

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
STEPHANIE GIRON

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

STEPHANIE GIRON, an individual, for the real
party in interest, the State of California,

Plaintiff,

vs.

BANK OF AMERICA, NATIONAL
ASSOCIATION; and DOES 1 through 50,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/18/2023 at 11:29:00 AM

Clerk of the Superior Court
By Shiela Retez, Deputy Clerk

Case No.: 37-2023-00032504-CU-OE-CTL

REPRESENTATIVE ACTION

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

1 Plaintiff STEPHANIE GIRON (“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 BANK OF AMERICA, NATIONAL
7 ASSOCIATION (“BOFA”) and DOES 1 through 50 (all defendants are hereinafter collectively
8 referred to as “Defendants”) for wage and hour violations of the California Labor Code and the
9 applicable Industrial Welfare Commission Wage Order (the “IWC Wage Order”).

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

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

18 **JURISDICTION AND VENUE**

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

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

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

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

THE PARTIES

8. The State of California is the real party in interest in a PAGA action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal.5th 73, 81. [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”].)

9. Defendants are an American multinational investment bank and financial services holding company.

10. Plaintiff worked for, and was employed by Defendants in California from 2016 until 2023.

11. Plaintiff was employed by Defendants as a Customer Service Representative, also known as CSR, during which time she was paid hourly, was considered non-exempt, and was subject to Defendants’ Employee Handbook for California. Defendants’ Employee Handbook provided uniform company-wide policies and practices that governed Plaintiff and all other non-exempt employees’ employment for Defendants in California.

12. Pursuant to Labor Code section 2699(c), 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 current and former employees, who are also aggrieved employees.

13. Specifically, Plaintiff suffered from Defendants’ violations of Labor Code sections 201, 202, 203, 204, 226, 226(a), 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(9), 226(b), 226(c), 226.7, 226.7(b), 226.7(c), 227.3, 246, 246(a), 246(b), 246(c), 246(i), 246(l), 432, 510, 512, 1197, 1198, 1198.5, and 2802, and therefore has standing as an aggrieved employee.

14. Plaintiff brings this action on behalf of Defendants’ current and former non-exempt California employees who worked for Defendants from May 26, 2022 until trial (“Representative Employees”) that suffered from any one of the alleged violations in this Complaint. (*Huff v. Securitas Sec. Servs. USA, Inc.* (2018) 23 Cal. App. 5th 745, 753 [“An Employee Affected By at Least One Labor Code Violation May Pursue Penalties on Behalf of the State for Unrelated Violations By the Same Employer.”].)

1 15. The true names and capacities, whether individual, corporate, associate or otherwise
2 of the Defendant named herein as DOES 1 through 50, are unknown to Plaintiff at this time. Plaintiff
3 therefore sues said Defendants by such fictitious names pursuant to California Code of Civil
4 Procedure section 474. Plaintiff will seek leave to amend the operative complaint (“Complaint”) to
5 allege the true names and capacities of DOES 1 through 50 when their names are ascertained. Plaintiff
6 is informed and believes, and based thereon allege, that each of the DOE Defendants is in some
7 manner liable to Plaintiff for the events and actions alleged herein.

8 16. Plaintiff is informed and believes, and based thereon alleges, that at all times, each
9 Defendant was acting as an agent, joint venturer, integrated enterprise and/or alter ego for each of the
10 other defendants and each were co-conspirators with respect to the acts and the wrongful conduct
11 alleged herein so that each is responsible for the acts of the other in connection with the conspiracy
12 and in proximate connection with the other defendants.

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

17 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

18 18. On May 26, 2023, Plaintiff, via counsel, provided the statutorily required notice to the
19 LWDA (“PAGA Notice”), indicating that Plaintiff intends to pursue claims against Defendants for
20 violations of the Labor Code on behalf of herself and Representative Employees pursuant to the
21 PAGA.

22 19. On May 26, 2023, Plaintiff, via counsel, sent a copy of the PAGA Notice to Defendant
23 BOFA.

24 20. On July 24, 2023, Plaintiff, via counsel, provided an amended notice to the LWDA
25 (“Amended PAGA Notice”), indicating that Plaintiff intends to pursue additional claims against
26 Defendants under the Labor Code.

