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LORENA GUTIERREZ

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

LORENA GUTIERREZ, an individual, for the
real party in interest, the State of California, and
on behalf of other current and former employees.

Plaintiff,

vs.

MDRS HOLDINGS, INC.; MDRS SPINE &
SPORT, INC.; MEASUREMENT DRIVEN
REHABILITATION SYSTEMS; and DOES 1
through 50,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

01/10/2024 at 10:45:00 AM

Clerk of the Superior Court
By Emily Schilawski, Deputy Clerk

Case No. 37-2023-00004328-CU-OE-CTL

Judge: Hon. Katherine Bacal
Department: C-69

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. Violation of Labor Code §227.3;
2. Violation of Labor Code §§ 512, 226.7 and the IWC Wage Order;
3. Violation of Labor Code § 226.7, 226.7(c), and the IWC Wage Order;
4. Violation of Labor Code §§ 246, 246(l);
5. Violation of Labor Code §§ 510, 1194, 1198 and IWC Wage Order;
6. Violation of Labor Code § 226;
7. Violation of Labor Code § 204;
8. Violation of Labor Code §§ 201, 202, 203;
9. Violation of Labor Code § 233;
10. Violation of Labor Code § 432.5;
11. Violation of Labor Code § 2802;
12. Violation of Labor Code §§ 226(b), 226(c), 1198.5, and 432;
13. Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq*;

1 Plaintiff LORENA GUTIERREZ (“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 (“Representative Employees”), and individually on behalf of herself and all
4 other similarly situated individuals (“Class Members”) alleges the following:

5 **NATURE OF THE ACTION**

6 1. Plaintiff, by and through this action, seeks individual, representative, and class relief.

7 2. Plaintiff brings this class action on behalf of herself and Class Members who worked
8 for Defendants MDRS HOLDINGS INC., MDRS SPINE & SPORT, INC., MEASUREMENT
9 DRIVEN REHABILITATION SYSTEMS and DOES 1 through 50 (collectively referred to as
10 “Defendants”) in California as non-exempt hourly paid employees and against whom one or more
11 violations of the California Labor Code, the applicable Industrial Welfare Commissions Wage Orders
12 (the “IWC Wage Order”), and the California Business and Professions Code section 17200 et seq.
13 (“UCL”) were committed, as set forth in this complaint

14 3. Plaintiff brings this action seeking wages, penalties, restitution, injunctive and other
15 equitable relief, reasonable attorneys’ fees, costs, and any other remedies the Court deems just due to
16 the violations committed by Defendants as alleged in this Complaint.

17 4. Pursuant to the Private Attorneys General Act (“PAGA”), incorporated in Labor Code
18 sections 2698, 2699 *et seq.*, Plaintiff brings this representative action against Defendants for wage and
19 hour violations of the California Labor Code and the applicable Industrial Welfare Commission Wage
20 Order (the “IWC Wage Order”).

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

27 6. Through this representative action, Plaintiff seeks to recover civil penalties under the
28 PAGA.

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

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

9. This Court has jurisdiction over Plaintiff's claim for civil penalties under the PAGA.

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

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11. Plaintiff is a former nonexempt employee of Defendants, who started her employment with Defendants on or about February 7, 2022 and worked until October 13, 2022.

12. At all relevant times, Plaintiff resided in the County of San Diego, California.

13. Defendants are Plaintiff's employer under California law.

14. Defendants provide physical therapy and related services in various clinics located throughout California.

15. Defendants do business in the County of San Diego, California.

16. 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.”].)

17. 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

1 is informed and believes, and based thereon allege, that each of the DOE Defendants is in some
2 manner liable to Plaintiff for the events and actions alleged herein.

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

8 19. Plaintiff is informed and believes, and based thereon alleges, that each defendant was
9 acting partly within and partly without the scope and course of their employment, and was acting with
10 the knowledge, permission, consent, and ratification of every other defendant.

11 20. At all material times, Defendants were and/or are Class Members and Representative
12 Employees' employers or persons acting on behalf of Representative Employees' employer, under
13 California law, the IWC Wage Order, and Labor Code sections 558 and 558.1 and thus are jointly and
14 severally liable for the violations alleged herein and any amounts awarded and/or recoverable as a
15 result of this action.

16 **GENERAL ALLEGATIONS**

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

19 22. During the relevant time period, Defendants are believed to have employed more than
20 100 employees.

