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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. 37-2022-00005196-CU-OE-CTL

FIRST AMENDED COMPLAINT

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

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 current
3 and former California employees (“Represented Employees”) allege the following:

4 **NATURE OF THE ACTION**

5 1. Pursuant to the PAGA, incorporated in Labor Code sections 2698, 2699 *et seq.*,
6 Plaintiffs bring this representative action against Defendant Citibank, NA (“CITI”) and DOES 1
7 through 50 (all defendants are hereinafter collectively referred to as “Defendants”) for wage and hour
8 violations of the California Labor Code and the applicable Industrial Welfare Commission Wage
9 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, 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 allege 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. This Court has jurisdiction over Plaintiffs’ claims for civil penalties under the PAGA.

26 7. Pursuant to California Code of Civil Procedure section 395, venue is proper in the
27 Superior Court of California for the County of San Diego because this is where the wrongful
28 misconduct alleged herein occurred.

THE PARTIES

8. 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.”].)

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

10. “Aggrieved employee” means individuals CITI employed as non-exempt employees in California and who earned non-discretionary incentive compensation, such as referral, sales and client excellence-based incentives or awards and/or weekend shift premiums between December 1, 2020 and December 31, 2022.

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

12. The true names and capacities, whether individual, corporate, associate or otherwise of the Defendant named herein as DOES 1 through 50, are unknown to Plaintiffs at this time. Plaintiffs therefore sue 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.

13. Plaintiffs are informed and believes, and based thereon alleges, 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.

14. At all material times, Defendants were and/or are employers or persons acting on behalf of employers, under California law, the IWC Wage Order, and the Labor Code, including Labor

1 Code sections 558 and 558.1 and thus are jointly and severally liable for the violations alleged herein
2 and any amounts awarded and/or recoverable as a result of this action.

3 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

4 15. On December 1, 2021, Plaintiffs, via counsel, provided the statutorily required notice
5 to the LWDA ("PAGA Notice"), indicating that Plaintiffs intend to pursue claims against Defendants
6 for violations of the Labor Code. (PAGA Notices Attached as Exhibit A to this Complaint.)

7 16. On December 1, 2021, Plaintiffs, via counsel, sent a copy of the PAGA Notices to
8 Defendant CITI.

9 17. The statutory period expired since Plaintiffs provided the PAGA Notices to the LWDA
10 and LWDA did not serve Plaintiffs with a notice of its intent to assume jurisdiction over the applicable
11 penalty claims and did not provide notice as set forth in Labor Code section 2699.3(a)(2)(A). Plaintiffs
12 have exhausted the administrative requirements under the PAGA to bring the claims alleged below.

13 **PAGA REPRESENTATIVE ACTION CLAIMS**

14 18. California law provides that an aggrieved employee may file a representative action
15 under the PAGA against an employer for violations of the Labor Code and Wage Order.

16 19. On information and belief, and as alleged below, current and former non-exempt
17 employees of Defendants were subject to wage and hour violations by Defendants, specifically by
18 Defendants' violation of Labor Code sections 201, 202, 203, 204, 226, 226(a), 226(b), 226(c), 226.7,
19 226.7(b), 226.7(c), 227.3, 246, 432, 510, 512, 1197, 1197.1, 1198.5, 2698 and 2699 et seq.

20 **FIRST CAUSE OF ACTION**

21 **(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code**
22 **Sections 246 and 246(l) against all Defendants)**

23 20. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set
24 forth herein.

25 21. Under Labor Code sections 246 and 246(l), employers in California must provide
26 employees with paid sick leave to be paid at a specified rate of pay which must factor in additional
27 earnings during a given pay period wherein such leave is used.

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22. Defendants provided its employees additional nondiscretionary payments, including but not limited to, bonuses, commissions, weekend premiums, shift differentials.

23. Upon information and belief, Defendants paid sick leave at the incorrect rate of pay resulting in the underpayment of wages. By way of one example, Defendants failed to appropriately factor in additional payments and compensation for purposes of computing the appropriate rate of pay for sick leave wages as required by Labor Code sections 246 and 246(l).

