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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

PATRICK WILSON, in a representative
capacity on behalf of himself and all other
Aggrieved Employees,

Plaintiff,

vs.

PACIFIC BELL TELEPHONE COMPANY,
a California corporation; and DOES 1 – 10,
inclusive,

Defendants.

CASE NO. 23CV046794

**CLASS AND REPRESENTATIVE
ACTION**

FIRST AMENDED COMPLAINT

- 1. CLASS ACTION;**
- 2. PRIVATE ATTORNEYS GENERAL
ACT (Labor Code §§ 2698, *et seq.*)**

1 **I. INTRODUCTION**

2 1. This is a class action under Code of Civil Procedure section 382 and a
3 representative action under Labor Code sections 2698, et seq. (“PAGA”) brought by Plaintiff
4 PATRICK WILSON (“Plaintiff”) brings this action against Defendant PACIFIC BELL
5 TELEPHONE COMPANY (“Defendant”).

6 2. The basis for the action is that Defendant’s “California – Kin Care” and “Regular
7 and Reliable Attendance” policies and related practices violate California’s Kin Care law, Labor
8 Code sections 233 and 234, and its Paid Sick-Days law, Labor Code section 246.5.

9 3. Specifically, these policies treat the use of accrued kin-care and the use of accrued
10 paid sick-days as unprotected absences subject to discipline.

11 4. Plaintiff seeks to represent a class of current and former employees and to recover
12 PAGA civil penalties on a representative basis on behalf of all current and former employees
13 who worked for Defendant in the State of California (“Aggrieved Employees”) during the period
14 from June 15, 2022 through the present (the “PAGA Period”).

15 **II. PARTIES**

16 5. Plaintiff has worked for Defendant more than twenty years. Currently, he works
17 for Defendant as a splicing technician in Alameda County.

18 6. Plaintiff and Class Members are Defendant’s current or former employees.

19 7. Defendant is a California Corporation headquartered in San Francisco. It is one of
20 the oldest and largest telecommunications companies in the country.

21 8. The true names and capacities, whether individual, corporate, associate, or
22 otherwise, of the defendants sued herein as DOES 1 through 10, inclusive, are currently
23 unknown to Plaintiff, who therefore sues said defendants by such fictitious names under Code of
24 Civil Procedure section 474. Plaintiff is informed and believes, and based thereon alleges, that
25 each of the defendants designated herein as a DOE is legally responsible in some manner for the
26 unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to
27 reflect the true names and capacities of the defendants designated hereinafter as DOES when
28 such identities become known.

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10. Venue is proper in this judicial district, pursuant to Code of Civil Procedure section 395(a). The unlawful acts alleged herein have occurred in and have a direct effect on Aggrieved Employees within the State of California and Alameda County. (See *Crestwood Behavioral Health, Inc. v. The Superior Court of Alameda County* (2021) 60 Cal.App.5th 1069.)

11. Pursuant to Labor Code section 2699.3 subsections (a) and (c), on June 15, 2023, Plaintiff gave notice by electronic filing and by certified mail to Defendant and the Labor Workforce Development Agency (“LWDA”) of the factual and legal basis for the labor law violations alleged in this complaint.

V. CLASS ACTION ALLEGATIONS

14. The class that Plaintiff seeks to represent (“Class”) is defined as:

15. The Class Period is defined as:

1 16. The claims herein have been brought and may properly be maintained as a class
2 action under Code of Civil Procedure section 382 because there is a well-defined community of
3 interest among Class Members with respect to the claims asserted herein and the Class is easily
4 ascertainable:

- 5 a. Ascertainability and Numerosity: The potential members of the Class as defined
6 herein are so numerous that joinder would be impracticable. Plaintiff is informed and
7 believes, and based thereon alleges, that Defendant has employed at least eleven
8 thousand (11,000) Class Members during the Class Period. The names and addresses
9 of the Class Members are available from Defendant. Notice can be provided to the
10 Class Members via first class mail using techniques and a form of notice similar to
11 those customarily used in class action lawsuits of this nature.
- 12 b. Commonality: There are questions of law and fact common to Plaintiff and the Class
13 that predominate over any questions affecting only individual members of the Class.
14 These common questions of law and fact include, without limitation:
- 15 i. Whether Defendants have violated (1) California's Kin Care law, Labor Code
16 sections 233 and 234, and (2) California's Paid Sick-Days law, Labor Code
17 section 246.5;
- 18 ii. What relief is necessary to remedy Defendant's unfair and unlawful conduct as
19 herein alleged; and
- 20 iii. Other questions of law and fact.
- 21 c. Typicality: Plaintiff's claims are typical of the claims of the Class: He was employed
22 by Defendant during the Class Period in California. Plaintiff and all members of the
23 Class have sustained injuries-in-fact due to their damages arising out of and caused
24 by Defendant's common course of conduct in violation of law, as alleged herein.
- 25 d. Adequacy of Representation: Plaintiff is a member of the Class that he seeks to
26 represent and will fairly and adequately represent and protect the interests of Class.
27 Counsel representing Plaintiff are competent and experienced in litigating wage and
28 hour class actions.

1 e. Superiority of Class Action: A class action is superior to other available means in
2 order to obtain fair and efficient adjudication of this controversy. Individual joinder
3 of all putative Class Members is not practicable, and questions of law and fact
4 common to the proposed Class predominate over any questions affecting only
5 individual members of the proposed Class. Each Class Member has suffered injury
6 and is entitled to recover by reason of Defendant's unlawful policies and practices
7 alleged herein. Class action treatment will allow those similarly situated persons to
8 litigate their claims in the manner that is most efficient and economical for the parties
9 and the judicial system. Further, the prosecution of separate actions against Defendant
10 by individual members of the proposed Class would create a risk of inconsistent or
11 varying adjudications that would establish incompatible standards of conduct for
12 Defendant.