21 23. Defendants failed to provided Plaintiff, Class Members, and Representative
22 Employees with paid sick leave at the appropriate rate of pay as required under Labor Code sections
23 246 and 246(l), resulting in the underpayment of wages.

24 24. Defendants failed to provide Plaintiff, Class Members, and Representative Employees
25 with compliant meal periods in violation of Labor Code sections 512, 226.7, and the IWC Wage
26 Order.

27 25. Defendants failed to pay Plaintiff, Class Members, and Representative Employees all
28 earned wages upon separation of employment under Labor Code sections 201 and 202.

1 26. Defendants failed to pay Plaintiff, Class Members, and Representative Employees all
2 earned wages in a timely matter as required under Labor Code section 204.

3 27. Defendants failed to issue accurate wage statements to Plaintiff, Class Members, and
4 Representative Employees in violation of Labor Code sections 226(a), 226(a)(1), 226(a)(2), 226(a)(5),
5 226(a)(8), and 226(a)(9).

6 28. Defendants failed to properly provide Plaintiff, Class Members, and Representative
7 Employees with overtime pay for hours worked in excess of eight hours in a workday and/or hours
8 worked in excess of 40 hours in one workweek.

9 29. Defendants had a paid time off (“PTO”) policy that provides an accrual rate that
10 depends on all hours paid to Plaintiff, Class Members, and Representative Employees per pay period.
11 Yet, Defendants would not accrue PTO hours for the hours paid for sick leave.

12 30. To date, Defendants have not paid Plaintiff, Class Members, and Representative
13 Employees all of their wages due and payable, in an amount to be shown according to proof.

14 **CLASS ACTION ALLEGATIONS**

15 31. The proposed Class Members that Plaintiff seeks to represent are defined as follows:

16 All persons who worked for Defendants as a non-exempt employee in
17 California at any time between January 31, 2019 and the date of trial.

18 32. Plaintiff reserves the right to modify the definition of Class Members or further divide
19 it into subclasses or limit to particular issues. (California Rules of Court, Rule 3.765(b).)

20 33. This action may be maintained as a class action because many persons have a well-
21 defined common interest and it is impractical to bring them all before the court. (Code of Civil
22 Procedure § 382.)

23 34. Ascertainable Class: The proposed Class is ascertainable because it can be identified
24 and located using Defendants’ payroll and personnel records.

25 35. Numerosity: While the precise number of class members has not yet been determined.
26 Plaintiff is informed and believes there are over 100 putative class members in California affected by
27 Defendants’ policies and procedures. Joinder of all propose Class Members is not practicable.
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1 36. Typicality: Plaintiff's claims are typical of the claims of the proposed Class. Plaintiff
2 and class members sustained injuries and damages caused by Defendants' common course of conduct
3 in violation of laws, regulations and statutes as alleged.

4 37. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect
5 the interests of the members of the Class. Proposed Class Counsel, Mashiri Law Firm, APC and The
6 Jami Law Firm P.C., are competent and experienced in litigating employment class actions. Plaintiff
7 is aware and understands his obligations to faithfully assist in the preparation of the case and to make
8 decisions in the best interests of the putative class.

9 38. Superiority of Class Action: A class action is superior to other available means for the
10 fair and efficient adjudication of this controversy. Each class member has been damaged, and is
11 entitled to recovery, by Defendants' illegal policies and practices and a class action allows them to
12 litigate their claims in the most efficient and economical manner for the parties and judicial system.
13 There are no likely difficulties managing this action that preclude its maintenance as a class action.

14 39. Predominating common questions of law and fact include:

- 15 (a) Whether Defendants failed to correctly accrue and/or pay vacation wages in
16 violation of Labor Code section 227.3;
- 17 (b) Whether Defendants failed to provide compliant meal periods in violation of
18 Labor Code sections 512, 226.7 and the IWC Wage Order;
- 19 (c) Whether Defendants failed to pay meal premiums at the regular rate of pay in
20 violation of Labor Code section 226.7, 226.7(c), and the IWC Wage Order;
- 21 (d) Whether Defendants failed to pay sick leave wages at the correct rate in violation
22 of Labor Code sections 246 and 246(l);
- 23 (e) Whether Defendants failed to accurately pay overtime wages in violation of Labor
24 Code sections 510, 1194, 1198, and IWC Wage Order;
- 25 (f) Whether Defendants issued inaccurate wage statements in violation of Labor
26 Code section 226(a);
- 27 (g) Whether Defendants failed to timely pay all earned wages in violation of Labor
28 Code section 204;