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

25. Aggrieved Employees are permitted to use the PAGA to enforce California's Healthy
Workplaces Healthy Families Act. (*Wood v. Kaiser Found. Hosps.* (2023) 88 Cal.App.5th 742, 748.)

26. 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.

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

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

29. Pursuant to the PAGA, Labor Code section 2699(g), or any other applicable statute, Plaintiffs seek to recover reasonable attorneys' fees, costs, and filing fees paid to the LWDA in an amount to be shown according to proof.

SECOND CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code
Sections 1197 and 1197.1 against all Defendants)**

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

31. Under Labor Code section 1197, an employer is required to pay its employees the proper minimum wages for all hours worked.

32. Upon information and belief, Defendants failed to properly provide their employees with minimum wages for all hours worked. By way of example, employees would work without getting compensated the correct wages for sick pay, meal/rest premiums, and/or overtime in violation of Labor Code section 1197.

33. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 1197.

34. Labor Code section 1197.1 imposes upon Defendants, and each of them, civil penalties of fifty dollars (\$100) per pay period, per aggrieved employee for initial violations, and one hundred dollars (\$250) per pay period, per aggrieved employee for subsequent violations.

35. 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.

36. Plaintiffs are seeking civil penalties against Defendants under Labor Code sections 2699(f), 1197.1, 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.

37. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiffs seek to recover reasonable attorneys' fees, costs, and filing fees paid to the LWDA in an amount to be shown according to proof.

THIRD CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Sections 512 and 226.7(b) against all Defendants)**

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

39. Under Labor Code section 512, 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

1 “requires a first meal period no later than the end of an employee’s fifth hour of work [...]” (*Brinker*
2 *Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004.)

3 40. Labor Code section 226.7(b) prohibits an employer from requiring an employee to
4 work during a meal period.

5 41. Upon information and belief, during times relevant to this action, Defendants failed to
6 provide their employees with compliant meal periods in violation of Labor Code sections 512,
7 226.7(b), and the IWC Wage Order.

8 42. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
9 Labor Code sections 512 and 226.7(b) and the IWC Wage Order.

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

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

17 45. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiffs seek to recover
18 reasonable attorneys’ fees, costs, and filing fees paid to the LWDA in an amount to be shown
19 according to proof.

20 **FOURTH CAUSE OF ACTION**

21 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code** 22 **Section 226.7(b) against all Defendants)**

23 46. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set
24 forth herein.

25 47. Rest periods under California labor law are required for non-exempt employees who
26 work three and a half (3 1/2) or more hours in a day. Employees are entitled to ten (10) minutes of
27 rest period for each four (4) hours, or a substantial fraction thereof, that they work in a day.

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48. Labor Code section 226.7(b) prohibits an employer to require an employee to work during a rest period and provides that an employee must be paid a wage for doing so.

49. Upon information and belief, Defendants failed to provide their employees with proper rest periods in violation of Labor Code section 226.7(b) and the IWC Wage Order.

50. The PAGA imposes upon Defendants, and each of them, civil penalties for violating the rest break provision in Labor Code section 226.7(b) and the IWC Wage Order.

51. 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.

52. Plaintiffs are seeking civil penalties against Defendants under Labor Code section 2699(f), 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.

53. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiffs seek to recover reasonable attorneys' fees, costs, and filing fees paid to the LWDA 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 226.7(c) against all Defendants

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

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

56. Upon information and belief, Defendants failed to issue meal and/or rest premiums at the regular rate of pay in violation of Labor Code section 226.7(c).

57. PAGA imposes upon Defendants, and each of them, penalties for violating Labor Code section 226.7(c) and the IWC Wage Order.

58. 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.

59. Plaintiffs are seeking civil penalties against Defendants under Labor Code section 2699(f), 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.

60. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiffs seek to recover reasonable attorneys' fees, costs, and filing fees paid to the LWDA in an amount to be shown according to proof.

SIXTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Sections 510 against all Defendants)**

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

62. 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.)