27 21. On July 24, 2023, Plaintiff, via counsel, sent a copy of the Amended PAGA Notice to
28 Defendant BOFA.

1 22. The statutory period expired since Plaintiff provided the PAGA Notice to the LWDA
2 and LWDA did not serve Plaintiff with a notice of its intent to assume jurisdiction over the applicable
3 penalty claims and did not provide notice as set forth in Labor Code section 2699.3(a)(2)(A). As
4 such, Plaintiff has exhausted the administrative requirements under the PAGA.

5 **PAGA REPRESENTATIVE ACTION CLAIMS**

6 23. California law provides that an aggrieved employee may file a representative action
7 under the PAGA against an employer for violations of the Labor Code and Wage Order.

8 24. Defendants' Employee Handbook provided uniform company-wide policies and
9 practices that governed Plaintiff and Representative Employees' employment for Defendants in
10 California.

11 25. As alleged below, current and former employees of Defendants in California, including
12 Plaintiff, were subject to systemic and company-wide wage and hour violations by Defendants,
13 specifically by Defendants' violation of Labor Code sections 201, 202, 203, 226, 226(a), 226(a)(1),
14 226(a)(2), 226(a)(5), 226(a)(9), 226(b), 226(c), 226.7, 226.7(b), 226.7(c), 246, 246(a), 246(b), 246(c),
15 246(l), 432, 510, 512, 1197, 1198, 1198.5, 2802, 2698 and 2699 et seq.

16 **FIRST CAUSE OF ACTION**

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

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

21 27. Under Labor Code sections 246, 246(a), 246(b), and 246(c) employers in California
22 must provide employees with paid sick leave.

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

26 29. During their employment, Plaintiff and Representative Employees earned additional
27 nondiscretionary compensation, including but not limited to bonuses and awards.
28

1 30. Defendants failed to pay Plaintiff and Representative Employees all sick leave wages
2 in accordance with Labor Code section 246(l) because Defendants have a systemic company-wide
3 payroll deficiency that resulted in the issuance of sick leave to all Representative Employees in
4 California at the base rate of pay rather than their higher blended rate of pay.

5 31. During Plaintiff's employment, Defendants issued sick leave to Plaintiff at her base
6 rate of pay rather than her higher blended rate of pay.

7 32. Defendants systemically and categorically failed to factor in additional
8 nondiscretionary payments and compensation—including but not limited to bonuses, awards, and
9 other hourly and non-hourly wages earned—for purposes of computing the appropriate rate of pay for
10 sick leave under Labor Code section 246(l).

11 33. Defendants' failure to issue sick leave at the rate mandated by Labor Code section
12 246(l) was systemic and company-wide in California, thereby resulting in the underpayment of wages
13 to Plaintiff and Representative Employees.

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

16 35. Aggrieved Employees are permitted to use the PAGA to enforce California's Healthy
17 Workplaces Healthy Families Act. (*Wood v. Kaiser Found. Hosps.* (2023) 88 Cal.App.5th 742, 748.)

18 36. 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 37. Plaintiff is seeking civil penalties against Defendants under Labor Code section
23 2699(f) and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an
24 amount to be shown according to proof.

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

39. 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 512 and 226.7(b) against all Defendants)**

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

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

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

43. Defendants failed to provide Plaintiff and Representative Employees with compliant meal periods in violation of Labor Code sections 512, 226.7(b), and the IWC Wage Order.

44. Defendants did not always relieve Plaintiff and Representative Employees for compliant meal periods under California law. This was due, in part, to the demanding nature of the work, understaffing at bank branches, and the time sensitivity of assigned tasks, duties, and obligations during working hours.

45. Defendants' time records for Plaintiff reflect numerous noncompliant meal periods. In a meal period case, an employer's "[t]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations." (*Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61.)

46. Defendants' failure to relieve Plaintiff for meal periods is a systemic company-wide practice that affected Representative Employees in California.

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

48. Labor Code section 558 imposes upon Defendants, and each of them, civil penalties of fifty 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.

49. 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.

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

51. Pursuant to the PAGA, 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.

THIRD CAUSE OF ACTION

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

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

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

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

55. Defendants failed to provide Plaintiff and Representative Employees with proper rest periods in violation of Labor Code section 226.7(b) and the IWC Wage Order.

