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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MICHAEL MCGARVEY, an individual, Plaintiff, vs. JUNO CAPITAL PARTNERS, LLC, a limited liability company; JOHN GREGORY RICHARDSON, an individual; and DOES 1 through 10, inclusive, Defendants.	Case No. CGC24621033 **FIRST AMENDED COMPLAINT FOR:** **(1) Fraud** **(2) Unpaid Wages** **(3) Accounting** **(4) Failure To Pay All Wages Due Upon Separation** **(5) Failure To Provide Accurate Itemized Wage Statements** **(6) Unreimbursed Expenses** **(7) Violation Of Labor Code § 98.6** **(8) Violation Of Labor Code § 1102.5** **(9) Wrongful Termination In Violation Of Public Policy** **(10) Misclassification As An Independent Contractor** **(11) Recordkeeping Violations** **(12) Unlawful Or Unfair Business Practices** **(13) Civil Penalties Under PAGA** **DEMAND FOR JURY TRIAL**

Plaintiff Michael McGarvey brings this civil action and, on information and belief, alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Michael McGarvey ("Plaintiff" or "McGarvey") is an individual and a resident of California. For his first name, Plaintiff also goes by "Mike."

2. Defendant Juno Capital Partners, LLC (the "Company," "Juno," or "Juno Capital Partners") is a business that operates in California, including in San Franscico.

3. Defendant John Gregory Richardson ("Richardson") is the managing partner, director, and owner, or majority owner, of Juno. For his first name, Richardson also goes by "Greg."

4. Plaintiff, a former employee, worked for Juno and Richardson in California. By way of this First Amended Complaint, Plaintiff seeks damages in an amount that renders this matter an "unlimited" civil case within the meaning of California law.

5. The true names and capacities of the Doe Defendants (Does 1 through 10, inclusive) are unknown to Plaintiff at this time and Plaintiff is informed and believes that they are in some way liable for the illegal conduct, injury, and damages alleged herein. The Doe Defendants are believed to be affiliated entities of Juno, joint employers, responsible executives, or otherwise liable for the conduct complained of herein, whether because of alter-ego status, agency principles, aider and abettor (or co-conspirator) status, statutorily-imposed responsibility, or otherwise. This pleading invokes all applicable forms of tolling.

6. The Court has personal jurisdiction over the Company because it is a citizen of this State, the Company does business in this State, and the Company otherwise has minimum contacts with this State. The Court has personal jurisdiction over Richardson because he is a resident of California and has sufficient minimum contacts with this State. The Court has personal jurisdiction over Plaintiff because he is a resident of California and has sufficient minimum contacts with this State. Venue is proper in San Francisco County inasmuch as the Company conducts business San Francisco County, Plaintiff performed work for the Company in San Francisco County, and alleged unlawful conduct and/or its

effects occurred in San Franscico County.

GENERAL ALLEGATIONS

7. Juno Capital Partners is a growth equity firm based in California that provides its business clients with capital support as well as advisory services. Juno styles itself as a "boutique merchant bank specializing in global investment and advisory services to leading digital entertainment companies." (Juno website, junocapitalpartners.com, last visited 12/30/24). Juno employs numerous employees in California and alleged "independent contractors" in California.

8. McGarvey worked at Juno for a number of years performing its core business functions such as investment and advisory work and working on business transactions, projects, and deals for a number of different clients. For example the clients/projects included, without limitation, Xsolla and Haven, among many others.

9. Juno hired McGarvey as an employee under a written offer letter which promised him, among other things, salary, bonuses, commissions/fees, vacation, and an ownership interest in Juno. McGarvey accepted the offer and worked for Juno.

10. The offer letter sets forth different components of McGarvey's promised "compensation" as a Juno employee. The "Equity" component of his compensation states: "You are eligible to receive 5% of the current shareholdings of Juno LLC/LLP vesting over four years, specifics are TBD."

11. During his employment at Juno, McGarvey was also offered and promised various forms of compensation for his work, including in writing.

12. McGarvey performed the work necessary to earn the various forms of compensation promised to him.

13. McGarvey did not receive all the various forms of compensation owed to him, and these breaches caused him harm and damage.

14. McGarvey's employment at Juno was terminated, and McGarvey did not receive all the compensation owed to him at the time of his separation. At the time of McGarvey's separation from employment at Juno, he was owed but was not paid various

types of wages, including, without limitation, fees/commissions, bonus pay, vacation wages, and his ownership interest or share in Juno.

