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MARISSA GARCIA

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

MARISSA GARCIA, an individual, for the real
party in interest, the State of California,

Plaintiff,

vs.

WINTRUST MORTGAGE, a division of BBT
and DOES 1 through 50,

Defendants.

Case No. 37-2022-00019649-CU-OE-CTL

REPRESENTATIVE ACTION

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

1 Plaintiff MARISSA GARCIA (“Plaintiff”), in her capacity as the State of California’s
2 designated proxy under the Private Attorneys General Act, and on behalf of other current and former
3 California employees (“Represented Employees”) alleges the following:

4 **NATURE OF THE ACTION**

5 1. Pursuant to the Private Attorneys General Act (“PAGA”), incorporated in Labor Code
6 sections 2698, 2699 *et seq.*, Plaintiff brings this representative action against Defendants WINTRUST
7 MORTGAGE (WINTRUST), a division of BBT, and DOES 1 through 50 (all defendants are
8 hereinafter collectively referred to as “Defendants”) for wage and hour violations of the California
9 Labor Code and the applicable Industrial Welfare Commission Wage Order (the “IWC Wage Order”).

10 2. Pursuant to Labor Code section 2699 *et seq.*, any provision of the Labor Code that
11 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
12 Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies or employees
13 for violation of the code may, as an alternative, be recovered through a civil action brought by an
14 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
15 to the procedures specified in Labor Code section 2699.3.

16 3. Through this representative action, Plaintiff seeks to recover civil penalties under the
17 PAGA. No class certification is required. (*Arias v. Superior Court* (2009) 46 Cal.4th 969.)

18 **JURISDICTION AND VENUE**

19 4. Pursuant to Article VI, section 10 of the California Constitution, subject matter
20 jurisdiction is proper in the Superior Court of California, County of San Diego, State of California
21 because Plaintiff alleges claims arising under California law.

22 5. This Court has jurisdiction over Defendants because each is believed to be an
23 association, corporation, business entity, or individual that conducts substantial business in the State
24 of California, County of San Diego.

25 6. This Court has jurisdiction over Plaintiff’s claim 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. Plaintiff is an “aggrieved employee” because she was employed by Defendants and had one or more of the alleged violations committed against her, and therefore is 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).

10. Plaintiff worked for Defendants during which time she was paid hourly and was considered non-exempt.

11. Defendants are a financial service company doing in business in California.

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 Plaintiff at this time. Plaintiff therefore sues said Defendants by such fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff 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. Plaintiff is informed and believes, and based thereon allege, that each of the DOE Defendants is in some manner liable to Plaintiff for the events and actions alleged herein.

13. Plaintiff is informed and believes, 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.

14. Plaintiff is informed and believes, 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.

15. At all material times, Defendants were and/or are Represented Employees’ employers or persons acting on behalf of Represented Employees’ employer, under California law, the IWC

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

3 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

4 16. On March 17, 2022, Plaintiff, via counsel, sent the statutorily required notice to the
5 LWDA, indicating that Plaintiff intends to pursue claims against Defendants for violations of the
6 Labor Code.

7 17. On March 17, 2022, Plaintiff, via counsel, sent a copy of the March 17, 2022 notice to
8 Defendant WINTRUST.

9 18. The statutory period expired since Plaintiff sent the March 17, 2022 notice to the
10 LWDA and LWDA did not serve Plaintiff with a notice of its intent to assume jurisdiction over the
11 applicable penalty claims and did not provide notice as set forth in Labor Code section
12 2699.3(a)(2)(A).

13 19. Therefore, Plaintiff has exhausted the administrative requirements under the PAGA.

14 **PAGA REPRESENTATIVE ACTION CLAIMS**

15 20. On information and belief, current and former employees of Defendants were subject
16 to wage and hour violations by Defendants, specifically by Defendants' violations of Labor Code
17 sections 201, 202, 203, 204, 226, 226(a)(1)-(a)(9), 226.3, 226.7, 227.3, 246, 248.5, 510, 512, 1194,
18 1197, 1197.1, 1198, 2698, and 2699 et seq.

