and other current or former  
15 employees pursuant to the procedures specified in Labor Code section 2699.3.

16 3. Through this representative action, Plaintiffs seek 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 Plaintiffs 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 Plaintiffs’ 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.

**THE PARTIES**

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

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

11. Plaintiffs worked for Defendants during which time they were paid hourly and were considered non-exempt.

12. Defendants are in the financial services industry with locations throughout California.

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

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

15. Plaintiffs are informed and believe, and based thereon alleges, that each Defendant was acting partly within and partly without the scope and course of their employment, and was acting with the knowledge, permission, consent, and ratification of every other Defendant.

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

6                                   **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7           17. On December 1, 2021, Plaintiffs each, via counsel, sent the statutorily required notice  
8 to the LWDA, indicating that Plaintiffs intend to pursue claims against Defendants for violations of  
9 the Labor Code.

10          18. On December 1, 2021, Plaintiffs each, via counsel, sent a copy of their December 1,  
11 2021 notice to Defendant CITI.

12          19. The statutory period expired since Plaintiffs sent the statutory notices to the LWDA  
13 and LWDA did not serve Plaintiffs with a notice of its intent to assume jurisdiction over the  
14 applicable penalty claims and did not provide notice as set forth in Labor Code section  
15 2699.3(a)(2)(A).

16          20. Therefore, Plaintiffs have exhausted the administrative requirements under the  
17 PAGA.

18                                   **THE PAGA REPRESENTATIVE ACTION CLAIMS**

19          21. On information and belief, current and former employees of Defendants were subject  
20 to wage and hour violations by Defendants, specifically by Defendants' violations of Labor Code  
21 sections 246, 246(l), 1197.1, 2698, and 2699 et seq.

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

25          23. Plaintiffs bring this representative action against Defendants under the PAGA on  
26 behalf of the state, who is the real party in interest.

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

- 1 a. Their action involves allegations of violations of provisions of the California Labor  
2 Code that provide for a civil penalty to be assessed and collected by the LWDA or  
3 any departments, divisions, commissions, boards, agencies or employees;  
4 b. Plaintiffs are each an “aggrieved employee” because Plaintiffs were employed by the  
5 alleged violator and had one or more of the alleged violations committed against  
6 themselves; and  
7 c. Plaintiffs have satisfied the procedural requirements of Labor Code section 2699.3,  
8 as set forth above.

9 25. As a result of the acts alleged above, Plaintiffs seek to recover civil penalties under  
10 the PAGA for Defendants’ failure to provide accurate sick pay wages in violation of Labor Code  
11 sections 246 and 246(l).

12 **FIRST CAUSE OF ACTION**

13 **(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code §§**  
14 **246, 246(l) against all Defendants)**

15 26. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though  
16 set forth herein.

17 27. Under Labor Code section 246, employers in California must provide employees  
18 with paid sick leave to be paid at a specified rate of pay which must factor in additional earnings  
19 during a given pay period wherein such leave is used.

20 28. During their employment, Plaintiffs earned additional nondiscretionary  
21 compensation, such as, for example, sales pay, incentive bonuses, and weekend premiums.

22 29. Upon information and belief, Defendants failed to provide Plaintiffs and Represented  
23 Employees with the appropriate rate of pay when paying sick pay, as required under Labor Code  
24 sections 246 and 246(l).

25 30. PAGA imposes upon Defendants, and each of them, civil penalties for violating  
26 Labor Code sections 246 and 246(l).

27 31. Civil penalties under the PAGA are equitable in nature. (*Nationwide Biweekly*  
28 *Admin., Inc. v. Superior Ct. of Alameda Cty.*, (2020) 9 Cal.5th 279.)

32. 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.

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

34. Pursuant to Labor Code section 248.5, if applicable herein, Plaintiffs seek to recover attorney's fees, costs, equitable relief in the form of civil penalties, in an amount to be shown according to proof.

35. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiffs seek 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.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

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

Dated: February 9, 2022

**THE JAMI LAW FIRM P.C.**

By:   
 Tamim Jami  
 Attorney for Plaintiffs  
 ELSA GARCIA  
 MARLON AYALA