15. During his employment at Juno, McGarvey did not receive expense reimbursement for all expenses incurred, including, among others, reimbursement for the business use of his personal cell phone.

16. Both before and after his employment at Juno as an employee, McGarvey was misclassified as an independent contractor of Juno.

17. After his employment at Juno ended, McGarvey worked without compensation for Juno as an independent contractor for a several-month period. Richardson was aware that McGarvey was working for Juno without compensation during this several-month period. As an independent contractor, McGarvey performed work that was inside the usual course of Juno's business, and McGarvey did not meet any applicable test for independent contractor status. Indeed, McGarvey performed the same work and/or job functions as an "independent contractor" as he did as an "employee" of Juno. Similarly, during the applicable limitations period, Juno utilized other workers to perform work within the usual course of Juno's business who did not meet any applicable test for independent contractor status.

18. When McGarvey and other workers were considered "independent contractors" of Juno they instead qualified as, and they should have been classified as, employees, and they should have received all the entitlements that California law confers upon employees. However, they were willfully misclassified in order to lessen Juno's expenditures.

19. Plaintiff has timely and adequately exhausted administrative remedies under the Private Attorneys General Act of 2004 ("PAGA'). McGarvey filed a notice with the California Labor & Workforce Development Agency ("LWDA") under PAGA (**Exhibit A** hereto) and served a copy of the same via certified mail to Juno and Richardson. Plaintiff also filed an Amendment To PAGA Notice with the LWDA (**Exhibit B** hereto) and sent a copy of the same via certified mail to Juno and Richardson. Defendants' counsel has been

provided with the same documentation and has acknowledged receipt. After waiting the requisite 65-exhaustion period, Plaintiff hereby amends this Complaint to add a cause of action under PAGA.

FIRST CAUSE OF ACTION

Fraud

(Against Juno Capital Partners, Richardson, And Does 1 Through 10, Inclusive)

20. Plaintiff re-alleges and incorporates by reference herein the allegations set forth in Paragraphs 1 through 19 inclusive.

21. Before McGarvey worked at Juno as an employee, he worked at Juno as an "independent contractor." After working successfully as an "independent contractor," McGarvey approached Richardson about becoming an equity owner -- a partner -- in Juno. McGarvey wanted an ownership interest in the business. Richardson represented to McGarvey that the only way to become an equity owner in Juno is to come onboard as an "employee." Accordingly, the parties negotiated for McGarvey to be hired by Juno as an employee.

22. On behalf of Juno, Richardson tendered an offer letter to McGarvey which contained, among other things, a promise of 5% ownership in Juno, which vested over a four-year period. The promise was made by Richardson, and the promise was also attributable to Juno under, among other things, agency principles and respondeat superior.

23. Richardson and Juno did not intend to perform this promise when the promise was made. The promise was a ruse to satisfy and retain McGarvey under the false promise of ownership.

24. Richardson and Juno intended that McGarvey rely upon the promise of a 5% ownership interest. Indeed, Richardson had previously represented that the only way for McGarvey to obtain ownership in Juno is through becoming an employee of Juno

25. In reliance upon the promise of ownership, McGarvey accepted the offer letter, came onboard at Juno as an employee, and worked at Juno as an employee for an extended period of time. McGarvey reasonably relied upon the promise of ownership, which was

formalized in the offer letter and which was consistent with the circumstances surrounding the negotiation and presentation of the offer letter. In a correspondence attending the offer letter, Richardson wrote: "It's important you care about and see value in the equity…"

26. Richardson and Juno did not perform the promised act. Richardson and Juno withheld and did not provide McGarvey with any shares or ownership interest in Juno. Richardson and Juno did not provide any distributions to McGarvey, which he should have received in accordance with his ownership interest. Instead, those distributions were knowingly and willfully withheld and channeled to Richardson.

27. McGarvey was harmed by the intentional misrepresentation, fraud, and false promise which was broken.

28. McGarvey's reliance on the representation and false promise was a substantial factor in causing McGarvey harm, including lost work/employment opportunities, lost ownership, lost distributions, and emotional distress.