19 21. California law provides that an aggrieved employee may file an action against an
20 employer for penalties in connection with violations of the Labor Code and Wage Order provided the
21 aggrieved employee file an action on behalf of himself or herself and other current and former
22 employees.

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

- 25 a. Their action involves allegations of violations of provisions of the California Labor
26 Code that provide for a civil penalty to be assessed and collected by the LWDA or any
27 departments, divisions, commissions, boards, agencies or employees;
28

- 1 b. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
2 violator and had one or more of the alleged violations committed against her; and
3 c. Plaintiff has satisfied the procedural requirements of Labor Code section 2699.3, as set
4 forth above.

5 23. As a result of the acts alleged above, Plaintiff seeks to recover civil penalties under the
6 PAGA for violations of the following Labor Code provisions.

- 7 a. failure to provide accurate sick leave accrual and pay in violation of Labor Code section
8 246;
9 b. failure to provide overtime wages in violation of Labor Code sections 510, 1194, 1198,
10 and the IWC Wage Order;
11 c. failure to provide accurate itemized wage statements in violation of Labor Code
12 sections 226, and 226.3;
13 d. failure to provide meal breaks and meal premiums in violation of Labor Code sections
14 512 and 226.7;
15 e. failure to timely pay earned wages in violation of Labor Code section 204;
16 f. failure to pay earned wages in violation of Labor Code sections 201, 202, and 203; and
17 g. failure to pay all vested vacation hours in violation of Labor Code sections 227.3.

18 **FIRST CAUSE OF ACTION**
19 **(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code**
20 **sections 246 and 246(I) against all Defendants)**

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

23 25. Under Labor Code section 246, employers in California must provide employees with
24 paid sick leave.

25 26. Plaintiff and Represented Employees were entitled to paid sick leave.

26 27. During her employment with Defendants, Plaintiff would regularly receive
27 nondiscretionary earnings, including commissions.

28 28. Upon information and belief, Defendants failed to properly provide Plaintiff and the
Represented Employees with paid sick leave, including paying sick leave at the correct rate, as

1 mandated by Labor Code section 246(l)(1)-(3).

2 29. By way of example, Defendants failed to compensate sick leave at the correct rate of
3 pay under Labor Code section 246(l) because they failed to account for all compensation earned
4 including, but not limited to, nondiscretionary earnings such as commissions.

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

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

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

14 33. Plaintiff is seeking civil penalties against Defendants under the PAGA, including
15 Labor Code sections 2699(f), 1197.1, 248.5, and/or any other applicable statute allowing recovery of
16 civil penalties under the PAGA in an amount to be shown according to proof.

17 34. Pursuant to Labor Code section 248.5, Plaintiff seeks to recover attorney's fees, costs,
18 and civil penalties as alleged herein in an amount to be shown according to proof.

19 35. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
20 attorney's fees, costs, filing fees paid to the LWDA and civil penalties in an amount to be shown
21 according to proof.

22 **SECOND CAUSE OF ACTION**
23 **(Representative Claims for Civil Penalties Under the PAGA for Violation of Labor Code**
24 **Sections 246 and 246(b) against all Defendants)**

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

27 37. Under Labor Code section 246, employers in California must provide employees with
28 paid sick leave.

38. Upon information and belief, Defendants failed to provide Plaintiff and Represented

1 Employees with the minimum sick leave accrual rate as required under Labor Code section 246.

2 39. Labor Code section 246(b)(1) provides that “An employee shall accrue paid sick days
3 at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of
4 employment or the operative date of this article, whichever is later, subject to the use and accrual
5 limitations set forth in this section.”

6 40. Labor Code section 246(b)(3) provides that “An employer may use a different accrual
7 method, other than providing one hour per every 30 hours worked, provided that the accrual is on a
8 regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by
9 the 120th calendar day of employment or each calendar year, or in each 12-month period.”

10 41. Upon information and belief, Defendants provided Plaintiff with sick leave accrual at
11 a rate of 1 hour of sick leave per every 40 hours worked. Defendants’ accrual rate does not result in
12 at least 24 hours by 120 calendar days as required by Labor Code section 246(b).

13 42. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
14 Labor Code sections 246 and 246(b).