13 **VI. FACTUAL ALLEGATIONS**

14 **Plaintiff Uses Accrued Time to Care for His Kin, Faces Discipline**

15 17. On March 15, 2023, Plaintiff's wife had a medical emergency. Plaintiff called his
16 supervisor, informed the supervisor he had a family emergency, and requested one hour of kin
17 care. Plaintiff had accrued a sufficient number of hours of kin-care leave to cover this time.

18 18. The supervisor approved the request. Plaintiff took the approved hour to care for
19 his wife then returned to work and completed his shift.

20 19. On March 23, 2023, Plaintiff's manager invited Plaintiff to a meeting. At the
21 meeting, the manager informed Plaintiff he would be suspended for one day for taking an
22 unprotected absence. This "unprotected absence" was the one hour of kin care that Plaintiff took
23 to care for his wife.

24 20. The manager also informed Plaintiff that an attendance occurrence would be
25 placed in his file for one-year, placing him at risk of enhanced disciplinary action during that
26 period and chilling his use of further accrued kin-care leave.

1 21. Plaintiff protested that his supervisor had approved this leave. The manager
2 confirmed that the one hour of kin care had been approved by Plaintiff's supervisor. However,
3 two of Defendant's policies and practices require discipline for the use of accrued kin-care leave.

4 **Defendant's "California – Kin Care Policy"**

5 22. Defendant's "California – Kin Care Policy" provides for the use of up to one-half
6 of an employee's annually accrued paid sick-days for the care of family members, including
7 children, parents, spouses, domestic partners, grandparents, grandchildren, and siblings.

8 23. However, in order to use accrued paid sick-days for kin care, Defendant requires
9 its employees to submit a "New Leave" request for kin care in Defendant's *LeaveLink* system.
10 Employees must submit this request within five days of using the accrued time.

11 24. Defendant's policy provides that "[e]mployees choosing not to file for CA Kin
12 Care protection in LeaveLink or employees whose CA Kin Care leave request is denied may
13 incur an unexcused attendance event, which may be subject to disciplinary action up to and
14 including dismissal."

15 25. If an employee does not submit a kin-care request to *LeaveLink*, Defendant re-
16 codes the leave as paid sick-days.

17 **Defendant's "Regular and Reliable Attendance" policy**

18 26. Defendant also maintains a "Regular and Reliable Attendance" policy.

19 27. This policy counts the use of accrued sick days as an "unprotected absence." This
20 includes the use of accrued sick days to care for the illness of an employee or the employee's
21 kin. Employees are paid for the use of this accrued time, but the time itself counts as an
22 unprotected absence that can lead to disciplinary action, including suspension and dismissal.

23 28. Under Defendant's policy, an employee's first use of accrued sick days results in
24 a warning. This warning remains a part of the employee's record for 12 months. Further use of
25 accrued sick-leave within that 12-month period results in a warning of suspension. Further use of
26 accrued sick-leave during that 12-month period results in a one-day suspension. Further use
27 during that period results in termination.

**Defendant's Policies, Plaintiff's Kin Care,
and All Other Aggrieved Employees**

29. At the time Plaintiff received his supervisor's approval to use kin care on March 15, 2023, he was unaware of Defendant's "California – Kin Care Policy." As a result, Plaintiff did not submit the kin-care request to *LeaveLink* and Defendant did not code the leave as kin care.

30. Instead, Defendant coded the kin-care leave as paid sick-days. Although Plaintiff had accrued paid sick-days to use, Defendant treated the time as an "unprotected absence" under its "Regular and Reliable Attendance" policy, resulting in an occurrence on Plaintiff's record. In his write-up of Plaintiff, Plaintiff's manager noted that "regular and reliable attendance is an essential function of every AT&T position and is a condition of employment."

31. Plaintiff was paid out from his accrued sick days for the hour he took and suspended without pay for one day pursuant to the "Regular and Reliable Attendance" policy. Furthermore, he was informed that further "unexcused absences" would result in suspension or other further discipline.

32. These policies and Defendant's related practices violate California law.

33. California's Labor Code contains two separate but overlapping paid sick-days schemes: (1) California's Kin Care law, Labor Code sections 233 and 234, and (2) California's Paid Sick-Days law, Labor Code section 246.5.

Paid Sick-Days – Labor Code section 246.5

34. Labor Code section 246.5 provides,

(a) Upon the oral or written request of an employee, an employer shall provide sick days for the following purposes:

(1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.

(2) ...

(c) (1) An employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, ... or opposing any policy or practice or act that is prohibited by this article.

1
2 35. Labor Code section 246.5 therefore protects an employee's use of accrued sick
3 days for either of two purposes. First, it protects the employee's use of accrued sick days to care
4 for his or her own health. Second, it protects the employee's use of accrued sick days to care for
5 the health of the employee's kin.

6 **Kin Care – Labor Code sections 233 and 234**

7 36. Labor Code section 233 provides in relevant part,

8 (a) Any employer who provides sick leave for employees shall permit an employee to
9 use in any calendar year the employee's accrued and available sick leave
10 entitlement, in an amount not less than the sick leave that would be accrued
11 during six months at the employer's then current rate of entitlement, for the
12 reasons specified in subdivision (a) of Section 246.5. The designation of sick
13 leave taken for these reasons shall be made at the sole discretion of the
14 employee. ...

15 (c) An employer shall not deny an employee the right to use sick leave or discharge,
16 threaten to discharge, demote, suspend, or in any manner discriminate against an
17 employee for using, or attempting to exercise the right to use, sick leave to attend
18 to an illness or the preventive care of a family member, or for any other reason
19 specified in subdivision (a) of Section 246.5.
20 ...