56. Defendants did not always relieve Plaintiff and Representative Employees for compliant rest periods under California law. This was due, in part, to the demanding nature of the

1 work, understaffing at bank branches, and the time sensitivity of assigned tasks, duties, and
2 obligations during working hours.

3 57. Defendants' time records for Plaintiff do not reflect any rest periods taken, or
4 certifications and/or attestations that Plaintiff had a timely opportunity to take the rest periods she was
5 entitled to during her shifts.

6 58. Defendants' failure to relieve Plaintiff for rest periods is a systemic company-wide
7 practice that affected Representative Employees in California.

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

10 60. 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 61. Plaintiff is seeking civil penalties against Defendants under Labor Code section
15 2699(f), the IWC Wage Order, and/or any other applicable statute allowing recovery of civil penalties
16 under the PAGA as alleged herein in an amount to be shown according to proof.

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

20 **FOURTH CAUSE OF ACTION**

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

22 **Section 226.7(c) against all Defendants**

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

25 64. Under Labor Code section 226.7(c), if an employer fails to provide an employee with
26 a proper meal or rest period, the employer shall pay the employee one hour of pay at the employee's
27 regular rate of compensation for each workday that the meal/rest period is not provided.
28

65. Defendants failed to issue Plaintiff and Representative Employees meal and/or rest premiums at the regular rate of pay in violation of Labor Code section 226.7(c). By way of example, Defendants failed to retroactively adjust the premiums it issued to Plaintiff once incentive/bonuses were later determined and paid for the same period wherein the premiums were already issued.

66. Defendants' failure to compensate Plaintiff for meal and rest premiums at the mandated regular rate of pay is a systemic company-wide practice that affected Representative Employees in California.

67. PAGA imposes upon Defendants, and each of them, penalties for violating Labor Code section 226.7(c) and the IWC Wage Order.

68. 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.

69. Plaintiff is seeking civil penalties against Defendants under Labor Code section 2699(f), 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.

70. Pursuant to the PAGA, 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.

FIFTH CAUSE OF ACTION

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

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

72. 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

1 shall be compensated at the rate of no less than twice the regular rate of pay for an employee. (Labor
2 Code § 510 and IWC Wage Order.)

3 73. Plaintiff and Representative Employees were not paid for all overtime hours that they
4 worked for Defendants. By way of example, Defendants failed to properly provide Plaintiff and
5 Representative Employees with overtime pay for hours worked in excess of eight hours in one
6 workday and/or hours worked in excess of 40 hours in one workweek.

7 74. Defendants also violated Labor Code sections 510 and 1198 because they failed to
8 compensate Plaintiff and Representative Employees at the appropriate regular rate of pay for all
9 overtime hours worked. In particular, Defendants failed to properly true up all overtime pay based
10 on the incentives, bonuses, and awards that Plaintiff earned during her employment.

11 75. Defendants' failure to compensate Plaintiff for overtime at the mandated regular rate
12 of pay is a systemic company-wide issue that affected Representative Employees in California.

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

15 77. 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 78. Pursuant to Labor Code section 558, any employer or other person acting on behalf of
20 an employer who violates, or causes to be violated, Labor Code sections 500 to 558.1 or any provision
21 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
22 to a civil penalty. Specifically, Labor Code section 558 imposes upon Defendants, and each of them,
23 penalties of fifty dollars (\$50) per pay period, per aggrieved employee for initial violations, and one
24 hundred dollars (\$100) per pay period, per aggrieved employee for subsequent violations.

25 79. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
26 2699(f) and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an
27 amount to be shown according to proof.
28

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.

SIXTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Section 226(a)(1) against all Defendants)**

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

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

83. Defendants failed to accurately state the gross wages on the wage statements it issued to Plaintiff and Representative Employees in violation of Labor Code section 226(a)(1). By way of one example, the wage statements Defendants issued to Plaintiff failed to include the accurate amount of gross wages, including, but not limited to, sick pay wages, meal/rest premium wages, and/or overtime wages.

84. Because Defendants' payroll practices in California are uniform, Defendants' failure to furnish accurate itemized wage statements to Plaintiff is a systemic company-wide issue that affected Representative Employees in California.

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

86. 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.

87. 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.

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.

SEVENTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Section 226(a)(5) 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)(5) requires wage statements that an employer issues to its employees accurately state the net wages earned.

91. Defendants failed to accurately state the net wages on the wage statements it issued to Plaintiff and Representative Employees in violation of Labor Code section 226(a)(5). By way of one example, the wage statements Defendants issued to Plaintiff failed to include the accurate amount of net wages, including, but not limited to, sick pay wages, meal/rest premium wages, and/or overtime wages.

92. Because Defendants' payroll practices in California are uniform, Defendants' failure to furnish accurate itemized wage statements to Plaintiff is a systemic company-wide issue that affected Representative Employees in California.

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

94. 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.

95. 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.

96. 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)(9) against all Defendants)**

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

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

99. Defendants failed to provide Plaintiff and Representative Employees 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, and overtime are inaccurately itemized on the wage statement Defendants issued to Plaintiff.

100. Because Defendants' payroll practices in California are uniform, Defendants' failure to furnish accurate itemized wage statements to Plaintiff is a systemic company-wide issue that affected Representative Employees in California.

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

102. 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.

103. 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.

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.

NINTH 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. Defendants failed to keep records required under Labor Code section 226(a). By way of example, the copies of Plaintiff's payroll records that Defendants produced to Plaintiff do not include the accurate gross and net wages, total hours worked, and applicable hourly rates and corresponding hours worked.

108. Because Defendants' payroll practices in California are uniform, Defendants' failure to maintain accurate itemized wage statements for Plaintiff is a systemic company-wide issue that affected Representative Employees in California.

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

110. 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.

111. 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.

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.

TENTH CAUSE OF ACTION

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

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

114. 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.

115. 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.”

116. 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. ...”

117. Plaintiff and Representative Employees did not receive all wages upon termination or separation of employment. By way of one example, Plaintiff and Representative Employees were owed wages, including, but not limited to, sick pay wages, meal/rest premium wages, and overtime wages. To this date, Defendants have not paid Plaintiff and Representative Employees all wages due to them upon their termination of or separation from employment.

118. Defendants' failure to pay Plaintiff all wages due and owing at the time of her separation from employment is a systemic company-wide issue that affected Representative Employees in California that were terminated or separated from employment.

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

120. 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.

121. 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.

122. 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 2802 Against all Defendants)**

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

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

125. Defendants violated Labor Code section 2802. Plaintiff and Representative Employees incurred expenses as a result of using their cellular, internet data, and electric services, in discharge of their duties for Defendants. Defendants failed to adequately reimburse Plaintiff and Representative Employees for these necessary expenditures.

126. Defendants' failure to reimburse Plaintiff for all necessary expenditures incurred in discharge of her duties is a systemic company-wide issue that affected Representative Employees in California.

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

128. 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.

129. 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.

130. 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
Sections 226(b), 226(c), 432, and 1198.5 against all Defendants)**

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

132. 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.”

133. 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.”

134. 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.

135. Labor Code section 1198.5(b)(1) provides, in pertinent part: “The employer shall make the contents of those personnel records available for inspection to the current or former employee, or

1 his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar
2 days from the date the employer receives a written request.”

3 136. On May 26, 2023, Plaintiff, through counsel, sent a letter to Defendants, via certified
4 mail with tracking number, requesting copies of her payroll and personnel records. The status of the
5 tracking number (USPS Tracking No.: 70222410000194235330) shows that the certified letter was
6 delivered to an individual for Defendants, at the business address for Defendants, at 12:10 pm on May
7 31, 2023 in CHARLOTTE, NC 28202.

8 137. On August 4, 2023—70 days after Plaintiff sent her certified letter dated May 26,
9 2023—Defendants mailed records to Plaintiff in response to Plaintiff’s certified letter requesting her
10 payroll and personnel records.

11 138. Defendants have a policy and/or practice where they provide payroll and personnel
12 records to employees in California without regard to the statutory deadlines in the Labor Code.

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

15 140. 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.

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

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. An award of civil penalties pursuant to the PAGA and/or other applicable laws;
2. 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;
3. Post-judgment interest as provided by law; and
4. Such other and further relief that the Court may deem just and proper.

THE JAMI LAW FIRM P.C.

By: 
 Tamim Jami
 Attorney for Plaintiff
 STEPHANIE GIRON