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

19 44. Pursuant to Labor Code section 248.5, if applicable herein, Plaintiff seeks to recover
20 attorney’s fees, costs, equitable relief in the form of civil penalties, in an amount to be shown
21 according to proof.

22 45. Plaintiff is seeking civil penalties against Defendants under the PAGA, including
23 Labor Code sections 2699(f), 1197.1, 248.5, and/or any other applicable statute allowing recovery of
24 civil penalties under the PAGA in an amount to be shown according to proof.

25 46. Pursuant to Labor Code section 248.5, Plaintiff seeks to recover attorney’s fees, costs,
26 and civil penalties as alleged herein in an amount to be shown according to proof.

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

1 according to proof.

2 **THIRD CAUSE OF ACTION**
3 **(Representative Claims for Civil Penalties Under the PAGA for Violation of Labor Code**
4 **Sections 510 and 1194 against all Defendants)**

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

6 49. Eight hours of labor constitutes a day's work, and any work in excess of 8 hours in 1
7 workday, any work in excess of 40 hours in any one workweek, and for the first 8 hours worked on
8 the 7th consecutive day of work in a workweek, shall be compensated at the rate of no less than one-
9 and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one
10 day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.
11 (Labor Code § 510 and Applicable IWC Wage Orders § 3(A).)

12 50. Upon information and belief, Defendants failed to properly provide Plaintiff and the
13 Represented Employees with overtime pay for hours worked in excess of eight hours in a workday
14 and/or hours worked in excess of 40 hours in one workweek.

15 51. Plaintiff and Represented Employees would regularly receive nondiscretionary
16 earnings, including commissions.

17 52. Plaintiff and Represented Employees were not paid proper overtime when they worked
18 overtime hours because Defendants failed to include all compensation earned during a given period
19 when determining the regular rate of pay.

20 53. Plaintiff and Represented Employees were not paid proper overtime when they worked
21 overtime hours because Defendants failed to properly compute the regular rate of pay.

22 54. Upon information and belief, during all times relevant to this action, Defendants
23 violated Labor Code sections 510, 558, 1194, 1198, and the Applicable IWC Wage Order section
24 3(A).

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

56. Pursuant to Labor Code section 558, any employer or other person acting on behalf of an employer who violates, or causes to be violated, Labor Code sections 500 to 558.1 or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty. Specifically, Labor Code section 558 imposes upon Defendants, and each of them, penalties of fifty hundred dollars (\$50) per pay period, per aggrieved employee for initial violations, and one hundred dollars (\$100) per pay period, per aggrieved employee for subsequent violations.

57. Plaintiff is seeking civil penalties against Defendants under Labor Code sections 2699(f), 558, the Applicable IWC Wage Order, and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

58. Pursuant to Labor Code section 1194, Plaintiff seeks to recover attorney's fees, costs, interest, and civil penalties in an amount to be shown according to proof.

59. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

FOURTH CAUSE OF ACTION
(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code section 226(a)(1) against all Defendants)

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

61. Labor Code section 226(a)(1) requires that an employer issue wage statements to its employees that accurately state the gross wages earned.

62. Defendants failed to accurately state the proper gross on the wage statements in violation of Labor Code section 226(a)(1). By way of one example, the wage statements failed to include the proper amounts of gross wages because it failed to include the proper amount of sick pay, overtime wages, and meal premiums. Other examples of such failures exist.

63. The PAGA imposes upon Defendants, and each of them, penalties for violating Labor Code section 226(a)(1).

64. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of

1 one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two
2 hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor
3 Code provisions for which a civil penalty is not specifically provided.

4 65. With respect to violations of Labor Code section 226, Labor Code section 226.3
5 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee
6 for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
7 employee for each pay period.

8 66. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
9 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the
10 PAGA as alleged herein in an amount to be shown according to proof.

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

14 **FIFTH CAUSE OF ACTION**
15 **(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code**
16 **section 226(a)(5) against all Defendants)**

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

19 69. Labor Code section 226(a)(5) requires that an employer issue wage statements to its
20 employees that accurately state the net wages earned.

