

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

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

Attorneys for Plaintiff
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,

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
01/31/2023 at 10:32:04 AM
Clerk of the Superior Court
By Brenda Ramirez, Deputy Clerk

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

REPRESENTATIVE ACTION

**COMPLAINT FOR VIOLATIONS OF THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code Section 2698 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 (“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 MDRS
7 HOLDINGS, INC., MDRS SPINE & SPORT, INC., MEASUREMENT DRIVEN
8 REHABILITATION SYSTEMS (collectively “MDRS”), and DOES 1 through 50 (all defendants are
9 hereinafter collectively referred to as “Defendants”) for wage and hour violations of the California
10 Labor Code and the applicable Industrial Welfare Commission Wage Order (the “IWC Wage Order”).

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

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

19 **JURISDICTION AND VENUE**

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

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

26 6. This Court has jurisdiction over Plaintiff’s claim for civil penalties under the PAGA.

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7. 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.

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 doing business throughout the state of 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.

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1 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant was
2 acting partly within and partly without the scope and course of their employment, and was acting with
3 the knowledge, permission, consent, and ratification of every other Defendant.

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

8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9 16. On November 22, 2022, Plaintiff, via counsel, sent the statutorily required notice to
10 the LWDA ("PAGA Notice"), indicating that Plaintiff intends to pursue claims against Defendants
11 for violations of the Labor Code.

12 17. On November 22, 2022, Plaintiff, via counsel, sent a copy of the PAGA Notice to
13 MDRS.

14 18. The statutory period expired since Plaintiff sent the PAGA Notice to the LWDA and
15 LWDA did not serve Plaintiff with a notice of its intent to assume jurisdiction over the applicable
16 penalty claims and did not provide notice as set forth in Labor Code section 2699.3(a)(2)(A). Thus,
17 Plaintiff has exhausted the administrative requirements under the PAGA.

18 **PAGA REPRESENTATIVE ACTION CLAIMS**

19 19. On information and belief, current and former employees of Defendants were subject
20 to wage and hour violations by Defendants, specifically by Defendants' violations of Labor Code
21 sections 227.3, 512, 226.7, 226(a)(1), 226(a)(5), 226(a)(9), 204, 201, 202, 203, 204, 233, 246, 246(l),
22 432.5, 510, 512, 1198.5, 2802, 2698, and 2699 et seq.

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

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1 **FIRST CAUSE OF ACTION**

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

3 **Section 227.3 against all Defendants)**

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

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

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

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

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

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

24 27. Pursuant to the PAGA, Labor Code section 2699(g), or any other applicable statute,
25 Plaintiff seeks to recover reasonable attorneys’ fees, costs, filing fees paid to the LWDA, and civil
26 penalties in an amount to be shown according to proof.

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1 **THIRD CAUSE OF ACTION**

2 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
3 **Sections 226.7, 226.7(c), and the IWC Wage Order against all Defendants)**

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

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

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

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

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

20 42. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
21 2699(f), 226.7, the IWC Wage Order, and/or any other applicable statute allowing recovery of civil
22 penalties under the PAGA as alleged herein in an amount to be shown according to proof.

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

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1 **FOURTH CAUSE OF ACTION**

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

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

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

9 46. During their employment, Represented Employees earned additional nondiscretionary
10 compensation, such as, for example, bonuses.

11 47. Upon information and belief, Defendants paid sick leave at the incorrect rate of pay
12 resulting in the underpayment of wages. In particular, Defendants failed to appropriately factor in
13 additional nondiscretionary payments and compensation for purposes of computing the appropriate
14 rate of pay for sick leave wages.

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Sections 510, 1194, and 1198 and IWC Wage Order against all Defendants)**

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

55. 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.)

56. Upon information and belief, Defendants failed to properly provide Plaintiff and the Represented 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.

57. Upon information and belief, Represented Employees would receive additional nondiscretionary payments, including but not limited to, nondiscretionary bonuses.

58. Upon information and belief, the Represented 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.

59. Upon information and belief, during all times relevant to this action, Defendants violated Labor Code sections 510, 1194, 1198, and the IWC Wage Order.

60. 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.

61. 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.

62. 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.

63. 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.

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

SIXTH CAUSE OF ACTION

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

Section 226(a)(1) against all Defendants)

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

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

67. 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 issued to Plaintiff and the Represented Employees failed to include the accurate amount of gross wages because they failed to include the proper amount of wages, including, but not limited to, vacation wages, meal premium wages, overtime wages, and sick pay wages.

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

69. 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.

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

71. Plaintiff is seeking civil penalties against Defendants, including Labor Code section 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.

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

SEVENTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Section 226(a)(2) against all Defendants)**

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

74. Labor Code section 226(a)(2) requires that wage statements that an employer issues to its employees accurately state the total hours worked.

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

76. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 226(a)(2).

77. 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.

