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8 *and all other Aggrieved Employees*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF ALAMEDA**

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

13 Plaintiff,

14 vs.

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

18 Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

10/06/2023 at 03:19:48 PM

By: Milagros Cortez,
Deputy Clerk

CASE NO. 23CV046794

REPRESENTATIVE ACTION

COMPLAINT

**1. PRIVATE ATTORNEYS GENERAL
ACT (Labor Code §§ 2698, et seq.)**

1 **I. INTRODUCTION**

2 1. Plaintiff PATRICK WILSON (“Plaintiff”) brings this action against Defendant
3 PACIFIC BELL TELEPHONE COMPANY (“Defendant”) pursuant to the Private Attorneys
4 General Act of 2004, Labor Code sections 2698, *et seq.* (“PAGA”).

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

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

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

14 **II. PARTIES**

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

17 6. Defendant is a California Corporation headquartered in San Francisco. It is one of
18 the oldest and largest telecommunications companies in the country.

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

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9. 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.)

10. 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. FACTUAL ALLEGATIONS

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

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

14. On March 23, 2023, Plaintiff's manager invited Plaintiff to a meeting. At the meeting, the manager informed Plaintiff he would be suspended for one day for taking an

1 unprotected absence. This “unprotected absence” was the one hour of kin care that Plaintiff took
2 to care for his wife.

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

6 16. Plaintiff protested that his supervisor had approved this leave. The manager
7 confirmed that the one hour of kin care had been approved by Plaintiff’s supervisor. However,
8 two of Defendant’s policies and practices require discipline for the use of accrued kin-care leave.

9 **Defendant’s “California – Kin Care Policy”**

10 17. Defendant’s “California – Kin Care Policy” provides for the use of up to one-half
11 of an employee’s annually accrued paid sick-days for the care of family members, including
12 children, parents, spouses, domestic partners, grandparents, grandchildren, and siblings.

13 18. However, in order to use accrued paid sick-days for kin care, Defendant requires
14 its employees to submit a “New Leave” request for kin care in Defendant’s *LeaveLink* system.
15 Employees must submit this request within five days of using the accrued time.

16 19. Defendant’s policy provides that “[e]mployees choosing not to file for CA Kin
17 Care protection in *LeaveLink* or employees whose CA Kin Care leave request is denied may
18 incur an unexcused attendance event, which may be subject to disciplinary action up to and
19 including dismissal.”

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

22 **Defendant’s “Regular and Reliable Attendance” policy**

23 21. Defendant also maintains a “Regular and Reliable Attendance” policy.

24 22. This policy counts the use of accrued sick days as an “unprotected absence.” This
25 includes the use of accrued sick days to care for the illness of an employee or the employee’s
26 kin. Employees are paid for the use of this accrued time, but the time itself counts as an
27 unprotected absence that can lead to disciplinary action, including suspension and dismissal.
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1 23. Under Defendant’s policy, an employee’s first use of accrued sick days results in
2 a warning. This warning remains a part of the employee’s record for 12 months. Further use of
3 accrued sick-leave within that 12-month period results in a warning of suspension. Further use of
4 accrued sick-leave during that 12-month period results in a one-day suspension. Further use
5 during that period results in termination.

6 **Defendant’s Policies, Plaintiff’s Kin Care,**
7 **and All Other Aggrieved Employees**

8 24. At the time Plaintiff received his supervisor’s approval to use kin care on March
9 15, 2023, he was unaware of Defendant’s “California – Kin Care Policy.” As a result, Plaintiff
10 did not submit the kin-care request to *LeaveLink* and Defendant did not code the leave as kin
11 care.

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

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

21 27. These policies and Defendant’s related practices violate California law.

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

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Paid Sick-Days – Labor Code section 246.5

29. 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.

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

Kin Care – Labor Code sections 233 and 234

31. Labor Code section 233 provides in relevant part,

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

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

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

- 1 32. Labor Code section 233 therefore protects two kinds of kin care.
- 2 33. First, Section 233(a) protects leave taken for the reasons set forth in Labor Code
3 section 246.5(a). This includes paid sick days taken for the illness or preventive care of a family
4 member.
- 5 34. Second, Section 233(c) protects leave taken by an employee to attend to an illness
6 or the preventive care of a family member, without reference to Labor Code section 246.5(a).
7 Subsection (f) of Section 233 makes clear that these “rights and remedies ... are cumulative and
8 nonexclusive and are in addition to any other rights or remedies afforded by contract or under
9 other law.”
- 10 35. Labor Code section 234 provides that,
11 An employer absence control policy that counts sick leave taken pursuant to Section
12 233 as an absence that may lead to or result in discipline, discharge, demotion, or
13 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.

