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LUPITA FERNANDEZ

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

LUPITA FERNANDEZ, an individual, for the
real party in interest, the State of California,

Plaintiff,

vs.

PUBLIC CONSULTING GROUP LLC; and
DOES 1 through 50,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/16/2023 at 05:28:18 PM

Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

Case No. 37-2023-00044816-CU-OE-CTL

REPRESENTATIVE ACTION

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

1 Plaintiff LUPITA FERNANDEZ (“Plaintiff”), in her capacity as the State of California’s
2 designated proxy under the Private Attorneys General Act, and on behalf of other current and former
3 California employees (“Represented Employees”) alleges the following:

4 **NATURE OF THE ACTION**

5 1. Pursuant to the Private Attorneys General Act (“PAGA”), incorporated in Labor Code
6 sections 2698, 2699 *et seq.*, Plaintiff brings this representative action against Defendants PUBLIC
7 CONSULTING GROUP LLC 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.

THE PARTIES

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

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

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

11. Defendants are doing business throughout the state of California.

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

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

14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant was acting partly within and partly without the scope and course of their employment, and was acting with the knowledge, permission, consent, and ratification of every other Defendant.

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

5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6 16. On August 11, 2023, Plaintiff, via counsel, sent the statutorily required notice to the
7 LWDA (“PAGA Notice”), indicating that Plaintiff intends to pursue claims against Defendants for
8 violations of the Labor Code.

9 17. On August 11, 2023, Plaintiff, via counsel, sent a copy of the PAGA Notice to
10 Defendant PUBLIC CONSULTING GROUP LLC.

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

15 19. Plaintiff is seeking the remedies available under the PAGA for the Labor Code
16 violations referenced in this complaint, and any other Labor Code violations that may be discovered
17 and confirmed during the course of litigation.

18 **PAGA REPRESENTATIVE ACTION CLAIMS**

19 20. On information and belief, current and former employees of Defendants were subject
20 to wage and hour violations by Defendants, specifically by Defendants’ violations of Labor Code
21 sections 246, 246(l), 2698, and 2699 et seq.

22 21. California law provides that an aggrieved employee may file a representative action
23 under the PAGA against an employer for civil penalties in connection with violations of the Labor
24 Code and Wage Order.

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1 **FIRST CAUSE OF ACTION**

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

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

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

9 24. During their employment, Plaintiff and Represented Employees were entitled to accrue
10 and use paid time off for the same purposes and under the same conditions as specified in the Healthy
11 Workplaces, Healthy Families Act of 2014, spanning Labor Code sections 245-249.

12 25. During their employment, Plaintiff and Represented Employees earned additional
13 nondiscretionary compensation, such as, for example, a variety of bonuses.

14 26. Upon information and belief, Defendants paid sick leave at the incorrect rate of pay
15 resulting in the underpayment of wages. In particular, Defendants failed to appropriately factor in
16 additional nondiscretionary payments and compensation—including but not limited to bonuses earned
17 by Represented Employees—for purposes of computing the appropriate rate of pay for sick leave
18 wages.

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

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

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

27 30. Plaintiffs are seeking civil penalties against Defendants, including Labor Code section
28 2699(f) and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an

1 amount to be shown according to proof.

2 31. Pursuant to Labor Code section 248.5, if applicable herein, Plaintiffs seek to recover
3 attorney's fees, costs, equitable relief in the form of civil penalties, in an amount to be shown
4 according to proof.

5 32. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiffs seek to recover
6 reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be
7 shown according to proof.

8 **PRAYER FOR RELIEF**

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

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

15 Dated: October 16, 2023

THE JAMI LAW FIRM P.C.

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17 By: 
18 Tamim Jami
19 Attorney for Plaintiff
20 LUPITA FERNANDEZ
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