- 1 (h) Whether Defendants failed to pay all earned wages upon termination/separation
2 of employment in violation of Labor Code sections 201 and 202;
- 3 (i) Whether Defendants are subject to waiting time penalties under Labor Code
4 section 203;
- 5 (j) Whether Defendants violated Labor Code section 233;
- 6 (k) Whether Defendants violated Labor Code section 432.5;
- 7 (l) Whether Defendants violated Labor Code section 2802;
- 8 (m) Whether Defendants violated Labor Code sections 226(b), 226(c), 1198.5, and
9 432; and
- 10 (n) Whether the Class is entitled to equitable relief pursuant to Business and
11 Professions Code sections 17200, *et seq.*

12 **PAGA ALLEGATIONS**

13 40. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any person
14 who was employed by the alleged violator and against whom one or more of the alleged violations
15 was committed.”

16 41. Plaintiff is an “aggrieved employee” because she was employed by Defendants and
17 had one or more of the alleged violations committed against her, and therefore is properly suited to
18 act on behalf the state, and collect civil penalties for all violations committed against the
19 Representative Employees, who are also aggrieved employees as defined by Labor Code section
20 2699(c).

21 42. On November 22, 2022, Plaintiff, via counsel, sent the statutorily required notice to
22 the LWDA (“PAGA Notice”), indicating that Plaintiff intends to pursue claims against Defendants
23 for violations of the Labor Code.

24 43. On November 22, 2022, Plaintiff, via counsel, sent a copy of the PAGA Notice to
25 MDRS.

26 44. The statutory period expired since Plaintiff sent the PAGA Notice to the LWDA and
27 LWDA did not serve Plaintiff with a notice of its intent to assume jurisdiction over the applicable
28 penalty claims and did not provide notice as set forth in Labor Code section 2699.3(a)(2)(A). Thus,

1 Plaintiff has exhausted the administrative requirements under the PAGA.

2 45. On information and belief, current and former employees of Defendants were subject
3 to wage and hour violations by Defendants, specifically by Defendants' violations of Labor Code
4 sections 227.3, 226.7, 226(a)(1), 226(a)(5), 226(a)(9), 226(b), 226(c), 201, 202, 203, 204, 233, 246,
5 246(l), 432, 432.5, 510, 512, 1198.5, 2802, 2698, and 2699 et seq.

6 46. California law provides that an aggrieved employee may file a representative action
7 under the PAGA against an employer for civil penalties in connection with violations of the Labor
8 Code and Wage Order.

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Labor Code Section 227.3 against all Defendants)**

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

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

17 49. Defendants violated Labor Code section 227.3. Defendants would provide Plaintiff
18 and Class Members with an accrual rate less than what they were legally entitled to. As a result, (i)
19 Plaintiff and Class Members received less vacation hours than they were legally entitled to and (ii)
20 Plaintiff and Class Members did not receive all of their vested vacation hours upon cessation from
21 employment.

22 50. Plaintiff and Class Members are entitled to and seek unpaid wages.

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

25 52. 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.

53. 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.

54. Pursuant to the PAGA, Labor Code sections 218.5, 2699(g), or any other applicable statute, Plaintiff seeks to recover reasonable attorneys' fees, costs, filing fees paid to the LWDA, wages, interest, and civil penalties in an amount to be shown according to proof.

SECOND CAUSE OF ACTION

(Violation of Labor Code Sections 512, 226.7 and the IWC Wage Order against all Defendants)

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

56. Under Labor Code section 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 before the end of the employee's fifth hour. (*Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004.)

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

58. Defendants failed to provide Plaintiff and Class Members with compliant meal periods in violation of Labor Code sections 512, 226.7, and the IWC Wage Order.

59. Plaintiff and Class Members are entitled to and seek unpaid wages.

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

61. Labor Code section 558 imposes upon Defendants, and each of them, penalties of one hundred dollars (\$50) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$100) per pay period, per aggrieved employee for subsequent violations.

62. 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.

63. 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 as alleged herein in an amount to be shown according to proof.