63. Defendants violated Labor Code sections 510 because it failed to compensate their employees at the appropriate regular rate of pay where necessary for all overtime and double time hours worked. By way of one example, instead of paying overtime hours at a multiple of the employee's regular rate of pay, Defendants would pay overtime at the base rate.

64. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code sections 510 and the IWC Wage Order.

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65. 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.

66. Plaintiffs are seeking civil penalties against Defendants under Labor Code sections 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.

67. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiffs seeks to recover reasonable attorneys' fees, costs, and filing fees paid to the LWDA 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

Section 226(a) against all Defendants)

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

69. Under Labor Code section 226(a) an employer must issue wage statements that accurately itemize all of the information required under 226(a)(1) through (a)(9) (“(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that

1 secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period
2 and the corresponding number of hours worked at each hourly rate by the employee [...].”)

3 70. As a result of the violations referenced above, Defendants failed to provide accurate
4 wage statements to its employees in violation of Labor Code sections 226(a)(1) through (a)(9). By
5 way of one example, the rates for sick pay and meal/rest premiums are inaccurately itemized.

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

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

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

15 74. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiffs seek to recover
16 reasonable attorneys’ fees, costs, and filing fees paid to the LWDA in an amount to be shown
17 according to proof.

18 **EIGHTH CAUSE OF ACTION**

19 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code** 20 **Section 204 against all Defendants)**

21 75. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set
22 forth herein.

23 76. Labor Code section 204 imposes an obligation of timely payment of wages upon
24 California employers.

25 77. Defendants violated Labor Code section 204 because they failed to timely pay their
26 employees all earned wages during an applicable pay period. By way of one example, Defendants
27 failed to pay all earned wages, including, but not limited to, sick pay wages, meal/rest premium wages,
28 and overtime wages in a timely manner as required under Labor Code section 204.

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

79. Labor Code section 210 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.

80. 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.

81. Plaintiffs are seeking civil penalties against Defendants under Labor Code sections 210, 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.

82. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiffs seek to recover reasonable attorneys' fees, costs, and filing fees paid to the LWDA 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
Sections 201, 202, and 203 against all Defendants)**

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

84. Under Labor Code section 201, if an employee is discharged by his/her employer, the wages earned and unpaid at the time of discharge are due and payable immediately.

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

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

87. Upon information and belief, employees did not receive all wages upon termination or separation of employment. By way of one example, employees were owed wages, including, but not limited to, sick pay wages, meal/rest premium wages, and overtime wages. To this date, Defendants have not paid all wages upon termination or separation of employment.

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

89. 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.

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

91. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiffs seek to recover reasonable attorneys' fees, costs, and filing fees paid to the LWDA in an amount to be shown according to proof.

TENTH CAUSE OF ACTION

(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code

Sections 226(b), 226(c), 432, and 1198.5 against all Defendants)

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

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1 93. Labor Code section 226(b) requires, in pertinent part, that “An employer [...] shall
2 afford current and former employees the right to inspect or copy records pertaining to their
3 employment, upon reasonable request to the employer.”

4 94. Labor Code section 226(c) requires, in pertinent part, that “An employer who receives
5 a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current
6 or former employee shall comply with the request as soon as practicable, but no later than 21 calendar
7 days from the date of the request.”

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

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

14 97. On October 7, 2021 and October 8, 2021, both Plaintiffs, through counsel, sent a letter
15 to Defendant, requesting copies of their payroll and personnel records, including but not limited to,
16 his itemized wage statements and time records. Defendant did not respond and failed to produce
17 Plaintiffs’ requested payroll and personnel records by the statutory deadline. On November 4, 2021,
18 both Plaintiffs, through counsel, sent another follow up letter, this time via certified mail, requesting
19 his payroll and personnel records. As of December 1, 2021, Plaintiffs had not received a response to
20 their multiple requests for their payroll and personal records. Accordingly, Defendant violated Labor
21 Code sections 226, 226(b), 226(c), 432, and 1198.5. by failing to produce Plaintiffs’ payroll and
22 personnel records and other documents covered by these Labor Code sections in a timely manner.

