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 and all other Aggrieved Employees*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

GLADYS MARTINEZ, individually, and on
 behalf of herself and all other aggrieved
 employees,

Plaintiff,

vs.

UNITEDHEALTH GROUP INC.;
 OPTUM SERVICES, INC.;
 and DOES 1 through 100, inclusive,

Defendants.

Case No.: **22STCV33246**

REPRESENTATIVE COMPLAINT FOR:

1. Civil Penalties Pursuant to the Private Attorneys General Act of 2004 (California Labor Code § 2698, *et seq.*)

1. Plaintiff GLADYS MARTINEZ (“Plaintiff”), on behalf of herself and all other “Aggrieved Employees” defined herein, acting as a private attorney general under the California Labor Code Private Attorneys General Act of 2004, § 2698, *et seq.* (“PAGA”), files this Complaint against Defendants UNITEDHEALTH GROUP INC. (“UNITEDHEALTH”); OPTUM SERVICES, INC. (“OPTUM”), and DOES 1 through 100, inclusive (collectively, “Defendants”). Plaintiff alleges and avers as follows:

JURISDICTION AND VENUE

2. The civil penalties sought by Plaintiff pursuant to PAGA exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

3. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other courts.” The statutes under which this action is brought do not specify any other basis for jurisdiction.

4. This Court has jurisdiction over all Defendants because each Defendant is either a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

5. Venue is proper in this Court because, upon information and belief, the named Defendants reside, transact business, or have offices in this county and the acts and omissions alleged herein took place in this county.

PARTIES

6. At all times herein relevant, Plaintiff was a resident of the State of California.

7. Defendants UNITEDHEALTH and OPTUM are health services companies, and transact business and employ individuals throughout the State of California, including the County of Los Angeles.

8. At all relevant times, Defendants UNITEDHEALTH and OPTUM were the “employers” of Plaintiff and all other “Aggrieved Employees,” within the meaning of all

1 applicable state laws and statutes.

2 9. At all times herein relevant, Defendants UNITEDHEALTH, OPTUM and DOES
3 1 through 100, and each of them, were the agents, partners, joint venturers, representatives,
4 servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at
5 all times relevant hereto were acting within the course and scope of their authority as such
6 agents, partners, joint venturers, representatives, servants, employees, successors, co-
7 conspirators and assigns, and that all acts or omissions alleged herein were duly committed with
8 the ratification, knowledge, permission, encouragement, authorization and consent of each
9 Defendant designated herein.

10 10. The true names and capacities, whether corporate, associate, individual or
11 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues said
12 Defendants by such fictitious names. Plaintiff is informed and believes, and based on that
13 information and belief alleges, that each of the Defendants designated as a Doe is legally
14 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
15 the injuries and damages to Plaintiff and the other Aggrieved Employees, as alleged this
16 Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true names and
17 capacities when the same have been ascertained.

18 11. Defendants UNITEDHEALTH, OPTUM and DOES 1 through 100 are
19 collectively referred to herein as “Defendants.”

20 12. The “Aggrieved Employees” for purposes of this Complaint are all current and
21 former employees who worked for UNITEDHEALTH and OPTUM in the State of California at
22 any time since March 22, 2021 (beginning one year prior to the filing of the PAGA notice on
23 March 22, 2022) through the date of judgment on this matter, and who were subjected to a
24 “Prohibition Against Hiring and Recruiting” provision, or similar restrictive covenant. Plaintiff is
25 informed and believes that there are in excess of 100 allegedly Aggrieved Employees.
26

27 **FACTUAL ALLEGATIONS**

28 13. Plaintiff is an individual who currently resides, and during all relevant times has

1 resided, in the State of California.

2 14. Defendants employed Plaintiff beginning in August 2009 until her termination in
3 December 2021.

4 15. Defendants had the authority to hire and terminate Plaintiff and all other
5 Aggrieved Employees, to set their work rules and terms and conditions of employment, and to
6 supervise their daily employment activities.

7 16. Defendants directly hired and paid wages and benefits to Plaintiff and all other
8 Aggrieved Employees.

9 17. As a condition of her employment, Defendants required Plaintiff and the other
10 Aggrieved Employees to execute “The Code of Conduct and Employee Handbook
11 Acknowledgement Form” (hereinafter, the “Agreement”).

12 18. Under the Agreement’s “Prohibition Against Hiring and Recruiting” provision,
13 Plaintiff and the other Aggrieved Employees could not, for a period of 12 months following their
14 separation, “directly or indirectly...recruit, solicit, or induce (or in any way assist another in
15 recruiting, soliciting, or inducing) any employee or consultant of UnitedHealth Group to
16 terminate his or her or other relationship with UnitedHealth Group.”

17 19. These types of anti-competitive restrictions, which not only impact Plaintiff, but
18 also all other Aggrieved Employees, are unlawful under California’s well-established and well-
19 known prohibition anti-competitive agreements.

20 20. Plaintiff is informed and believes that, although Defendants knew that the non-
21 solicitation provisions in the Agreement were unlawful, they nevertheless required Plaintiff and
22 the other Aggrieved Employees to sign it as a condition of employment, and maintained that
23 unlawful term throughout their employment, and even after their separation. As a result, the
24 Agreement violates Labor Code § 432.5, which gives rise to PAGA penalties.