64. Pursuant to the PAGA, Labor Code sections 218.5, 2699(g), or any other applicable statute, Plaintiff seeks to recover reasonable attorneys' fees, costs, filing fees paid to the LWDA, wages, interest, and civil penalties in an amount to be shown according to proof.

THIRD CAUSE OF ACTION

(Violation of Labor Code Sections 226.7, 226.7(c), and the IWC Wage Order against all Defendants)

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

66. 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 period is not provided.

67. At minimum, Plaintiff, Class Members, and Representative Employees should have been paid a meal and rest break premium for each and every missed, delayed, or shortened meal and rest period in an amount that was equivalent to their regular rate of pay for the pay period. Because Defendants failed to issue such meal and rest premiums at the regular rate of pay for the pay period, Defendants violated Labor Code section 226.7(c). (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858.)

68. Plaintiff and Class Members are entitled to and seek unpaid wages.

69. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code sections 226.7, 226.7(c) and the IWC Wage Order.

70. 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.

71. Plaintiff is seeking civil penalties against Defendants under Labor Code sections 2699(f), 226.7, 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.

72. Pursuant to the PAGA, Labor Code sections 218.5, 2699(g), or any other applicable statute, Plaintiff seeks to recover reasonable attorneys' fees, costs, filing fees paid to the LWDA, wages, interest, and civil penalties in an amount to be shown according to proof.

FOURTH CAUSE OF ACTION

(Violation of Labor Code Sections 246 and 246(l) against all Defendants)

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

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

75. During their employment, Plaintiff, Class Members, and Representative Employees earned additional nondiscretionary compensation, such as, for example, bonuses.

76. Defendants paid sick leave at the incorrect rate of pay resulting in the underpayment of wages. In particular, Defendants failed to appropriately factor in additional nondiscretionary payments and compensation for purposes of computing the appropriate rate of pay for sick leave wages.

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

78. An aggrieved employees is permitted to use the PAGA to enforce California’s Healthy Workplaces Healthy Families Act, which incorporates, Labor Code sections 246 and 246(l). (*Wood v. Kaiser Found. Hosps.* (2023) 88 Cal.App.5th 742, 748.)

79. 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.

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

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

82. Pursuant to the PAGA, Labor Code sections 218.5, 2699(g), or any other applicable statute, Plaintiff seeks to recover reasonable attorneys' fees, costs, filing fees paid to the LWDA, wages, interest, and civil penalties in an amount to be shown according to proof.

FIFTH CAUSE OF ACTION

(Violations of Labor Code Sections 510, 1194, and 1198 and IWC Wage Order against all Defendants)

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

84. 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.)

85. Defendants failed to properly provide Plaintiff, Class Members, and Representative Employees with overtime pay for hours worked in excess of eight hours in a workday and/or hours worked in excess of 40 hours in one workweek.

86. Defendants would provide additional nondiscretionary payments, including but not limited to, nondiscretionary bonuses.

87. Plaintiff, Class Members, and Representative Employees were not paid accurate overtime wages because Defendants failed to include all compensation earned during a given period when determining the regular rate of pay, resulting in the underpayment of overtime wages.

88. Plaintiff and Class Members are entitled to and seek unpaid wages.

89. Defendants violated Labor Code sections 510, 1194, 1198, and the IWC Wage Order.

90. 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.

91. 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.

92. Plaintiff is seeking civil penalties against Defendants, including 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.

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

94. Pursuant to the PAGA, Labor Code sections 218.5, 2699(g), or any other applicable statute, Plaintiff seeks to recover reasonable attorneys' fees, costs, filing fees paid to the LWDA, wages, interest, and civil penalties in an amount to be shown according to proof.

SIXTH CAUSE OF ACTION

(Violations of Labor Code Section 226(a) against all Defendants)

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

96. Labor Code section 226(a) requires that the wage statements accurately state (1) gross wages earned, (2) total hours worked, (3) number of piece rate units earned and all applicable piece rates; (4) all deductions made, (5) net wages earned, (6) the pay periods' inclusive dates, (7) the employee's name and either last four (only) Social Security digits for employee ID number, (8) the

1 name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect
2 during each pay period and the corresponding number of hours worked at each hourly rate (Cal. Lab.
3 Code §226(a)).