21 70. Defendants failed to accurately state the proper net on the wage statements in violation
22 of Labor Code section 226(a)(5). By way of one example, the wage statements failed to include the
23 proper amounts of net wages because it failed to include the proper amount of sick pay, overtime
24 wages, and meal premiums. Other examples of such failures exist.

25 71. The PAGA imposes upon Defendants, and each of them, penalties for violating Labor
26 Code section 226(a)(5).

27 72. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of
28 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

1 Code provisions for which a civil penalty is not specifically provided.

2 73. With respect to violations of Labor Code section 226, Labor Code section 226.3
3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee
4 for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
5 employee for each pay period.

6 74. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
7 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the
8 PAGA in an amount to be shown according to proof.

9 75. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
10 attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown
11 according to proof.

12 **SIXTH CAUSE OF ACTION**
13 **(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code**
14 **sections 226(a)(9) against all Defendants)**

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

16 77. Labor Code section 226(a)(9) requires that an employer issue its employees with wage
17 statements that accurately state all applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate by the employee.

19 78. Defendants failed to provide the applicable hourly rates in effect during the pay period
20 and the corresponding number of hours worked at each hourly rate by the employee in violation of
21 Labor Code section 226(a)(9).

22 79. By way of one example, the rates for sick pay, overtime, and meal premiums are
23 inaccurately itemized.

24 80. All other claims alleged in this complaint have also resulted in a derivative claim of an
25 inaccurate itemized wage statement.

26 81. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
27 Labor Code section 226(a)(9).

28 82. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil

1 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
2 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
3 all Labor Code provisions for which a civil penalty is not specifically provided.

4 83. With respect to violations of Labor Code section 226, Labor Code section 226.3
5 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee
6 for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
7 employee for each pay period.

8 84. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
9 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the
10 PAGA in an amount to be shown according to proof.

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

14 **SEVENTH CAUSE OF ACTION**
15 **(Representative Claims for Civil Penalties Under the PAGA for violation of Labor Code**
16 **section 226(a) against all Defendants)**

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

19 87. Under Labor Code section 226(a) an employer must either keep a duplicate of the wage
20 statement provided to an employee or a computer-generated record that accurately shows all of the
21 information required under 226(a)(1) through (a)(9).

22 88. Upon information and belief, during all times relevant to this action, Defendants failed
23 to keep records required under Labor Code section 226(a). By way of example, the copies of the wage
24 statements that Defendants kept do not include the proper gross and net wages, and all applicable
25 hourly rates and corresponding hours worked as described herein and in the aforementioned
26 paragraphs.

27 89. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
28 Labor Code section 226(a).

90. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil

1 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
2 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
3 all Labor Code provisions for which a civil penalty is not specifically provided.

4 91. With respect to violations of Labor Code section 226, Labor Code section 226.3
5 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee
6 for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
7 employee for each pay period.

8 92. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
9 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the
10 PAGA in an amount to be shown according to proof.

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

14 **EIGHTH CAUSE OF ACTION**
15 **(Representative Claims for Civil Penalties Under the PAGA for violation of Labor Code**
16 **Section 226.7(c) and the IWC Wage Order against all Defendants)**

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

19 95. Labor Code section 226.7 prohibits an employer from requiring an employee to work
20 during a meal period and provides that an employee must be paid a wage for doing so.

21 96. Upon information and belief, during all times relevant to this action, Defendants
22 violated Labor Code sections 512, 226.7, and the IWC Wage Order.

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

26 98. Upon information and believe, because Defendants failed to issue meal premiums at
27 the regular rate of pay for the pay period, Defendants violated Labor Code § 226.7(c) and IWC Wage
28 Order. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858.)

99. The PAGA imposes upon Defendants, and each of them, penalties for violating Labor Code section 226.7 and the IWC Wage Order.

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

101. Plaintiff is seeking civil penalties against Defendants under Labor Code sections 2699(f), 226.7, 558, the IWC Wage Order, and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

102. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties as alleged herein in an amount to be shown according to proof.