14 **Defendant’s Violations**

- 15 36. Defendant’s “Regular and Reliable Attendance” policy violates Labor Code
16 section 246.5. By counting the use of accrued sick days as an unexcused absence that may lead
17 to discipline, the policy “discriminate[s] against an employee for using accrued sick days, [and]
18 attempting to exercise the right to use accrued sick days.” Defendant’s policy chills its
19 employees’ ability and willingness to use the sick days they have already accrued.
- 20 37. Defendant’s “California – Kin Care Policy” violates Section 233(a)’s reservation
21 to the employee “sole discretion” to designate sick leave “for the reasons specified in subdivision
22 (a) of Section 246.5.” These reasons include “preventive care for ... an employee’s family
23 member.” By automatically coding kin-care leave as sick leave where the employee does not
24 submit the request to *LeaveLink*, Defendant exercises discretion that Section 233 reserves to its
25 employees.
- 26 38. Once Defendant has coded an employee’s kin care as paid sick-days pursuant to
27 its “California – Kin Care Policy,” Defendant’s “Regular and Reliable Attendance” policy results
28 in further violations of Section 233. The terms of that policy treat the re-coded kin-care leave as

1 “unprotected absences,” resulting in an occurrence. The warnings, suspensions, and terminations
2 that result from these occurrences are “threat[s] to discharge, demote, suspend” and
3 “discriminate against an employee for using [kin care],” as prohibited by Section 233(c).
4 Employees suffer this discrimination for no less than 12 months while the occurrence remains on
5 their record and threatens further discipline. In this way, Defendant’s policy chills its employees’
6 ability and willingness to use sick days they have already accrued to care for their kin.

7 39. Section 234 removes any shadow of a doubt that Defendant’s application of these
8 policies violates Section 233. Defendant’s “Regular and Reliable Attendance” policy is precisely
9 “[a]n employer absence control policy that counts sick leave taken pursuant to Section 233 as an
10 absence that may lead to or result in discipline, discharge, demotion, or suspension” as
11 prohibited by Section 234. And Defendant’s “California – Kin Care Policy” subjects employee
12 use of kin care to the “Regular and Reliable Attendance” policy. The policies are therefore “a per
13 se violation of Section 233.” (See Labor Code § 234.)

14 40. Defendant’s violations are further enumerated in paragraph 48, below.

15 **Plaintiff and Aggrieved Employees**

16 41. Based on the foregoing facts, Plaintiff seeks civil penalties pursuant to PAGA, on
17 behalf of himself and all other Aggrieved Employees who worked for Defendant during the
18 PAGA Period.

19 **VI. CAUSE OF ACTION**

20 **Penalties Under the Private Attorneys General Act**
21 **(Labor Code §§ 2698, et seq.)**

22 42. The allegations of each of the preceding paragraphs are realleged and
23 incorporated herein by reference.

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

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

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

10 46. Plaintiff therefore has standing to bring this civil action on behalf of himself and
11 all other former and current Aggrieved Employees for not just any violations suffered by him,
12 but for any and all Labor Code violations suffered by Aggrieved Employees during the PAGA
13 Period. (See Labor Code § 2699(c); *Kim v. Reins International California, Inc.* (2020) 9 Cal. 5th
14 73, 83-84.)

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

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

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

23 (a) Violations of Labor Code Section 233(a)’s requirement that “Any employer
24 who provides sick leave for employees shall permit an employee to use in any
25 calendar year the employee’s accrued and available sick leave entitlement ...
26 for the reasons specified in subdivision (a) of Section 246.5 [(a)(1) Diagnosis,
27 care, or treatment of an existing health condition of, or preventive care for, ...
28 an employee’s family member],” based on Defendant’s denial of employee

1 requests for kin care, including denials based on the employee not submitting
2 the request through *LeaveLink*.

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

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

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

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

26 (f) Violations of Labor Code Section 233(c)'s prohibition that "[a]n employer
27 shall not ... demote ... an employee for using, or attempting to exercise the
28 right to use, sick leave to attend to an illness or the preventive care of a family

1 member,” based upon Defendant’s demotion of employees for non-
2 compliance with its Kin Care policy.

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

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

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

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

26 (j) Violations of Labor Code Section 233(c)’s prohibition that “[a]n employer
27 shall not ... threaten to discharge ... an employee for using, or attempting to
28 exercise the right to use, sick leave ... for any ... reason specified in

1 subdivision (a) of Section 246.5 [(a)(1) Diagnosis, care, or treatment of an
2 existing health condition of, or preventive care for, ... an employee's family
3 member],” based upon Defendant treating the use of accrued sick leave for kin
4 care as an unprotected absence that can result in discipline leading up to
5 termination, on the basis of its Regular and Reliable Attendance policy.

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

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

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

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

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

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

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

18 **Violations of Labor Code section 246.5**
19 **resulting from Defendant’s Kin Care Policy**

20 (p) On behalf of all Aggrieved Employees not covered by a collective bargaining
21 agreement, violations of Labor Code section 246.5(a)’s requirement that
22 “Upon the oral or written request of an employee, an employer shall provide
23 sick days for the following purposes: (1) Diagnosis, care, or treatment of an
24 existing health condition of, or preventive care for ... an employee’s family
25 member,” based upon Defendant’s Kin Care policy permitting the denial of an
26 employee’s request for kin care where the employee does not submit the
27 request through *LeaveLink* within 5 days.