23 98. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
24 Labor Code sections 226(b), 226(c), 432, and 1198.5.

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

100. Plaintiffs are seeking civil penalties against Defendants under the PAGA, including Labor Code sections 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.

101. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiffs seek to recover attorneys' fees, costs, filing fees paid to the LWDA and civil penalties in an amount to be shown according to proof.

ELEVENTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code
Section 227.3 against all Defendants)**

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

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

104. Defendants violated Labor Code section 227.3. Upon information and belief, Defendant would provide Plaintiff and the Represented Employees with an accrual rate less than what they were legally entitled to. As a result, (i) Plaintiff and the Represented Employees received less vacation hours than they were legally entitled to and (ii) Plaintiff and the Represented Employees did not receive all of their vested vacation hours upon cessation from employment.

105. PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 227.3.

106. 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.

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

108. Pursuant to the PAGA, Labor Code section 2699(g), or any other applicable statute, Plaintiffs seek to recover reasonable attorneys' 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: June 20, 2024

THE JAMI LAW FIRM P.C.

By: 
 Tamim Jami
 Attorney for Plaintiffs
 ELSA GARCIA
 MARLON AYALA

EXHIBIT A

EXHIBIT A



THE JAMI LAW FIRM P.C.

3525 DEL MAR HEIGHTS RD # 941, SAN DIEGO, CA 92130

■ TEL: (858) 284-0248 ■ FAX: (858) 284-0977 ■ www.JamiLaw.com

December 1, 2021

Via Electronic Submission

Labor and Work Force Development Agency

Attn: PAGA Administrator

455 Golden Gate Ave., 9th Floor

San Francisco, CA 94102

Via Certified Mail

Citibank, N.A.

701 East 60th Street North

Sioux Falls, South Dakota 57104

Re: Elsa Garcia v. Citibank, N.A.

Notice to the Labor and Work Force Development Agency

Dear Labor Commissioner:

This office, in association with the Mashiri Law Firm, A Professional Corporation, represents Mr. Elsa Garcia (“Plaintiff”). Accordingly, we are informing you of our representation and ask that all further communication regarding this matter be directed to my attention at the address located on this letterhead and that no contact be made directly with our client. This letter is sent pursuant to the provisions of Labor Code section 2699, *et seq.*

I. INTRODUCTION

This is a wage and hour labor dispute. Plaintiff’s intent is to pursue a representative action against Citibank, N.A. (“Defendant”) on behalf of the state of California for violations committed against Plaintiff and any and all current and former aggrieved employees (Plaintiff and any and all current and former aggrieved employees are hereinafter collectively referred to as “Aggrieved Employees”) pursuant to the Private Attorneys General Act (“PAGA”), incorporated in Labor Code sections 2698, 2699 *et seq.*,

II. FACTS & NATURE OF THE DISPUTE

The Aggrieved Employees have several legal claims against Defendant for violations of Labor Code sections 201, 202, 203, 204, 226, 226(b), 226(c), 226(a), 226.3, 226.7, 227.3, 246, 432, 510, 558, 1194, 1197.1, 1198, 1198.5, 2698, and 2699 *et seq.*

Defendant failed to pay Aggrieved Employees all wages and entitlements due under Labor Code section 510, including but not limited to compensating such employees at the appropriate regular rate of pay where necessary for all overtime hours worked. This resulted from Defendant's failure to appropriately factor in any additional compensation, including but not limited to, incentives and nondiscretionary bonuses earned by Aggrieved Employees for the purpose of computing the employees' regular rate of pay. In turn, this resulted in an underpayment of wages for all those hours that required Defendant to issue payment at the regular rate of pay or a multiple thereof, including but not limited to overtime hours worked as mandated in Labor Code section 510. This violation resulted in an underpayment of wages to the Aggrieved Employees which also resulted in derivative violations of other Labor Code sections including, but not limited to, Labor Code sections 201, 202, 203, 204, 226(a), and 1197.1.