21 (f) The rights and remedies specified in this section are cumulative and nonexclusive
22 and are in addition to any other rights or remedies afforded by contract or under
23 other law.

24 37. Labor Code section 233 therefore protects two kinds of kin care.

25 38. First, Section 233(a) protects leave taken for the reasons set forth in Labor Code
26 section 246.5(a). This includes paid sick days taken for the illness or preventive care of a family
27 member.

28 39. Second, Section 233(c) protects leave taken by an employee to attend to an illness
or the preventive care of a family member, without reference to Labor Code section 246.5(a).
Subsection (f) of Section 233 makes clear that these "rights and remedies ... are cumulative and
nonexclusive and are in addition to any other rights or remedies afforded by contract or under
other law."

40. Labor Code section 234 provides that,

1 An employer absence control policy that counts sick leave taken pursuant to Section
2 233 as an absence that may lead to or result in discipline, discharge, demotion, or
3 suspension is a per se violation of Section 233. An employee working under this
policy is entitled to appropriate legal and equitable relief pursuant to Section 233.

4 **Defendant's Violations**

5 41. Defendant's "Regular and Reliable Attendance" policy violates Labor Code
6 section 246.5. By counting the use of accrued sick days as an unexcused absence that may lead
7 to discipline, the policy "discriminate[s] against an employee for using accrued sick days, [and]
8 attempting to exercise the right to use accrued sick days." Defendant's policy chills its
9 employees' ability and willingness to use the sick days they have already accrued.

10 42. Defendant's "California – Kin Care Policy" violates Section 233(a)'s reservation
11 to the employee "sole discretion" to designate sick leave "for the reasons specified in subdivision
12 (a) of Section 246.5." These reasons include "preventive care for ... an employee's family
13 member." By automatically coding kin-care leave as sick leave where the employee does not
14 submit the request to *LeaveLink*, Defendant exercises discretion that Section 233 reserves to its
15 employees.

16 43. Once Defendant has coded an employee's kin care as paid sick-days pursuant to
17 its "California – Kin Care Policy," Defendant's "Regular and Reliable Attendance" policy results
18 in further violations of Section 233. The terms of that policy treat the re-coded kin-care leave as
19 "unprotected absences," resulting in an occurrence. The warnings, suspensions, and terminations
20 that result from these occurrences are "threat[s] to discharge, demote, suspend" and
21 "discriminate against an employee for using [kin care]," as prohibited by Section 233(c).
22 Employees suffer this discrimination for no less than 12 months while the occurrence remains on
23 their record and threatens further discipline. In this way, Defendant's policy chills its employees'
24 ability and willingness to use sick days they have already accrued to care for their kin.

25 44. Section 234 removes any shadow of a doubt that Defendant's application of these
26 policies violates Section 233. Defendant's "Regular and Reliable Attendance" policy is precisely
27 "[a]n employer absence control policy that counts sick leave taken pursuant to Section 233 as an
28 absence that may lead to or result in discipline, discharge, demotion, or suspension" as

1 prohibited by Section 234. And Defendant's "California – Kin Care Policy" subjects employee
2 use of kin care to the "Regular and Reliable Attendance" policy. The policies are therefore "a per
3 se violation of Section 233." (See Labor Code § 234.)

4 45. Defendant's violations are further enumerated below.

5 **Plaintiff, Class Members, and Aggrieved Employees**

6 46. Based on the foregoing facts, Plaintiff seeks damages, statutory penalties, and
7 civil penalties pursuant to PAGA, on behalf of himself and all other Class Members and
8 Aggrieved Employees who worked for Defendant during the PAGA Period.

9 **VII. CAUSES OF ACTION**

10 **First Cause of Action**

11 **Class Claims**

12 **(Labor Code §§ 233, 234, and 246.5)**

13 47. The allegations of each of the preceding paragraphs are realleged and
14 incorporated herein by reference.

15 48. California's Kin Care law, Labor Code sections 233 and 234, and Paid Sick-Days
16 law, Labor Code section 246.5.

17 49. Defendant employed Plaintiff. Defendant committed violations of Labor Code
18 sections 233 and 234 against Plaintiff when it coded his kin-care leave as a paid sick-day
19 pursuant to its "California – Kin Care" policy, categorized this leave as an "unexcused absence"
20 pursuant to its "Regular and Reliable Attendance" policy, and disciplined him for taking accrued
21 kin-care leave pursuant to both policies.

22 50. Plaintiff therefore brings the following class claims based on violations of Labor
23 Code sections 233, 234, and 246.5:

24 **Violations of Labor Code Section 233
resulting from Defendant's "California – Kin Care Policy"**

25 (a) Defendant violated Labor Code Section 233(a)'s requirement that "Any employer
26 who provides sick leave for employees shall permit an employee to use in any
27 calendar year the employee's accrued and available sick leave entitlement ... for the
28 reasons specified in subdivision (a) of Section 246.5 [(a)(1) Diagnosis, care, or

1 treatment of an existing health condition of, or preventive care for, ... an employee's
2 family member],” based on Defendant’s denial of employee requests for kin care,
3 including denials based on the employee not submitting the request through
4 *LeaveLink*.

5 (b) Defendant violated Labor Code Section 233(a)’s requirement that “the designation of
6 sick leave taken for [the reasons specified in subdivision (a) of Section 246.5] shall be
7 made at the sole discretion of the employee,” based on Defendant coding employees’
8 use of kin-care as paid sick-days where the employee does not submit his or her kin
9 care request through *LeaveLink* pursuant to Defendant’s Kin Care Policy.