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

79. Plaintiff is seeking civil penalties against Defendants, including Labor Code section 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.

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

EIGHTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Section 226(a)(5) against all Defendants)**

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

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

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

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

85. 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.

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

87. Plaintiff is seeking civil penalties against Defendants, including Labor Code section 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.

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

NINTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Section 226(a)(8) against all Defendants)**

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

90. Labor Code section 226(a)(8) requires that the employer's wage statements accurately state the name of the employer.

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

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

93. 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 94. 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 95. Plaintiff is seeking civil penalties against Defendants, including Labor Code section
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 96. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
10 reasonable attorneys' fees, costs, and filing fees paid to the LWDA in an amount to be shown
11 according to proof.

12 **TENTH CAUSE OF ACTION**

13 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
14 **Section 226(a)(9) against all Defendants)**

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

17 98. Labor Code section 226(a)(9) requires that the employer's wage statements accurately
18 state all applicable hourly rates in effect during the pay period and the corresponding number of hours
19 worked at each hourly rate by the employee.

20 99. Defendants failed violated Labor Code section 226(a)(9). By way of one example, the
21 rates/hours for vacation pay, meal premiums, overtime, and sick pay are inaccurately itemized.

22 100. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
23 Labor Code section 226(a)(9).

24 101. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
25 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
26 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
27 all Labor Code provisions for which a civil penalty is not specifically provided.
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102. With respect to violations of Labor Code section 226, Labor Code section 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each pay period.

103. Plaintiff is seeking civil penalties against Defendants, including Labor Code section 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.

104. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover reasonable attorneys' fees, costs, and filing fees paid to the LWDA 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 226(a) against all Defendants)

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

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

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

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

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109. 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.

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

111. Plaintiff is seeking civil penalties against Defendants, including Labor Code section 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.

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

TWELFTH CAUSE OF ACTION

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

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

114. Labor Code section 204 imposes an obligation of timely payment of wages upon California employers.

115. Defendants violated Labor Code section 204 because they failed to timely pay Plaintiff and the Represented Employees all earned wages during an applicable pay period.

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

117. Labor Code section 204 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.

118. 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.

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

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

THIRTEENTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Sections 201, 202, and 203 against all Defendants)**

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

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

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

124. 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. ...”

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125. Upon information and belief, Plaintiff and the Represented Employees did not receive all wages upon termination or separation of employment. By way of one example, Plaintiff and the Represented 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.

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

127. 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.

128. 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.

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

FOURTEENTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Section 233 against all Defendants)**

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

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

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132. Upon information and belief, Defendants had a policy that provides an accrual rate that depends on hours paid to the Represented Employees per pay period. For example, when a Represented Employee was paid for PTO hours, those hours were used to accrue PTO. However, when a Represented Employee used sick leave hours—22CASPSLBucket1—Defendants would not accrue PTO hours for the hours paid for sick leave. Defendants' disparate treatment of employees who exercised their entitlement to sick leave hours, violates Labor Code section 233(c).

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

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

135. 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.

136. 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.

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

FIFTEENTH CAUSE OF ACTION

(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code section 432.5 against all Defendants)

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

139. 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

1 term or condition which is known by such employer, or agent, manager, superintendent, or officer
2 thereof to be prohibited by law.”

3 140. Upon information and belief, Defendants required Represented Employees, including
4 Plaintiff, to sign a document entitled “Confidential, Nonsolicitation and Inventions Assignment
5 Agreement” (“Agreement”) which contains a non-solicitation clause in violation of California law.
6 Since the Agreement violates California law, Defendants’ requirement for Represented Employees,
7 including Plaintiff, to sign such unlawful Agreement violates Labor Code section 432.5.

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

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

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

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

20 **SIXTEENTH CAUSE OF ACTION**

21 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code** 22 **Section 2802 against all Defendants)**

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

25 146. Labor Code section 2802, subdivision (a) states that an employer must reimburse
26 employees “for all necessary expenditures” incurred by the employee in “direct consequence of the
27 discharge of his or her duties.”

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

6 148. Upon information and belief, Plaintiff believes that Defendants committed the
7 same violations against alleged in the prior paragraph against other Represented Employees.

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

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

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

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

20 **SEVENTEENTH CAUSE OF ACTION**

21 **(Representative Claims for Civil Penalties Under the PAGA for Violation of Labor Code**
22 **Sections 226(b), 226(c), 1198.5, and 432 against all Defendants)**

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

25 154. 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).)

4 155. 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).)

11 156. 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.

13 157. 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.”

17 158. 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.

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

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

26 161. 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

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

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

5 163. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
6 attorneys' fees, costs, filing fees paid to the LWDA and civil penalties in an amount to be shown
7 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: January 31, 2023

MASHIRI LAW FIRM, APC

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17 By: 
18 Alex Asil Mashiri
19 Attorney for Plaintiff
20 LORENA GUTIERREZ
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