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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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**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.

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

REPRESENTATIVE ACTION

**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 the wrongful
28 misconduct alleged herein occurred.

1 **THE PARTIES**

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

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

7 10. Plaintiff is an “aggrieved employee” because she was employed by Defendants and
8 had one or more of the alleged violations committed against him, and therefore is properly suited to
9 act on behalf the state, and collect civil penalties for all violations committed against the current and
10 former employees, who are also aggrieved employees as defined by Labor Code section 2699(c).

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

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

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

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1 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

2 14. On May 26, 2023, Plaintiff, via counsel, provided the statutorily required notice to the
3 LWDA (“PAGA Notice”), indicating that Plaintiff intends to pursue claims against Defendants for
4 violations of the Labor Code.

5 15. On May 26, 2023, Plaintiff, via counsel, sent a copy of the PAGA Notice to Defendant
6 BOFA.

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

10 17. On July 24, 2023, Plaintiff, via counsel, sent a copy of the Amended PAGA Notice to
11 Defendant BOFA.

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

16 **PAGA REPRESENTATIVE ACTION CLAIMS**

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

19 20. On information and belief, and as alleged below, current and former employees of
20 Defendants were subject to wage and hour violations by Defendants, specifically by Defendants’
21 violation of Labor Code sections 201, 202, 203, 204, 226, 226(a), 226(a)(1), 226(a)(2), 226(a)(5),
22 226(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),
23 432, 510, 512, 1197, 1198, 1198.5, 2802, 2698 and 2699 et seq.

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FIRST CAUSE OF ACTION

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

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

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

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

24. During their employment, Plaintiff and Aggrieved Employees earned additional nondiscretionary compensation, such as, for example, bonuses and other forms of supplemental wages.

25. Upon information and belief, Defendants paid sick leave at the incorrect rate of pay resulting in the underpayment of wages. In particular, Defendants failed to appropriately factor in additional nondiscretionary payments and compensation—including but not limited to bonuses and other hourly and non-hourly wages earned by Aggrieved Employees—for purposes of computing the appropriate rate of pay for sick leave wages.

26. Upon information and belief, Defendants failed to provide paid sick leave to their employees in violation of Labor Code sections 246, 246(a), 246(b), 246(c), and 246(l).

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

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

29. 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.)

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30. 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.

31. 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.

32. 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.

33. 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(i) against all Defendants)**

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

35. Under Labor Code section 246(i), an employer is required to either provide a written notice or an itemized wage statement accurately itemizing an employee's available paid sick leave hours.

36. Upon information and belief, Defendants also violated Labor Code section 246(i) by failing to provide a written notice or itemized wage statement accurately itemizing the employees' available paid sick leave hours.

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

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

39. 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.)

40. 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.

41. 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.

42. 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.

43. 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.

THIRD CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code
Section 1197 against all Defendants)**

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

45. Under Labor Code section 1197, an employer is required to pay its employees the proper minimum wages for all hours worked.

46. Upon information and belief, Defendants failed to properly provide their employees with minimum wages for all hours worked. By way of example, Defendants' employees would work many hours without getting compensated for the hours worked and/or not paid the correct minimum wages for all hours worked in violation of Labor Code section 1197.

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47. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 1197.

48. 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.

49. 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.

50. 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.

FOURTH 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)**

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

52. 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.)

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

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

55. 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.

56. 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.

57. 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.

58. 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.

59. 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
Section 226.7(b) against all Defendants)**

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

61. 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.

62. 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.

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

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

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65. 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.

66. 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.

67. 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.

SIXTH CAUSE OF ACTION

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

Section 226.7(c) against all Defendants

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

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

70. Upon information and belief, Defendants failed to issue meal and/or rest premiums at the regular rate of pay in violation of Labor Code section 226.7(c).

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

72. 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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73. 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.

74. 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.

SEVENTH CAUSE OF ACTION

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

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

76. 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.)

77. Upon information and belief, Defendants' employees were not paid for all overtime and double time hours worked for Defendant. By way of example, Defendants failed to properly provide their 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. By way of another example, Defendants failed to properly provide their employees with double time pay for all hours worked in excess of 12 hours in a workday and/or for all hours worked in excess of eight on the seventh consecutive day of work in a workweek.

78. Defendants also violated Labor Code sections 510 and 1198 because it failed to compensate their employees at the appropriate regular rate of pay where necessary for all overtime and double time hours worked.