10 (c) Defendant violated Labor Code Section 233(c)’s prohibition that “[a]n employer shall
11 not deny an employee the right to use sick leave ... to attend to an illness or the
12 preventive care of a family member,” based upon Defendant’s Kin Care policy
13 raising an artificial barrier to employees’ use of accrued kin care by requiring
14 employees to submit the kin-care request to *LeaveLink* within 5 days of taking it.

15 (d) Defendant violated Labor Code Section 233(c)’s prohibition that “[a]n employer shall
16 not ... discharge ... an employee for using, or attempting to exercise the right to use,
17 sick leave to attend to an illness or the preventive care of a family member,” based
18 upon Defendant’s discharge of employees for non-compliance with its Kin Care
19 policy.

20 (e) Defendant violated Labor Code Section 233(c)’s prohibition that “[a]n employer shall
21 not ... threaten to discharge ... an employee for using, or attempting to exercise the
22 right to use, sick leave to attend to an illness or the preventive care of a family
23 member,” based upon Defendant treating non-compliance with its Kin Care policy as
24 an unexcused attendance event subject to dismissal.

25 (f) Defendant violated Labor Code Section 233(c)’s prohibition that “[a]n employer shall
26 not ... demote ... an employee for using, or attempting to exercise the right to use,
27 sick leave to attend to an illness or the preventive care of a family member,” based
28

1 upon Defendant's demotion of employees for non-compliance with its Kin Care
2 policy.

3 (g) Defendant violated Labor Code Section 233(c)'s prohibition that "[a]n employer shall
4 not ... suspend ... an employee for using, or attempting to exercise the right to use,
5 sick leave to attend to an illness or the preventive care of a family member," based
6 upon Defendant's suspension of employees for non-compliance with its Kin Care
7 policy.

8 (h) Defendant violated Labor Code Section 233(c)'s prohibition that "[a]n employer shall
9 not ... in any manner discriminate against an employee for using, or attempting to
10 exercise the right to use, sick leave to attend to an illness or the preventive care of a
11 family member," based upon Defendant's Kin Care policy that "Employees choosing
12 not to file for CA Kin Care protection in LeaveLink or employees whose CA Kin
13 Care leave request is denied may incur an unexcused attendance event, which may be
14 subject to disciplinary action up to and including dismissal" having a chilling effect
15 upon the use of kin care.

16 **Violations of Labor Code Section 233**
17 **resulting from Defendant's Regular and Reliable Attendance policy**

18 (i) Defendant violated Labor Code Section 233(c)'s prohibition that "[a]n employer shall
19 not ... discharge ... an employee for using, or attempting to exercise the right to use,
20 sick leave ... for any ... reason specified in subdivision (a) of Section 246.5 [(a)(1)
21 Diagnosis, care, or treatment of an existing health condition of, or preventive care for,
22 ... an employee's family member]," based upon Defendant's discharge of employees
23 for using accrued sick leave for kin care, on the basis of its Regular and Reliable
24 Attendance policy.

25 (j) Defendant violated Labor Code Section 233(c)'s prohibition that "[a]n employer shall
26 not ... threaten to discharge ... an employee for using, or attempting to exercise the
27 right to use, sick leave ... for any ... reason specified in subdivision (a) of Section
28 246.5 [(a)(1) Diagnosis, care, or treatment of an existing health condition of, or

1 preventive care for, ... an employee's family member],” based upon Defendant
2 treating the use of accrued sick leave for kin care as an unprotected absence that can
3 result in discipline leading up to termination, on the basis of its Regular and Reliable
4 Attendance policy.

5 (k) Defendant violated Labor Code Section 233(c)'s prohibition that “[a]n employer shall
6 not ... demote ... an employee for using, or attempting to exercise the right to use,
7 [sick leave ... for any ... reason specified in subdivision (a) of Section 246.5 [(a)(1)
8 Diagnosis, care, or treatment of an existing health condition of, or preventive care for,
9 ... an employee's family member],” based upon Defendant's demotion of employees
10 for taking accrued sick leave for kin care, on the basis of its Regular and Reliable
11 Attendance policy.

12 (l) Defendant violated Labor Code Section 233(c)'s prohibition that “[a]n employer shall
13 not ... suspend ... an employee for using, or attempting to exercise the right to use,
14 sick leave ... for any ... reason specified in subdivision (a) of Section 246.5 [(a)(1)
15 Diagnosis, care, or treatment of an existing health condition of, or preventive care for,
16 ... an employee's family member],” based upon Defendant's suspension of
17 employees for using accrued sick leave for kin care on the basis of its Regular and
18 Reliable Attendance policy.

19 (m) Defendant violated Labor Code Section 233(c)'s prohibition that “[a]n employer shall
20 not ... in any manner discriminate against an employee for using, or attempting to
21 exercise the right to use, sick leave ... for any ... reason specified in subdivision (a)
22 of Section 246.5 [(a)(1) Diagnosis, care, or treatment of an existing health condition
23 of, or preventive care for, ... an employee's family member],” based upon
24 Defendant's Regular and Reliable Attendance policy having a chilling effect on the
25 use of accrued sick leave for kin care.

1 **Violations of Labor Code Section 234**
2 **resulting from Defendant’s Kin Care policy**

3 (n) Defendant violated Labor Code Section 234’s prohibition against counting the use of
4 kin care as an unprotected absence and attendance occurrence pursuant to an “absence
5 control policy” based upon Defendant’s Kin Care policy stating that “Employees
6 choosing not to file for CA Kin Care protection in LeaveLink or employees whose
7 CA Kin Care leave request is denied may incur an unexcused attendance event, which
8 may be subject to disciplinary action up to and including dismissal.”