NINTH CAUSE OF ACTION
(Representative Claims for Civil Penalties Under the PAGA for violation of Labor Code Sections 512, 226.7 and the IWC Wage Order against all Defendants)

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

104. Under Labor Code sections 226.7, 512 and the IWC Wage Order, an employer must provide a meal period of at least thirty minutes if the employee works more than five hours. California Labor Code section 512 “requires a first meal period no later than the end of an employee’s fifth hour of work [...]” (*Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004.)

105. Upon information and belief, during all times relevant to this action, Defendants violated Labor Code sections 512, 226.7, and the IWC Wage Order because they failed to provide Plaintiff and Represented Employees with compliant meal periods.

106. The PAGA imposes upon Defendants, and each of them, penalties for violating Labor Code sections 512, 226.7 and the IWC Wage Order.

107. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor

1 Code provisions for which a civil penalty is not specifically provided.

2 108. Pursuant to Labor Code section 558, any employer or other person acting on behalf of
3 an employer who violates, or causes to be violated, Labor Code sections 500 to 558.1 or any provision
4 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
5 to a civil penalty. Specifically, Labor Code section 558 imposes upon Defendants, and each of them,
6 penalties of one hundred dollars (\$50) per pay period, per aggrieved employee for initial violations,
7 and two hundred dollars (\$100) per pay period, per aggrieved employee for subsequent violations.

8 109. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
9 2699(f), 226.7, 558, the IWC Wage Order, and/or any other applicable statute allowing recovery of
10 civil penalties under the PAGA in an amount to be shown according to proof.

11 110. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
12 attorney's fees, costs, filing fees paid to the LWDA, and civil penalties as alleged herein in an amount
13 to be shown according to proof.

14 **TENTH CAUSE OF ACTION**
15 **(Representative Claims for Civil Penalties Under the PAGA for violation of Labor Code**
16 **section 204 against all Defendants)**

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

19 112. Pursuant to Labor Code section 204, earned wages must be paid in a timely manner.

20 113. Upon information and belief, Defendants violated Labor Code section 204 because
21 they failed to timely pay Plaintiff and the Represented Employees all earned wages. By way of one
22 example, Plaintiff and Represented Employees were not paid their sick pay wages, overtime wages,
23 and meal premium wage in timely manner as required under Labor Code section 204.

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

26 115. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
27 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
28 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.

1 116. Plaintiff is seeking civil penalties against Defendants under Labor Code section
2 2699(f), and/or any other applicable statute allowing recovery of civil penalties under the PAGA in
3 an amount to be shown according to proof.

4 117. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
5 attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown
6 according to proof.

7 **ELEVENTH CAUSE OF ACTION**
8 **(Representative Claim for Civil Penalties Under the PAGA for violation of Labor Code**
9 **Sections 201, 202, and 203 against all Defendants)**

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

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

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

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

24 122. Upon information and belief, Plaintiff and the Represented Employees did not receive
25 all wages upon termination or separation of employment. By way of example, Plaintiff was owed
26 wages for sick leave, overtime, and meal premiums. To this date, Defendants have not paid Plaintiff
27 and Represented Employees all due and owed wages.

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

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

125. Plaintiff is seeking penalties against Defendants under Labor Code sections 2699(f), 210, and/or any other applicable statute allowing recovery of civil penalties in an amount to be shown according to proof.

126. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

TWELFTH CAUSE OF ACTION
**(Representative Claim for Civil Penalties Under the PAGA for violation of Labor Code
Section 227.3 against all Defendants)**

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

128. 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 [...].”

129. Upon information and belief, Defendants would provide Plaintiff and the Represented Employees with an accrual rate less than what they were legally entitled to. As a result of such conduct, Plaintiff and the Represented Employees did not receive all of their vested vacation hours upon cessation from employment in violation of Labor Code section 227.3.

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

131. 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

1 all Labor Code provisions for which a civil penalty is not specifically provided.

2 132. Plaintiff is seeking civil penalties against Defendants under Labor Code section
3 2699(f), and/or any other applicable statute allowing recovery of civil penalties under the PAGA in
4 an amount to be shown according to proof.

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

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for a judgment against Defendants as follows:

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

15 Dated: May 24, 2022

MASHIRI LAW FIRM, APC

16 By:  _____

17 Alex Asil Mashiri
18 Attorney for Plaintiff
19 Marissa Garcia
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