Defendant also failed to provide Aggrieved Employees with meal and rest periods in violation of Labor Code section 512, 226.7, and the applicable wage order. Additionally, Defendant failed to pay Aggrieved Employees all wages and entitlements due (i.e. meal and rest premiums) under Labor Code section 226.7, including but not limited to compensating such employees at the appropriate regular rate of pay where necessary for the non-provision of meal and rest breaks in accordance with the applicable wage order and Labor Code sections 226.7 and 512. This resulted from Defendant's failure to appropriately factor in additional compensation—including but not limited to, incentives and nondiscretionary bonuses earned by Aggrieved Employees—for the purpose of computing the appropriate regular rate of pay. In turn, this resulted in an underpayment of wages for all hours that required payment of the regular rate of pay or a multiple thereof, including but not limited to those mandated in Labor Code section 226.7. This violation resulted in an underpayment of wages to the Aggrieved Employees which also resulted in derivative violations of other Labor Code sections including, but not limited to, Labor Code sections 201, 202, 203, 204, 226(a), and 1197.1.

Furthermore, upon information and belief, Defendant failed to pay the Aggrieved Employees all wages and entitlements due under the labor code, including but not limited to compensating its employees for use of their sick leave pursuant to the correct rate of pay mandated in Labor Code section 246(l). This violation resulted in an underpayment of wages to the Aggrieved Employees which also resulted in derivative violations of other Labor Code sections including, but not limited to, Labor Code sections 201, 202, 203, 204, 246, 246(l) and 1197.1.

Additionally, upon information and belief, Defendant failed to provide the Aggrieved Employees with the appropriate accrual of vacation hours on a per pay period basis which resulted in a violation of Labor Code section 227.3. Upon information and belief, Defendant would provide Aggrieved Employees with accrual at less than what they were legally entitled to.

The above violations resulted in derivative violations including, but not limited to, Labor Codes sections 201, 202, 203, 204, 226, 226(a)(1)-(9), 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1197.1, 1198, 2698, and 2699 et seq.

Finally, Defendant failed to provide the Aggrieved Employees with accurate wage statements. By way of example, the wage statements failed, among other things, to accurately state the gross and net wages, and all applicable hourly rates in effect during the pay period and

corresponding hours worked in violation of Labor Code section 226 subdivisions (a)(1), (a)(5), and (a)(9).

Finally, Defendant violated Labor Code sections 226, 226(b), 226(c), 432, and 1198.5. On October 8, 2021, Plaintiff, through counsel, sent a letter to Defendant, requesting copies of her payroll and personnel records, including but not limited to, her itemized wage statements and time records. Defendant did not respond and failed to produce Plaintiff's requested payroll and personnel records by the statutory deadline. On November 4, 2021, Plaintiff, through counsel, sent another follow up letter this time, via certified mail, requesting her payroll and personnel records. As of the date of this notice, Plaintiff has not received a response to her multiple requests for her payroll and personal records. Accordingly, Defendant violated Labor Code sections 226, 226(b), 226(c), 432, and 1198.5. by failing to produced Plaintiff's payroll and personnel records and other documents covered by these Labor Code sections. Upon information and belief, Plaintiff believes that Defendant committed the same violations against other Aggrieved Employees.

The above violations resulted in derivative violations including, but not limited to, Labor Codes sections 201, 202, 203, 204, 226, 226(a)(1)-(9), 226.3, 1197, 1197.1, 2698, and 2699 *et seq.*

Further investigation and formal discovery will likely uncover additional facts and claims supporting liability for violations of the Labor Code against Defendant. These violations may include, but are not limited to, violations of Labor Code sections 201, 202, 203, 204, 226, 226(a)(1)-(a)(9), 226(b), 226(c), 226.3, 226.7, 227.3, 246, 432, 432.5, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5, 2802, 2698, and 2699 *et seq.*

III. CONCLUSION

Please take notice that this letter is intended to exhaust the pre-litigation requirements set forth under Labor code section 2699, *et seq.* By law, an employee alleging a violation of one of the above-referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of section 2699, *et seq.* by seeking redress in court. (*See* Labor Code § 2699.3.)