- 1 (q) On behalf of all Aggrieved Employees not covered by a collective bargaining
2 agreement, violations of Labor Code Section 246.5(c)(1)'s prohibition that
3 "[a]n employer shall not deny an employee the right to use accrued sick days
4 [for the Diagnosis, care, or treatment of an existing health condition of, or
5 preventive care for ... an employee's family member]" based upon Defendant
6 discharging employees pursuant to its Kin Care Policy where the employee
7 does not submit the kin care through *LeaveLink* within 5 days.
- 8 (r) On behalf of all Aggrieved Employees not covered by a collective bargaining
9 agreement, violations of Labor Code Section 246.5(c)(1)'s prohibition that
10 "[a]n employer shall not ... discharge ... an employee for using accrued sick
11 days [for the Diagnosis, care, or treatment of an existing health condition of,
12 or preventive care for ... an employee's family member]" based upon
13 Defendant discharging employees pursuant to its Kin Care Policy where the
14 employee does not submit the kin care through *LeaveLink* within 5 days.
- 15 (s) On behalf of all Aggrieved Employees not covered by a collective bargaining
16 agreement, violations of Labor Code Section 246.5(c)(1)'s prohibition that
17 "[a]n employer shall not ... threaten to discharge ... an employee for using
18 accrued sick days [for the Diagnosis, care, or treatment of an existing health
19 condition of, or preventive care for ... an employee's family member]" based
20 upon Defendant's Kin Care policy counting kin care as an "unexcused
21 absence" that could lead to discipline where the employee does not submit the
22 kin care through *LeaveLink* within 5 days.
- 23 (t) On behalf of all Aggrieved Employees not covered by a collective bargaining
24 agreement, violations of Labor Code Section 246.5(c)(1)'s prohibition that
25 "[a]n employer shall not ... demote ... an employee for using accrued sick
26 days [for the Diagnosis, care, or treatment of an existing health condition of,
27 or preventive care for ... an employee's family member]" based upon
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Defendant demoting employees pursuant to its Kin Care Policy where the employee does not submit the kin care through *LeaveLink* within 5 days.

(u) 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 [for the Diagnosis, care, or treatment of an existing health condition of, or preventive care for ... an employee's family member]" based upon Defendant suspending employees pursuant to its Kin Care Policy where the employee does not submit the kin care through *LeaveLink* within 5 days.

(v) 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 [for the Diagnosis, care, or treatment of an existing health condition of, or preventive care for ... an employee's family member]" based upon Defendant's Kin Care policy counting the use of accrued kin care as an "unexcused absence" that could lead to discipline and creating a chilling effect on the use of kin care days.

**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

1 Policy counting the use of accrued sick-days as an “unexcused absence” that
2 could lead to discipline.

3 (y) On behalf of all Aggrieved Employees not covered by a collective bargaining
4 agreement, violations of Labor Code Section 246.5(c)(1)’s prohibition that
5 “[a]n employer shall not ... demote ... an employee for using accrued sick
6 days” based upon Defendant demoting employees pursuant to its Regular and
7 Reliable Attendance Policy for use of accrued sick-days.

8 (z) On behalf of all Aggrieved Employees not covered by a collective bargaining
9 agreement, violations of Labor Code Section 246.5(c)(1)’s prohibition that
10 “[a]n employer shall not ... suspend ... an employee for using accrued sick
11 days” based upon Defendant suspending employees pursuant to its Regular
12 and Reliable Attendance Policy for use of accrued sick-days.

13 (aa) On behalf of all Aggrieved Employees not covered by a collective
14 bargaining agreement, violations of Labor Code Section 246.5(c)(1)’s
15 prohibition that “[a]n employer shall not ... in any manner discriminate
16 against an employee for using accrued sick days” based upon Defendant’s
17 Regular and Reliable Attendance Policy counting the use of accrued sick-days
18 as an “unexcused absence” that could lead to discipline and creating a chilling
19 effect on the use of accrued sick-days.

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

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

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

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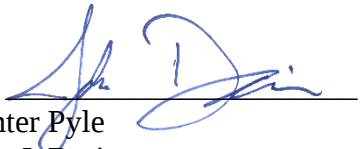
1 **VII. PRAYER FOR RELIEF**

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

- 4 1. An award of civil penalties pursuant to Labor Code sections 2698, *et seq.*; and
5 2. An award to Plaintiff of reasonable attorneys' fees and costs, pursuant to Code of
6 Civil Procedure section 1021.5 and Labor Code section 2699(g) and/or other
7 applicable law.

8
9 DATED: October 6, 2023

HUNTER PYLE LAW

10
11 By: 
12 Hunter Pyle
John J. Darin

13 *Attorneys for Plaintiff*
14 *and all other Aggrieved Employees*