9 **Violations of Labor Code Section 234**
10 **Resulting from Defendant’s Regular and Reliable Attendance policy**

11 (o) Defendant violated Labor Code Section 234’s prohibition against counting the use of
12 sick leave as an unprotected absence and attendance occurrence pursuant to an
13 “absence control policy” based upon Defendant’s Regular and Reliable Attendance
14 policy treating the use of accrued sick leave for kin care as an unexcused absence
15 resulting in disciplinary action up to and including dismissal.

16 **Violations of Labor Code section 246.5**
17 **resulting from Defendant’s Kin Care Policy**

18 (p) With respect to employees not covered by a collective bargaining agreement,
19 Defendant violated Labor Code Section 246.5(a)’s requirement that “Upon the oral or
20 written request of an employee, an employer shall provide sick days for the following
21 purposes: (1) Diagnosis, care, or treatment of an existing health condition of, or
22 preventive care for ... an employee’s family member,” based upon Defendant’s Kin
23 Care policy permitting the denial of an employee’s request for kin care where the
24 employee does not submit the request through *LeaveLink* within 5 days.

25 (q) With respect to employees not covered by a collective bargaining agreement,
26 Defendant violated Labor Code Section 246.5(c)(1)’s prohibition that “[a]n employer
27 shall not deny an employee the right to use accrued sick days [for the Diagnosis, care,
28 or treatment of an existing health condition of, or preventive care for ... an
 employee’s family member]” based upon Defendant discharging employees pursuant

1 to its Kin Care Policy where the employee does not submit the kin care through
2 *LeaveLink* within 5 days.

3 (r) With respect to employees not covered by a collective bargaining agreement,
4 Defendant violated Labor Code Section 246.5(c)(1)'s prohibition that "[a]n employer
5 shall not ... discharge ... an employee for using accrued sick days [for the Diagnosis,
6 care, or treatment of an existing health condition of, or preventive care for ... an
7 employee's family member]" based upon Defendant discharging employees pursuant
8 to its Kin Care Policy where the employee does not submit the kin care through
9 *LeaveLink* within 5 days.

10 (s) With respect to employees not covered by a collective bargaining agreement,
11 Defendant violated Labor Code Section 246.5(c)(1)'s prohibition that "[a]n employer
12 shall not ... threaten to discharge ... an employee for using accrued sick days [for the
13 Diagnosis, care, or treatment of an existing health condition of, or preventive care for
14 ... an employee's family member]" based upon Defendant's Kin Care policy
15 counting kin care as an "unexcused absence" that could lead to discipline where the
16 employee does not submit the kin care through *LeaveLink* within 5 days.

17 (t) With respect to employees not covered by a collective bargaining agreement,
18 Defendant violated Labor Code Section 246.5(c)(1)'s prohibition that "[a]n employer
19 shall not ... demote ... an employee for using accrued sick days [for the Diagnosis,
20 care, or treatment of an existing health condition of, or preventive care for ... an
21 employee's family member]" based upon Defendant demoting employees pursuant to
22 its Kin Care Policy where the employee does not submit the kin care through
23 *LeaveLink* within 5 days.

24 (u) With respect to employees not covered by a collective bargaining agreement,
25 Defendant violated Labor Code Section 246.5(c)(1)'s prohibition that "[a]n employer
26 shall not ... suspend ... an employee for using accrued sick days [for the Diagnosis,
27 care, or treatment of an existing health condition of, or preventive care for ... an
28 employee's family member]" based upon Defendant suspending employees pursuant

1 to its Kin Care Policy where the employee does not submit the kin care through
2 *LeaveLink* within 5 days.

- 3 (v) With respect to employees not covered by a collective bargaining agreement,
4 Defendant violated Labor Code Section 246.5(c)(1)'s prohibition that "[a]n employer
5 shall not ... in any manner discriminate against an employee for using accrued sick
6 days [for the Diagnosis, care, or treatment of an existing health condition of, or
7 preventive care for ... an employee's family member]" based upon Defendant's Kin
8 Care policy counting the use of accrued kin care as an "unexcused absence" that
9 could lead to discipline and creating a chilling effect on the use of kin care days.

10 **Violations of Labor Code section 246.5**
11 **resulting from Defendant's Regular and Reliable Attendance Policy**

- 12 (w) With respect to employees not covered by a collective bargaining agreement,
13 Defendant violated Labor Code Section 246.5(c)(1)'s prohibition that "[a]n employer
14 shall not ... discharge ... an employee for using accrued sick days" based upon
15 Defendant discharging employees pursuant to its Regular and Reliable Attendance
16 Policy for use of accrued sick-days.
- 17 (x) With respect to employees not covered by a collective bargaining agreement,
18 Defendant violated Labor Code Section 246.5(c)(1)'s prohibition that "[a]n employer
19 shall not ... threaten to discharge ... an employee for using accrued sick days" based
20 upon Defendant's Regular and Reliable Attendance Policy counting the use of
21 accrued sick-days as an "unexcused absence" that could lead to discipline.
- 22 (y) With respect to employees not covered by a collective bargaining agreement,
23 Defendant violated Labor Code Section 246.5(c)(1)'s prohibition that "[a]n employer
24 shall not ... demote ... an employee for using accrued sick days" based upon
25 Defendant demoting employees pursuant to its Regular and Reliable Attendance
26 Policy for use of accrued sick-days.
- 27 (z) With respect to employees not covered by a collective bargaining agreement,
28 Defendant violated Labor Code Section 246.5(c)(1)'s prohibition that "[a]n employer

1 shall not ... suspend ... an employee for using accrued sick days” based upon
2 Defendant suspending employees pursuant to its Regular and Reliable Attendance
3 Policy for use of accrued sick-days.