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

80. 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.

81. 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 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.

82. 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.

83. 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)(1) against all Defendants)

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

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

86. 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

1 the proper amount of wages, including, but not limited to, sick pay wages, meal/rest premium wages,
2 and regular and/or overtime wages.

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

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

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

13 90. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
14 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the
15 PAGA in an amount to be shown according to proof.

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

19 **NINTH CAUSE OF ACTION**

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

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

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

26 94. Defendants failed to accurately state the proper net on the wage statements in violation
27 of Labor Code section 226(a)(5). By way of one example, the wage statements issued to their
28 employees failed to include the accurate amount of net wages because they failed to include the proper

1 amount of wages, including, but not limited to, sick pay wages, meal/rest premium wages, and regular
2 and/or overtime wages.

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

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

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

13 98. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
14 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the
15 PAGA in an amount to be shown according to proof.

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

19 **TENTH CAUSE OF ACTION**

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

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

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

27 102. Defendants failed to provide the applicable hourly rates in effect during the pay period
28 and the corresponding number of hours worked at each hourly rate by the employee in violation of

1 Labor Code section 226(a)(9). By way of one example, the rates/hours for sick pay, meal/rest
2 premiums, and overtime are inaccurately itemized.

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

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

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

13 106. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
14 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the
15 PAGA in an amount to be shown according to proof.

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

19 **ELEVENTH CAUSE OF ACTION**

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

21 **Section 226(a) against all Defendants)**

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

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

27 110. Upon information and belief, during all times relevant to this action, Defendants failed
28 to keep records required under Labor Code section 226(a). By way of example, the copies of the

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

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

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

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

13 114. Plaintiff is seeking civil penalties against Defendants under Labor Code section
14 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the
15 PAGA in an amount to be shown according to proof.

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

19 **TWELFTH CAUSE OF ACTION**

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

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

24 117. Labor Code section 204 imposes an obligation of timely payment of wages upon
25 California employers.

26 118. Defendants violated Labor Code section 204 because they failed to timely pay their
27 employees all earned wages during an applicable pay period. By way of one example, Defendants
28 failed to pay all earned wages, including, but not limited to, sick pay wages, meal/rest premium wages,

1 and regular/overtime wages in a timely manner as required under Labor Code section 204.

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

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

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

11 122. Plaintiff is seeking civil penalties against Defendants under Labor Code sections 210,
12 2699(f), and/or any other applicable statute allowing recovery of civil penalties under the PAGA in
13 an amount to be shown according to proof.

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

17 **THIRTEENTH CAUSE OF ACTION**

18 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code** 19 **Sections 201, 202, and 203 against all Defendants)**

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

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

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

127. 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. ...”

128. Upon information and belief, employees did not receive all wages upon termination or separation of employment. By way of one example, employees were owed wages, including, but not limited to, meal/rest premium wages, and regular/overtime wages. To this date, Defendants have not paid all wages upon termination or separation of employment.

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

130. 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.

131. 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.

132. 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 2802 Against all Defendants)

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

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134. 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.”

135. Defendants violated Labor Code section 2802. By way of one example, Defendants' employees were required to use their cellular phone, internet, and electricity to work remotely. However, Defendants failed to adequately reimburse their employees for necessary expenditures.

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

137. 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.

138. 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.

139. 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

Section 227.3 Against all Defendants)

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

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

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

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

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

11 153. On May 26, 2023, Plaintiff, through counsel, sent a letter to Defendants, via certified
12 mail and tracking number, requesting copies of her payroll and personnel records. The tracking
13 number indicates that the certified letter was delivered to an individual for Defendants, at the business
14 address for Defendants, at 12:10 pm on May 31, 2023 in CHARLOTTE, NC 28202. To date, no
15 documents have been produced by Defendants in response to Plaintiff’s request.

16 154. Upon information and belief, Defendants have a policy and practice whereby they
17 refuse to provide all required payroll and personnel records to employees who request them, e.g.,
18 paystubs, time records, arbitration agreements, handbooks, policies, signed documents, etc.

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

21 156. 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.

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

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

PRAYER FOR RELIEF

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

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.

Dated: July 31, 2023

THE JAMI LAW FIRM P.C.

By: 
 Tamim Jami
 Attorney for Plaintiff
 STEPHANIE GIRON