It is Plaintiff's intention to prosecute this matter under Labor Code section 2699 *et seq.* on behalf of the state of California, herself, and the Aggrieved Employees seeking the remedies for the Labor Code violations referenced in this letter, and any others that may be discovered in the course of litigation, should the LWDA not address these matters within the proscribed time period.

We write this letter subject to, and without waiver of, our client's rights and remedies, all of which we expressly reserve. This letter is not an express statement of all facts and circumstances concerning this matter.

Sincerely,



Tamim Jami, Esq.



THE JAMI LAW FIRM P.C.

3525 DEL MAR HEIGHTS RD # 941, SAN DIEGO, CA 92130

■ TEL: (858) 284-0248 ■ FAX: (858) 284-0977 ■ www.JamiLaw.com

December 1, 2021

Via Electronic Submission

Labor and Work Force Development Agency

Attn: PAGA Administrator

455 Golden Gate Ave., 9th Floor

San Francisco, CA 94102

Via Certified Mail

Citibank, N.A.

701 East 60th Street North

Sioux Falls, South Dakota 57104

Re: Marlon Ayala v. Citibank, N.A.

Notice to the Labor and Work Force Development Agency

Dear Labor Commissioner:

This office, in association with the Mashiri Law Firm, A Professional Corporation, represents Mr. Marlon Ayala (“Plaintiff”). Accordingly, we are informing you of our representation and ask that all further communication regarding this matter be directed to my attention at the address located on this letterhead and that no contact be made directly with our client. This letter is sent pursuant to the provisions of Labor Code section 2699, *et seq.*

I. INTRODUCTION

This is a wage and hour labor dispute. Plaintiff’s intent is to pursue a representative action against Citibank, N.A. (“Defendant”) on behalf of the state of California for violations committed against Plaintiff and any and all current and former aggrieved employees (Plaintiff and any and all current and former aggrieved employees are hereinafter collectively referred to as “Aggrieved Employees”) pursuant to the Private Attorneys General Act (“PAGA”), incorporated in Labor Code sections 2698, 2699 *et seq.*,

II. FACTS & NATURE OF THE DISPUTE

The Aggrieved Employees have several legal claims against Defendant for violations of Labor Code sections 201, 202, 203, 204, 226, 226(b), 226(c), 226(a), 226.3, 226.7, 227.3, 246, 432, 510, 558, 1194, 1197.1, 1198, 1198.5, 2698, and 2699 *et seq.*

Defendant failed to pay Aggrieved Employees all wages and entitlements due under Labor Code section 510, including but not limited to compensating such employees at the appropriate regular rate of pay where necessary for all overtime hours worked. This resulted from Defendant's failure to appropriately factor in any additional compensation, including but not limited to, incentives and nondiscretionary bonuses earned by Aggrieved Employees for the purpose of computing the employees' regular rate of pay. In turn, this resulted in an underpayment of wages for all those hours that required Defendant to issue payment at the regular rate of pay or a multiple thereof, including but not limited to overtime hours worked as mandated in Labor Code section 510. This violation resulted in an underpayment of wages to the Aggrieved Employees which also resulted in derivative violations of other Labor Code sections including, but not limited to, Labor Code sections 201, 202, 203, 204, 226(a), and 1197.1.

Defendant also failed to provide Aggrieved Employees with meal and rest periods in violation of Labor Code section 512, 226.7, and the applicable wage order. Additionally, Defendant failed to pay Aggrieved Employees all wages and entitlements due (i.e. meal and rest premiums) under Labor Code section 226.7, including but not limited to compensating such employees at the appropriate regular rate of pay where necessary for the non-provision of meal and rest breaks in accordance with the applicable wage order and Labor Code sections 226.7 and 512. This resulted from Defendant's failure to appropriately factor in additional compensation—including but not limited to, incentives and nondiscretionary bonuses earned by Aggrieved Employees—for the purpose of computing the appropriate regular rate of pay. In turn, this resulted in an underpayment of wages for all hours that required payment of the regular rate of pay or a multiple thereof, including but not limited to those mandated in Labor Code section 226.7. This violation resulted in an underpayment of wages to the Aggrieved Employees which also resulted in derivative violations of other Labor Code sections including, but not limited to, Labor Code sections 201, 202, 203, 204, 226(a), and 1197.1.