4 (aa) With respect to employees not covered by a collective bargaining agreement,
5 Defendant violated Labor Code Section 246.5(c)(1)’s prohibition that “[a]n employer
6 shall not ... in any manner discriminate against an employee for using accrued sick
7 days” based upon Defendant’s Regular and Reliable Attendance Policy counting the
8 use of accrued sick-days as an “unexcused absence” that could lead to discipline and
9 creating a chilling effect on the use of accrued sick-days.

10 51. As a direct and proximate result of Defendant’s unlawful practices and policies,
11 Plaintiff and other Class Members have suffered and continue to suffer monetary losses and
12 other non-monetary harms.

13 52. Plaintiff, on behalf of himself and all other Class Members, requests damages and
14 statutory penalties against Defendant for violations of Labor Code sections 233, 234, and 246.5,
15 as provided under Labor Code section 2699(f), in amounts to be proved at trial.

16 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth below.

17 **Second Cause of Action**
18 **Penalties Under the Private Attorneys General Act**
19 **(Labor Code §§ 2698, et seq.)**

20 53. The allegations of each of the preceding paragraphs are realleged and
21 incorporated herein by reference.

22 54. Labor Code section 2699(g)(1) provides, in pertinent part: “[A]n aggrieved
23 employee may recover the civil penalty described in subdivision (f) in a civil action . . . filed on
24 behalf of himself or herself and other current or former employees against whom one or more of
25 the alleged violations was committed. Any employee who prevails in any action shall be entitled
26 to an award of reasonable attorney’s fees and costs.”

27 55. Labor Code section 2699(c) provides that “aggrieved employee” means “any
28 person who was employed by the alleged violator and against whom one or more of the alleged
violations was committed.”

1 56. Defendant employed Plaintiff. Defendant committed violations of Labor Code
2 sections 233 and 234 against Plaintiff when it coded his kin-care leave as a paid sick-day
3 pursuant to its “California – Kin Care” policy, categorized this leave as an “unexcused absence”
4 pursuant to its “Regular and Reliable Attendance” policy, and disciplined him for taking accrued
5 kin-care leave pursuant to both policies. Plaintiff is therefore an aggrieved employee as defined
6 by Labor Code section 2699(c).

7 57. Plaintiff therefore has standing to bring this civil action on behalf of himself and
8 all other former and current Aggrieved Employees for not just any violations suffered by him,
9 but for any and all Labor Code violations suffered by Aggrieved Employees during the PAGA
10 Period. (See Labor Code § 2699(c); *Kim v. Reins International California, Inc.* (2020) 9 Cal. 5th
11 73, 83-84.)

12 58. To be clear, Plaintiff does not allege that Defendant committed violations of
13 Labor Code section 246.5 against him. However, he seeks civil penalties for violations of Labor
14 Code section 246.5 that Defendant committed against all Aggrieved Employees not covered by a
15 valid collective bargaining agreement.

16 59. Plaintiff’s cause of action under Labor Code section 2698, *et seq.* is based on
17 violations of Labor Code sections 233, 234, and 246.5, including the following:

18 **Violations of Labor Code Section 233**
19 **resulting from Defendant’s “California – Kin Care Policy”**

- 20 (a) Violations of Labor Code Section 233(a)’s requirement that “Any employer who
21 provides sick leave for employees shall permit an employee to use in any calendar
22 year the employee’s accrued and available sick leave entitlement ... for the reasons
23 specified in subdivision (a) of Section 246.5 [(a)(1) Diagnosis, care, or treatment of
24 an existing health condition of, or preventive care for, ... an employee’s family
25 member],” based on Defendant’s denial of employee requests for kin care, including
26 denials based on the employee not submitting the request through *LeaveLink*.
27 (b) Violations of Labor Code Section 233(a)’s requirement that “the designation of sick
28 leave taken for [the reasons specified in subdivision (a) of Section 246.5] shall be

made at the sole discretion of the employee,” based on Defendant coding employees’ use of kin-care as paid sick-days where the employee does not submit his or her kin care request through *LeaveLink* pursuant to Defendant’s Kin Care Policy.

- (c) Violations of Labor Code Section 233(c)’s prohibition that “[a]n employer shall not deny an employee the right to use sick leave ... to attend to an illness or the preventive care of a family member,” based upon Defendant’s Kin Care policy raising an artificial barrier to employees’ use of accrued kin care by requiring employees to submit the kin-care request to *LeaveLink* within 5 days of taking it.
- (d) Violations of Labor Code Section 233(c)’s prohibition that “[a]n employer shall not ... discharge ... an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member,” based upon Defendant’s discharge of employees for non-compliance with its Kin Care policy.
- (e) Violations of Labor Code Section 233(c)’s prohibition that “[a]n employer shall not ... threaten to discharge ... an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member,” based upon Defendant treating non-compliance with its Kin Care policy as an unexcused attendance event subject to dismissal.
- (f) Violations of Labor Code Section 233(c)’s prohibition that “[a]n employer shall not ... demote ... an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member,” based upon Defendant’s demotion of employees for non-compliance with its Kin Care policy.
- (g) Violations of Labor Code Section 233(c)’s prohibition that “[a]n employer shall not ... suspend ... an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member,” based upon Defendant’s suspension of employees for non-compliance with its Kin Care policy.
- (h) Violations of Labor Code Section 233(c)’s prohibition that “[a]n employer shall not ... in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a

1 family member,” based upon Defendant’s Kin Care policy that “Employees choosing
2 not to file for CA Kin Care protection in LeaveLink or employees whose CA Kin
3 Care leave request is denied may incur an unexcused attendance event, which may be
4 subject to disciplinary action up to and including dismissal” having a chilling effect
5 upon the use of kin care.