4 97. Defendants failed to accurately state the proper gross on the wage statements in
5 violation of Labor Code section 226(a)(1). By way of one example, the wage statements issued to
6 Plaintiff and Class Members failed to include the accurate amount of gross wages because they failed
7 to include the proper amount of wages, including, but not limited to, vacation wages, meal premium
8 wages, overtime wages, and sick pay wages.

9 98. Defendants failed to accurately state the proper net wages earned on the wage
10 statements in violation of Labor Code section 226(a)(5). By way of one example, the wage statements
11 issued to Plaintiff and Class Members failed to include the accurate amount of net wages earned
12 during a given pay period because they failed to include the proper amount of all wages earned,
13 including, but not limited to, vacation, meal premium, overtime, and sick pay wages.

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

17 100. Defendants failed to accurately state the total hours worked on the wage statements in
18 violation of Labor Code section 226(a)(2). By way of one example, Defendants inaccurately included
19 the time paid for meal period premiums as hours worked. However, meal premium hours are not
20 hours worked. By way of another example, the total hours worked included hours paid for paid time
21 off. However, paid time off hours are not hours worked during a given pay period.

22 101. Defendants failed to maintain and keep records required under Labor Code section
23 226(a). By way of example, the copies of the wage statements that Defendants kept do not include the
24 accurate gross and net wages, total hours worked, name of the employer, and all applicable hourly
25 rates and corresponding hours worked as described herein and in the aforementioned paragraphs.

26 102. Defendant violated Labor Code section 226(a)(8) because the name of the employer
27 listed on the wage statements is incorrect, incomplete, misleading and/or confusing.

28 103. As a result of Defendants' failure to (i) provide accurate wage statements which

1 contains all required information set forth under Labor Code section 226, and (ii) maintain records
2 required under section 226, Plaintiff and Class Members suffered damages.

3 104. Plaintiff and Class Members seek damages, penalties, costs and attorneys' fees
4 pursuant to Labor Code sections 226 subdivision (e) in an amount to be proven at trial.

5 105. Plaintiff seek injunctive relief and attorneys' fees and costs pursuant to Labor Code
6 section 226 in an amount to be shown according to proof

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

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

13 108. With respect to violations of Labor Code section 226, Labor Code section 226.3
14 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee
15 for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
16 employee for each pay period.

17 109. Plaintiff is seeking civil penalties against Defendants, including Labor Code section
18 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the
19 PAGA in an amount to be shown according to proof.

20 110. Pursuant to the PAGA, Labor Code sections 218.5, 2699(g), or any other applicable
21 statute, Plaintiff seeks to recover reasonable attorneys' fees, costs, filing fees paid to the LWDA,
22 wages, interest, and civil penalties in an amount to be shown according to proof.

23 **SEVENTH CAUSE OF ACTION**

24 **(Violations of Labor Code Section 204 against all Defendants)**

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

27 112. Labor Code section 204 imposes an obligation of timely payment of wages upon
28 California employers.

1 113. Defendants violated Labor Code section 204 because they failed to timely pay Plaintiff
2 and Representative Employees all earned wages during an applicable pay period.

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

5 115. Labor Code section 204 imposes upon Defendants, and each of them, civil penalties of
6 one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two
7 hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations.

8 116. 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.

12 117. Plaintiff is seeking civil penalties against Defendants under Labor Code section 204,
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.

15 118. Pursuant to the PAGA, Labor Code sections 218.5, 2699(g), or any other applicable
16 statute, Plaintiff seeks to recover reasonable attorneys' fees, costs, filing fees paid to the LWDA,
17 wages, interest, and civil penalties in an amount to be shown according to proof.

18 **EIGHTH CAUSE OF ACTION**

19 **(Violations of Labor Code Sections 201, 202, and 203 against all Defendants)**

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

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

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

122. 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. ...”

123. Upon information and belief, Plaintiff, Class Members, and Representative Employees did not receive all wages upon termination or separation of employment. By way of one example, Plaintiff, Class Members, and Representative Employees were owed vacation wages, meal premium wages, overtime wages, and sick pay wages. To this date, Defendants have not paid all wages upon termination or separation of employment.

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

125. 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.

126. 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.

127. Pursuant to the PAGA, Labor Code sections 218.5, 2699(g), or any other applicable statute, Plaintiff seeks to recover reasonable attorneys' fees, costs, filing fees paid to the LWDA, wages, interest, and civil penalties in an amount to be shown according to proof.