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1 **FIRST CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT 2004**

3 **[California Labor Code § 2698, *et seq.*]**

4 **(Against All Defendants and DOES 1 through 100)**

5 21. Plaintiff, on behalf of herself and all other Aggrieved Employees, re-alleges and
6 incorporates into this cause of action each of the preceding paragraphs.

7 22. The Private Attorneys General Act 2004 (California Labor Code §§ 2698, *et seq.*)
8 (“PAGA”) expressly establishes that any provision of the California Labor Code which provides
9 for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
10 divisions, commissions, boards, agencies or employees for a violation of the California Labor
11 Code, may be recovered through a civil action brought by an aggrieved employee on behalf of
12 herself or herself, and other current or former employees.

13 23. Plaintiff and the other Aggrieved Employees are “Aggrieved Employees” as
14 defined by California Labor Code section 2699, subdivision (c) in that they are all current or
15 former employees of Defendants, and one or more of the alleged violations were committed
16 against them.

17 24. Pursuant to California Labor Code section 2699, Plaintiff, in a representative
18 capacity on behalf of all Aggrieved Employees, requests and is entitled to recover from
19 Defendants and each of them, civil penalties according to proof, interest, attorneys’ fees and
20 costs.

21 25. Pursuant to California Labor Code section 2699, subdivision (i), civil penalties
22 recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to
23 the Labor and Workforce Development Agency for the enforcement of labor laws and education
24 of employers and employees about their rights and responsibilities and twenty-five percent
25 (25%) to the aggrieved employees.

26 26. As described in greater detail herein, at all times relevant to this action,
27 Defendants devised, formulated, implemented, and enforced, a policy and procedure requiring
28 Plaintiff and all other Aggrieved Employees to execute agreements that Defendants knew or

1 should have known to be unlawful. By so doing, Defendants violated Labor Code § 432, which
2 gives rise to PAGA civil penalties under Cal. Lab. Code § 2698, *et seq.*

3 27. As a condition of their employment, Defendants required Plaintiff and all other
4 Aggrieved Employees to execute “The Code of Conduct and Employee Handbook
5 Acknowledgement Form” (hereinafter, the “Agreement”) or other similar restrictive covenants.

6 28. Under the Agreement’s “Prohibition Against Hiring and Recruiting” provision,
7 Plaintiff and all other Aggrieved Employees could not, for a period of 12 months following their
8 separation, “directly or indirectly...recruit, solicit, or induce (or in any way assist another in
9 recruiting, soliciting, or inducing) any employee or consultant of UnitedHealth Group to
10 terminate his or her or other relationship with UnitedHealth Group.”

11 29. These types of anti-competitive restrictions, which not only impact Plaintiff, but
12 also all other Aggrieved Employees, are unlawful under California’s well-established and well-
13 known prohibition anti-competitive agreements. *See* Cal. Bus. & Prof. Code 16600, *et seq.*

14 30. Plaintiff is informed and believes that, although Defendants knew that the non-
15 solicitation provisions in the Agreement were unlawful, they nevertheless required Plaintiff and
16 other Aggrieved Employees to sign it as a condition of employment, and maintained that
17 unlawful term of employment throughout their employment, and even after their separation.

18 31. Defendants’ violations of Labor Code § 432.5 give rise to PAGA civil penalties
19 under California Labor Code section 2698, *et seq.*

20 32. On March 22, 2022, pursuant to California Labor Code section 2699.3, Plaintiff,
21 through her counsel, on behalf of herself and all other Aggrieved Employees, provided the
22 California Labor and Workforce Development Agency, with written notice of the specific
23 provisions of the California Labor Code that are alleged to have been violated, including the
24 facts and theories to support such violations.

25 33. A copy of said notice was also sent to Defendants by certified mail pursuant to the
26 requirements of California Labor Code section 2699.3.

27 34. The LWDA has failed to notify Plaintiff of its intent to investigate these penalty
28

1 claims within sixty-five (65) days.

2 35. Thus, Plaintiff has exhausted her administrative remedies under PAGA's
3 California Labor Code section 2699.3(a)(2)(A).

4 36. Pursuant to PAGA, Plaintiff, in a representative capacity, is entitled to recover
5 civil penalties in connection with herself, and in connection with each and every allegedly
6 Aggrieved Employee of Defendants, for each and every pay period in which a California Labor
7 Code violation occurred, in an amount according to proof at trial.

8 37. Plaintiff and the other Aggrieved Employees are also entitled to reasonable
9 attorney's fees and costs pursuant to Labor Code § 2699(g), which are respectfully requested, in
10 an amount to be proved according to law.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, individually and on behalf of all other Aggrieved Employees,
13 prays that judgment be entered against Defendants as follows:

14 **On the First Cause of Action**

- 15 1. For civil penalties owing Plaintiff, the other Aggrieved Employees, and the
16 LWDA, pursuant to California Labor Code section 2698 *et seq.*;
17 2. For attorneys' fees, as allowable by statute;
18 3. For costs of suit incurred;
19 4. For pre-judgment and post-judgment interest; and
20 5. For such further relief as the Court deems proper.
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23 Dated: October 11, 2022

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26 John A. Van Hook
27 Adrian C. Byrne
28 Attorneys for Plaintiff GLADYS MARTINEZ
and all other Aggrieved Employees