6 **Violations of Labor Code Section 233**
7 **resulting from Defendant’s Regular and Reliable Attendance policy**

- 8 (i) Violations of Labor Code Section 233(c)’s prohibition that “[a]n employer shall not
9 ... discharge ... an employee for using, or attempting to exercise the right to use, sick
10 leave ... for any ... reason specified in subdivision (a) of Section 246.5 [(a)(1)
11 Diagnosis, care, or treatment of an existing health condition of, or preventive care for,
12 ... an employee’s family member],” based upon Defendant’s discharge of employees
13 for using accrued sick leave for kin care, on the basis of its Regular and Reliable
14 Attendance policy.
- 15 (j) Violations of Labor Code Section 233(c)’s prohibition that “[a]n employer shall not
16 ... threaten to discharge ... an employee for using, or attempting to exercise the right
17 to use, sick leave ... for any ... reason specified in subdivision (a) of Section 246.5
18 [(a)(1) Diagnosis, care, or treatment of an existing health condition of, or preventive
19 care for, ... an employee’s family member],” based upon Defendant treating the use
20 of accrued sick leave for kin care as an unprotected absence that can result in
21 discipline leading up to termination, on the basis of its Regular and Reliable
22 Attendance policy.
- 23 (k) Violations of Labor Code Section 233(c)’s prohibition that “[a]n employer shall not
24 ... demote ... an employee for using, or attempting to exercise the right to use, [sick
25 leave ... for any ... reason specified in subdivision (a) of Section 246.5 [(a)(1)
26 Diagnosis, care, or treatment of an existing health condition of, or preventive care for,
27 ... an employee’s family member],” based upon Defendant’s demotion of employees
28

1 for taking accrued sick leave for kin care, on the basis of its Regular and Reliable
2 Attendance policy.

3 (l) Violations of Labor Code Section 233(c)'s prohibition that "[a]n employer shall not
4 ... suspend ... an employee for using, or attempting to exercise the right to use, sick
5 leave ... for any ... reason specified in subdivision (a) of Section 246.5 [(a)(1)
6 Diagnosis, care, or treatment of an existing health condition of, or preventive care for,
7 ... an employee's family member]," based upon Defendant's suspension of
8 employees for using accrued sick leave for kin care on the basis of its Regular and
9 Reliable Attendance policy.

10 (m) Violations of Labor Code Section 233(c)'s prohibition that "[a]n employer shall not
11 ... in any manner discriminate against an employee for using, or attempting to
12 exercise the right to use, sick leave ... for any ... reason specified in subdivision (a)
13 of Section 246.5 [(a)(1) Diagnosis, care, or treatment of an existing health condition
14 of, or preventive care for, ... an employee's family member]," based upon
15 Defendant's Regular and Reliable Attendance policy having a chilling effect on the
16 use of accrued sick leave for kin care.

17 **Violations of Labor Code Section 234**
18 **resulting from Defendant's Kin Care policy**

19 (n) Violations of Labor Code Section 234's prohibition against counting the use of kin
20 care as an unprotected absence and attendance occurrence pursuant to an "absence
21 control policy" based upon Defendant's Kin Care policy stating that "Employees
22 choosing not to file for CA Kin Care protection in LeaveLink or employees whose
23 CA Kin Care leave request is denied may incur an unexcused attendance event, which
24 may be subject to disciplinary action up to and including dismissal."

25 **Violations of Labor Code Section 234**
26 **Resulting from Defendant's Regular and Reliable Attendance policy**

27 (o) Violations of Labor Code Section 234's prohibition against counting the use of sick
28 leave as an unprotected absence and attendance occurrence pursuant to an "absence
control policy" based upon Defendant's Regular and Reliable Attendance policy

1 treating the use of accrued sick leave for kin care as an unexcused absence resulting
2 in disciplinary action up to and including dismissal.

3 **Violations of Labor Code section 246.5**
4 **resulting from Defendant's Kin Care Policy**

- 5 (p) On behalf of all Aggrieved Employees not covered by a collective bargaining
6 agreement, violations of Labor Code section 246.5(a)'s requirement that "Upon the
7 oral or written request of an employee, an employer shall provide sick days for the
8 following purposes: (1) Diagnosis, care, or treatment of an existing health condition
9 of, or preventive care for ... an employee's family member," based upon Defendant's
10 Kin Care policy permitting the denial of an employee's request for kin care where the
11 employee does not submit the request through *LeaveLink* within 5 days.
- 12 (q) On behalf of all Aggrieved Employees not covered by a collective bargaining
13 agreement, violations of Labor Code Section 246.5(c)(1)'s prohibition that "[a]n
14 employer shall not deny an employee the right to use accrued sick days [for the
15 Diagnosis, care, or treatment of an existing health condition of, or preventive care for
16 ... an employee's family member]" based upon Defendant discharging employees
17 pursuant to its Kin Care Policy where the employee does not submit the kin care
18 through *LeaveLink* within 5 days.
- 19 (r) On behalf of all Aggrieved Employees not covered by a collective bargaining
20 agreement, violations of Labor Code Section 246.5(c)(1)'s prohibition that "[a]n
21 employer shall not ... discharge ... an employee for using accrued sick days [for the
22 Diagnosis, care, or treatment of an existing health condition of, or preventive care for
23 ... an employee's family member]" based upon Defendant discharging employees
24 pursuant to its Kin Care Policy where the employee does not submit the kin care
25 through *LeaveLink* within 5 days.
- 26 (s) On behalf of all Aggrieved Employees not covered by a collective bargaining
27 agreement, violations of Labor Code Section 246.5(c)(1)'s prohibition that "[a]n
28 employer shall not ... threaten to discharge ... an employee for using accrued sick

1 days [for the Diagnosis, care, or treatment of an existing health condition of, or
2 preventive care for ... an employee's family member]" based upon Defendant's Kin
3 Care policy counting kin care as an "unexcused absence" that could lead to discipline
4 where the employee does not submit the kin care through *LeaveLink* within 5 days.

