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9 Attorneys for Plaintiff
10 MARCELA CERVANTES

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

13 MARCELA CERVANTES, an individual, for the
real party in interest, the State of California,

14 Plaintiff,

15 vs.

16 VERTICAL HOLDINGS LLC; and DOES 1
17 through 50,

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19 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
06/08/2023 at 08:22:54 AM
Clerk of the Superior Court
By Jimmy Siharath, Deputy Clerk

Case No. 37-2023-00024018-CU-OE-CTL

REPRESENTATIVE ACTION

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

1 Plaintiff MARCELA CERVANTES (“Plaintiff”), in her capacity as the State of California’s
2 designated proxy under the Private Attorneys General Act (“PAGA”), and on behalf of other current
3 and former California non-exempt employees alleges the following:

4 **NATURE OF THE ACTION**

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

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

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

18 **JURISDICTION AND VENUE**

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

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

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

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

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

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

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

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

24. Civil penalties under the PAGA are equitable in nature. (*LaFace v. Ralphs Grocery Co.* (2022) 75 Cal.App.5th 388, 398-399; *Nationwide Biweekly Admin., Inc. v. Superior Ct. of Alameda Cty.* (2020) 9 Cal.5th 279.)

25. 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.

26. 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.

27. 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.

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

SECOND CAUSE OF ACTION

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

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

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1 30. Under Labor Code section 246(b), an “employee shall accrue paid sick days at the rate
2 of not less than one hour per every 30 hours worked” if the employer elects to use the accrual method
3 under Labor Code section 246.

4 31. Upon information and belief, Defendants’ employees would either not accrue sick
5 leave hours at all or they would accrue sick leave hours at a rate lower than 1 hour per 30 hours
6 worked. As a result, employees received fewer sick days than what they were legally entitled to under
7 Labor Code sections 246 and 246(b).

8 32. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
9 Labor Code sections 246 and 246(b).

10 33. Civil penalties under the PAGA are equitable in nature. (*LaFace v. Ralphs Grocery*
11 *Co.* (2022) 75 Cal.App.5th 388, 398-399; *Nationwide Biweekly Admin., Inc. v. Superior Ct. of*
12 *Alameda Cty.* (2020) 9 Cal.5th 279.)

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

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

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

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

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

5 47. Labor Code section 226.7(b) prohibits an employer from requiring an employee to
6 work during a meal period.

7 48. Upon information and belief, during all times relevant to this action, Defendants failed
8 to provide their employees with compliant meal periods in violation of Labor Code sections 512,
9 226.7(b), and the IWC Wage Order.

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

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

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

19 52. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
20 2699(f), 558, the IWC Wage Order, and/or any other applicable statute allowing recovery of civil
21 penalties under the PAGA as alleged herein in an amount to be shown according to proof.

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

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1 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

2 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
3 **Sections 510 and 1198 against all Defendants)**

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

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

12 71. Upon information and belief, Defendants failed to properly provide its employees with
13 overtime pay for hours worked in excess of eight hours in a workday and/or hours worked in excess
14 of 40 hours in one workweek.

15 72. Upon information and belief, Defendants failed to provide its employees with overtime
16 pay at the regular rate of pay. By way of one example, Defendants failed to include all compensation
17 earned (e.g. bonuses) during a given period when determining the regular rate of pay, resulting in the
18 underpayment of overtime wages.

19 73. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
20 Labor Code sections 510, 1198, and the IWC Wage Order.

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

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75. 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.

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

77. 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
Sections 221 and 223 against all Defendants)**

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

79. Under Labor Code section 221, it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

80. Under Labor Code section 223, it is unlawful for an employer to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

81. Defendants violated Labor Code sections 221 and 223. Upon information and belief, Defendants failed to pay their employees the hourly rate that they had promised to pay. By way of one example, Plaintiff was promised an hourly rate of \$16.75, yet Defendants paid an hourly rate of \$16 and/or \$16.50.

82. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code sections 221 and 223.

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83. 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.

84. 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.

85. 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)(1) against all Defendants)

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

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

88. 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 their 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, sick pay wages, meal/rest premium wages, and overtime wages.

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

90. 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.

91. 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.

92. Plaintiff is seeking civil penalties against Defendants under 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.

93. 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.

TENTH CAUSE OF ACTION

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

Section 226(a)(2) against all Defendants)

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

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

96. Defendants' wage statements issues to their employees failed to accurately state the total hours worked in violation of Labor Code section 226(a)(2).

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

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

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99. 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.

100. Plaintiff is seeking civil penalties against Defendants under 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.

101. 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)(5) against all Defendants)**

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

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

104. Defendants failed to accurately state the proper net on the wage statements in violation of Labor Code section 226(a)(5). By way of one example, the wage statements issued to their employees failed to include the accurate amount of net wages because they failed to include the proper amount of wages, including, but not limited to, sick pay wages, meal/rest premium wages, and overtime wages.

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

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

107. 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.

109. 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

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

112. Defendants failed to provide the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code section 226(a)(9). By way of one example, the rates/hours for sick pay, meal/rest premiums, regular time, and overtime are inaccurately itemized.

114. 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.

115. 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.

116. Plaintiff is seeking civil penalties against Defendants under 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.

117. 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
Section 226(a) against all Defendants)**

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

119. 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).

120. 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 records kept do not include the accurate gross and net wages, total hours worked, and applicable hourly rates and corresponding hours worked.

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

122. 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.

123. 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.

124. Plaintiff is seeking civil penalties against Defendants under 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.

125. 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 204 against all Defendants)**

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

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

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

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

130. Labor Code section 210 imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations.

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

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

133. 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.

FIFTEENTH CAUSE OF ACTION

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

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

135. 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.

136. 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.”

137. 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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146. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 2802.

147. 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.

148. 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.

149. 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.

SEVENTEENTH CAUSE OF ACTION

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

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

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

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

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

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

5 155. On January 26, 2023, Plaintiff, through counsel, sent a letter to Defendants, requesting
6 copies of her payroll and personnel records. Defendants failed to produce the requested records.

7 156. On March 7, 2023, Plaintiff, through counsel, sent a follow up letter to Defendants
8 requesting copies of her payroll and personnel records. Defendants failed to produce the requested
9 records.

10 157. On March 30, 2023, Plaintiff sent a third records request, this time, via certify mail.
11 Defendants failed to produce the requested records.

12 158. To date, no documents have been produced despite three separate records requests.

13 159. Upon information and belief, Defendants have a policy and practice whereby they
14 refuse to provide all required payroll and personnel records to employees who request them, including,
15 but not limited to, time records, handbooks, policies, documents with the employee’s signature, etc.

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

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

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

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

28 ///

1 **PRAYER FOR RELIEF**

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

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

8 Dated: June 8, 2023

MASHIRI LAW FIRM, APC

9
10 By: 

Alex Asil Mashiri
Attorney for Plaintiff
MARCELA CERVANTES