NINTH CAUSE OF ACTION

(Violations of Labor Code Section 233 against all Defendants)

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

129. Under Labor Code section 233, “[a]n employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate

1 against an employee for using, or attempting to exercise the right to use, sick leave to attend to an
2 illness or the preventive care of a family member, or for any other reason specified in subdivision (a)
3 of Section 246.5”.

4 130. Defendants had a policy that provides an accrual rate that depends on total hours paid
5 to Plaintiff and Class Members per pay period. For example, when Plaintiff was paid for making use
6 of her PTO hours, those paid PTO hours were then used to accrue PTO. However, when Plaintiff used
7 sick leave hours—22CASPSLBucket1—Defendants would not accrue PTO hours for the hours paid
8 to her for sick leave. Defendants’ disparate treatment of employees who exercised their entitlement
9 to sick leave hours, violates Labor Code section 233(c).

10 131. Pursuant to Labor Code section 233(e) and/or any other applicable statute, Plaintiff
11 seeks to recover reasonable attorneys’ fees and costs in an amount to be shown according to proof.

12 132. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
13 Labor Code section 233.

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

18 134. Plaintiff is seeking civil penalties against Defendants, including Labor Code section
19 2699(f) and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an
20 amount to be shown according to proof.

21 135. Pursuant to the PAGA, Labor Code sections 218.5, 2699(g), or any other applicable
22 statute, Plaintiff seeks to recover reasonable attorneys’ fees, costs, filing fees paid to the LWDA,
23 wages, interest, and civil penalties in an amount to be shown according to proof.

24 **TENTH CAUSE OF ACTION**

25 **(Violations of Labor Code section 432.5 against all Defendants)**

26 136. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though set
27 forth herein.
28

137. Under Labor Code section 432.5, “[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

138. Defendants required Plaintiff, Class Members, and Representative Employees to sign a document entitled “Confidential, Nonsolicitation and Inventions Assignment Agreement” (“Agreement”) which contains a non-solicitation clause in violation of California law. Since the Agreement violates California law, Defendants’ requirement for Representative Employees, including Plaintiff, to sign such unlawful Agreement violates Labor Code section 432.5.

139. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 432.5.

140. 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.

141. Plaintiff is 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.

142. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks 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 2802 against all Defendants)**

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

144. Labor Code section 2802, subdivision (a) states that an employer must reimburse employees “for all necessary expenditures” incurred by the employee in “direct consequence of the

1 discharge of his or her duties.”

2 145. Defendants violated Labor Code section 2802. By way of example, Plaintiff was often
3 required to use her personal cellular phone in order to communicate with co-workers and/or
4 management for work related matters, but would not be compensated for such. By way of another
5 example, when working from home, Plaintiff was required to purchase internet services to fulfill her
6 duties, but was not reimbursed for such expense.

7 146. Plaintiff believes that Defendants committed the same violations against alleged in the
8 prior paragraph against other Class Members and Representative Employees.

9 147. PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor
10 Code section 2802.

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

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

18 150. Pursuant to the PAGA, Labor Code sections 218.5, 2699(g), or any other applicable
19 statute, Plaintiff seeks to recover reasonable attorneys’ fees, costs, filing fees paid to the LWDA,
20 reimbursement, interest, and civil penalties in an amount to be shown according to proof.

21 **TWELFTH CAUSE OF ACTION**

22 **(Violation of Labor Code Sections 226(b), 226(c), 1198.5, and 432 against all Defendants)**

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

25 152. Labor Code section 226(b) requires, in pertinent part, that “An employer that is
26 required by this code or any regulation adopted pursuant to this code to keep the information required
27 by subdivision (a) shall afford current and former employees the right to inspect or copy records
28 pertaining to their employment, upon reasonable request to the employer. The employer may take

1 reasonable steps to ensure the identity of a current or former employee. If the employer provides
2 copies of the records, the actual cost of reproduction may be charged to the current or former
3 employee.” (Labor Code § 226 subdivision (b).)

4 153. 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. A violation of this subdivision is an infraction. Impossibility of
8 performance, not caused by or a result of a violation of law, shall be an affirmative defense for an
9 employer in any action alleging a violation of this subdivision. An employer may designate the person
10 to whom a request under this subdivision will be made.” (Labor Code § 226(c).)