5 (t) On behalf of all Aggrieved Employees not covered by a collective bargaining
6 agreement, violations of Labor Code Section 246.5(c)(1)'s prohibition that "[a]n
7 employer shall not ... demote ... an employee for using accrued sick days [for the
8 Diagnosis, care, or treatment of an existing health condition of, or preventive care for
9 ... an employee's family member]" based upon Defendant demoting employees
10 pursuant to its Kin Care Policy where the employee does not submit the kin care
11 through *LeaveLink* within 5 days.

12 (u) On behalf of all Aggrieved Employees not covered by a collective bargaining
13 agreement, violations of Labor Code Section 246.5(c)(1)'s prohibition that "[a]n
14 employer shall not ... suspend ... an employee for using accrued sick days [for the
15 Diagnosis, care, or treatment of an existing health condition of, or preventive care for
16 ... an employee's family member]" based upon Defendant suspending employees
17 pursuant to its Kin Care Policy where the employee does not submit the kin care
18 through *LeaveLink* within 5 days.

19 (v) On behalf of all Aggrieved Employees not covered by a collective bargaining
20 agreement, violations of Labor Code Section 246.5(c)(1)'s prohibition that "[a]n
21 employer shall not ... in any manner discriminate against an employee for using
22 accrued sick days [for the Diagnosis, care, or treatment of an existing health condition
23 of, or preventive care for ... an employee's family member]" based upon Defendant's
24 Kin Care policy counting the use of accrued kin care as an "unexcused absence" that
25 could lead to discipline and creating a chilling effect on the use of kin care days.
26
27
28

**Violations of Labor Code section 246.5
resulting from Defendant's Regular and Reliable Attendance Policy**

- (w) On behalf of all Aggrieved Employees not covered by a collective bargaining agreement, violations of Labor Code Section 246.5(c)(1)'s prohibition that "[a]n employer shall not ... discharge ... an employee for using accrued sick days" based upon Defendant discharging employees pursuant to its Regular and Reliable Attendance Policy for use of accrued sick-days.
- (x) On behalf of all Aggrieved Employees not covered by a collective bargaining agreement, violations of Labor Code Section 246.5(c)(1)'s prohibition that "[a]n employer shall not ... threaten to discharge ... an employee for using accrued sick days" based upon Defendant's Regular and Reliable Attendance Policy counting the use of accrued sick-days as an "unexcused absence" that could lead to discipline.
- (y) On behalf of all Aggrieved Employees not covered by a collective bargaining agreement, violations of Labor Code Section 246.5(c)(1)'s prohibition that "[a]n employer shall not ... demote ... an employee for using accrued sick days" based upon Defendant demoting employees pursuant to its Regular and Reliable Attendance Policy for use of accrued sick-days.
- (z) On behalf of all Aggrieved Employees not covered by a collective bargaining agreement, violations of Labor Code Section 246.5(c)(1)'s prohibition that "[a]n employer shall not ... suspend ... an employee for using accrued sick days" based upon Defendant suspending employees pursuant to its Regular and Reliable Attendance Policy for use of accrued sick-days.
- (aa) On behalf of all Aggrieved Employees not covered by a collective bargaining agreement, violations of Labor Code Section 246.5(c)(1)'s prohibition that "[a]n employer shall not ... in any manner discriminate against an employee for using accrued sick days" based upon Defendant's Regular and Reliable Attendance Policy counting the use of accrued sick-days as an "unexcused absence" that could lead to discipline and creating a chilling effect on the use of accrued sick-days.

60. As a direct and proximate result of Defendant's unlawful practices and policies, Plaintiff and other Aggrieved Employees have suffered and continue to suffer monetary losses and other non-monetary harms.

61. Plaintiff, on behalf of himself and all other Aggrieved Employees, requests civil penalties against Defendant for violations of Labor Code sections 233, 234, and 246.5, as provided under Labor Code section 2699(f), plus reasonable attorneys' fees and costs, as provided under Labor Code section 2699(g)(1), in amounts to be proved at trial.

WHEREFORE, Plaintiff prays for judgment against Defendant as set forth below.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all other Class Members and Aggrieved Employees, requests relief as follows:

1. Damages and statutory penalties against Defendant for violations of Labor Code sections 233, 234, and 246.5;
2. An award of civil penalties pursuant to Labor Code sections 2698, *et seq.*; and
3. An award to Plaintiff of reasonable attorneys' fees and costs, pursuant to Code of Civil Procedure section 1021.5 and Labor Code section 2699(g) and/or other applicable law.

DATED: July 15, 2025

HUNTER PYLE LAW, PC

By: Hunter Pyle
Hunter Pyle

*Attorneys for Plaintiff, Class Members,
and all other Aggrieved Employees*

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to this action. My business address is Hunter Pyle Law, PC, 505 14th Street, Suite 600, Oakland, California 94612. On this day, I served the following Document(s):

FIRST AMENDED COMPLAINT

☒ By Electronic Service. I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

James de Haan
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Raymond W. Bertrand
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San Diego, CA 92121

Attorneys for the Defendant
PACIFIC BELL TELEPHONE COMPANY

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Oakland, California, on this date, July 22, 2025.


DARLENE SANCHEZ