Furthermore, upon information and belief, Defendant failed to pay the Aggrieved Employees all wages and entitlements due under the labor code, including but not limited to compensating its employees for use of their sick leave pursuant to the correct rate of pay mandated in Labor Code section 246(l). This violation resulted in an underpayment of wages to the Aggrieved Employees which also resulted in derivative violations of other Labor Code sections including, but not limited to, Labor Code sections 201, 202, 203, 204, 246, 246(l) and 1197.1.

Additionally, upon information and belief, Defendant failed to provide the Aggrieved Employees with the appropriate accrual of vacation hours on a per pay period basis which resulted in a violation of Labor Code section 227.3. Upon information and belief, Defendant would provide Aggrieved Employees with accrual at less than what they were legally entitled to.

The above violations resulted in derivative violations including, but not limited to, Labor Codes sections 201, 202, 203, 204, 226, 226(a)(1)-(9), 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1197.1, 1198, 2698, and 2699 et seq.

Finally, Defendant failed to provide the Aggrieved Employees with accurate wage statements. By way of example, the wage statements failed, among other things, to accurately state the gross and net wages, and all applicable hourly rates in effect during the pay period and

corresponding hours worked in violation of Labor Code section 226 subdivisions (a)(1), (a)(5), and (a)(9).

Finally, Defendant violated Labor Code sections 226, 226(b), 226(c), 432, and 1198.5. On October 7, 2021, Plaintiff, through counsel, sent a letter to Defendant, requesting copies of his payroll and personnel records, including but not limited to, his itemized wage statements and time records. Defendant did not respond and failed to produce Plaintiff's requested payroll and personnel records by the statutory deadline. On November 4, 2021, Plaintiff, through counsel, sent another follow up letter this time, via certified mail, requesting his payroll and personnel records. As of the date of this notice, Plaintiff has not received a response to his multiple requests for his payroll and personal records. Accordingly, Defendant violated Labor Code sections 226, 226(b), 226(c), 432, and 1198.5. by failing to produced Plaintiff's payroll and personnel records and other documents covered by these Labor Code sections. Upon information and belief, Plaintiff believes that Defendant committed the same violations against other Aggrieved Employees.

The above violations resulted in derivative violations including, but not limited to, Labor Codes sections 201, 202, 203, 204, 226, 226(a)(1)-(9), 226.3, 1197, 1197.1, 2698, and 2699 *et seq.*

Further investigation and formal discovery will likely uncover additional facts and claims supporting liability for violations of the Labor Code against Defendant. These violations may include, but are not limited to, violations of Labor Code sections 201, 202, 203, 204, 226, 226(a)(1)-(a)(9), 226(b), 226(c), 226.3, 226.7, 227.3, 246, 432, 432.5, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5, 2802, 2698, and 2699 *et seq.*

III. CONCLUSION

Please take notice that this letter is intended to exhaust the pre-litigation requirements set forth under Labor code section 2699, *et seq.* By law, an employee alleging a violation of one of the above-referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of section 2699, *et seq.* by seeking redress in court. (*See* Labor Code § 2699.3.)

It is Plaintiff's intention to prosecute this matter under Labor Code section 2699 *et seq.* on behalf of the state of California, herself, and the Aggrieved Employees seeking the remedies for the Labor Code violations referenced in this letter, and any others that may be discovered in the course of litigation, should the LWDA not address these matters within the proscribed time period.

We write this letter subject to, and without waiver of, our client's rights and remedies, all of which we expressly reserve. This letter is not an express statement of all facts and circumstances concerning this matter.

Sincerely,



Tamim Jami, Esq.