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

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

17 156. On October 17, 2022, Plaintiff, through counsel, sent a letter to Defendants, requesting
18 copies of her payroll and personnel records. In response, Defendants produced some, but not all,
19 records that Plaintiff is entitled to by law. By way of one example, Defendants failed to produce
20 Plaintiff’s time records. Plaintiff’s counsel sent a follow up seeking the time records. Defendants did
21 not produce the time records until November 22, 2022.

22 157. Defendants violated Labor Code sections 226, 226(b), 226(c), 432, and 1198.5 by
23 failing to timely produce the requested records.

24 158. Plaintiff believes that Defendants committed the same violations against other Class
25 Members.

26 159. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
27 Labor Code sections 226(b), 226(c), 432, 1198.5.
28

160. Pursuant to Labor Code sections 226(h) and 1198.5(l), Plaintiff is seeking injunctive relief.

161. Pursuant to Labor Code sections 226(f) and 1198.5(k), Plaintiff is seeking statutory penalties.

162. Pursuant to Labor Code section 226(h) and 1198.5(l), Plaintiff is seeking reasonable attorneys' fees and costs.

163. 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.

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

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

THIRTEENTH CAUSE OF ACTION

(Violation of California Business and Professions Code §17200 against all Defendants)

166. Plaintiff re-alleges all preceding paragraphs.

167. Defendants, and each of them, are “persons” as defined under Business and Professions Code §17021.

168. Plaintiff is informed and believes and based thereon alleges that Defendants committed the unlawful and unfair business practices, as defined by Cal. Bus. & Prof. Code §17200, *et seq.*, by violating the following laws: Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 246, 432.5, 510, 512, 2802.

169. Defendants' conduct, as alleged in this complaint, constitutes unlawful and unfair conduct prohibited by Cal. Bus. & Prof. Code § 17200, *et seq.*

170. Defendants' business practices deprived Plaintiff and Class Members of compensation

1 and other funds to which they are legally entitled, constitutes unlawful and unfair business practices,
2 provides an unfair advantage to Defendants over their competitors who comply with wage and hour
3 and employment laws, and unjustly enriches them.

4 171. The unlawful and unfair business practices conducted by Defendants are ongoing and
5 present a threat and likelihood of continuing against Plaintiff and other class members and,
6 accordingly, Plaintiff and other class members seek injunctive relief in the form of an order by the
7 court requiring Defendants to issue Plaintiff and other class members, accurate sick pay wages, timely
8 wages, and complaint wage statements.

9 172. Plaintiff and other class members have suffered injury in fact and lost money or
10 property because of the aforementioned un lawful and unfair competition.

11 173. Defendants' conduct directly and proximately caused Plaintiff and other class
12 members to suffer damages in an amount to be shown according to proof.

13 174. Plaintiff and Class Members are seeking restitution for the aforementioned unlawful
14 and unfair competition.

15 175. Plaintiff and Class Members are seeking equitable relief, including injunctive relief for
16 the aforementioned unlawful and unfair competition.

17 176. Plaintiff and Class Members are seeking equitable relief, including injunctive relief for
18 the aforementioned unlawful and unfair competition.

19 177. Plaintiff and Class Members are also seeking reasonable attorneys' fees under
20 California Code of Civil Procedure section 1021.5, or any other applicable law allowing for such.

21 **PRAYER FOR RELIEF**

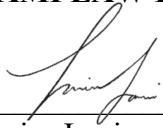
22 WHEREFORE, Plaintiff prays for a judgment against Defendants as follows:

- 23 1. For certification of this action as a class action;
24 2. For appointment of Plaintiff as the representative of the Class;
25 3. For appointment of counsel for Plaintiff as Class Counsel;
26 4. For unpaid wages;
27 5. For compensatory damages;
28 6. For statutory penalties;

7. For civil penalties pursuant to the PAGA and/or other applicable laws;
8. For waiting time penalties;
9. For actual damages;
10. For statutory damages;
11. For equitable relief, including injunctive relief;
12. 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;
13. For special and general damages;
14. For Restitution and disgorgement of all ill-gotten profits, including unpaid wages;
15. For all interest accrued to date;
16. For post-judgment interest as provided by law; and
17. For any other relief that the Court may deem just and proper.

Dated: January 9, 2024

THE JAMI LAW FIRM, P. C.

By: 

Tamim Jami
Attorney for Plaintiff
LORENA GUTIERREZ