29. In committing fraud, Richardson's and Juno's conduct also violated Penal Code § 496(a). Accordingly, McGarvey is entitled to treble damages, attorney's fees, and costs pursuant to Penal Code § 496(c). (*Siry Investment, L.P. v. Farkhondehpour* (2022) 13 Cal.5th 333.)

30. Richardson's and the Company's misconduct and fraud were done in callous disregard of the law, the outward promises being made, and Plaintiff's welfare. These actions were such that they were despicable and constitute oppression, fraud, or malice, and justify the imposition of punitive damages against the Company and Richardson.

SECOND CAUSE OF ACTION

Unpaid Wages

(Against Juno Capital Partners, And Does 1 Through 10, Inclusive)

31. Plaintiff re-alleges and incorporates by reference herein the allegations set forth in Paragraphs 1 through 30 inclusive.

32. Juno was an employer subject to the provisions of the Labor Code.

33. In connection with his employment at Juno, McGarvey was promised various

forms of compensation, including bonuses, commissions/fees, vacation, and an ownership interest in Juno.

34. All these forms of compensation constitute wages within the meaning of the Labor Code.

35. During his employment, McGarvey did not receive all the wages owed to him. Among other things, McGarvey did not receive promised bonus compensation, fees/commissions, vacation wages, and shares or ownership in Juno.

36. After his employment at Juno ended, Plaintiff still has not received all the compensation due to him.

37. Plaintiff is entitled to and requests all his owed compensation, as well as interest, attorney's fees and costs. (Labor Code, § 218.5 & 218.6.)

THIRD CAUSE OF ACTION

Accounting (Breach Of Contract)

(Against Juno Capital Partners, Richardson, And Does 1 Through 10, Inclusive)

38. Plaintiff re-alleges and incorporates by reference herein the allegations set forth in Paragraphs 1 through 37 inclusive.

39. McGarvey entered into a contract with Juno that provided him with a 5% ownership interest in Juno vesting over four years. This contract was breached.

40. Because Richardson is the managing member and the majority or sole owner of Juno, he was and is in a fiduciary relationship with McGarvey, a minority shareholder in Juno. Moreover, Juno owes McGarvey a duty of good faith and fair dealing with respect to the ownership interest promised to McGarvey.

41. There exists a relationship between the parties that requires accounting to determine the value of the ownership interest and the shareholder distributions that should have been distributed to McGarvey from Juno consistent with McGarvey's ownership interest. These values can be ascertained by an accounting. There may be other values for which an accounting is needed to determine the appropriate remedy.

42. The books and financial records of Juno are within the exclusive control of

Juno and Richardson, and they must be examined to determine the values alleged herein.

43. Consequently, Plaintiff seeks an accounting.

<u>FOURTH CAUSE OF ACTION</u>

Failure To Pay All Wages Due Upon Separation

(Against Juno Capital Partners, Richardson, And Does 1 Through 10, Inclusive)

44. Plaintiff re-alleges and incorporates by reference herein the allegations set forth in Paragraphs 1 through 43 inclusive.

45. Labor Code § 201 and 202 impose a time requirement on employers when it comes to providing the final wages of separated employees. Moreover, the Labor Code requires that earned vacation wages be paid out upon separation. (Labor Code, § 227.3.)

46. Plaintiff's employment at the Company ended over thirty (30) days ago and, to this day, he has not received all the wages due to him.

47. The Company failed to pay Plaintiff all his compensation owed, including (without limitation) fees/commissions, bonus pay, vacation wages, and his ownership interest or share in Juno, at the time of his separation. To this day, Plaintiff is still owed compensation. This deficiency in final pay was and is willful within the meaning of Labor Code § 203.

48. At all relevant times, Labor Code section 203 provided that, if employers (such as the Company) willfully fail to pay any wages of an employee who is discharged in the time required by Labor Code section 201, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced, but the wages shall not continue for more than thirty (30) days. Accordingly, Plaintiff is entitled to receive statutory penalties up to a maximum of thirty (30) days, as well as attorney's fees and costs, under Labor Code section 203 and 218.5.

49. To the extent the Company claims that McGarvey quit as opposed to being discharged, a characterization that McGarvey vigorously denies, the Company would still be liable under Labor Code §§ 202, 203, and 227.3, as McGarvey still did not receive all wages owed to him within the time mentioned in Labor Code § 202. Accordingly, even if

the Company claims that McGarvey quit (which is erroneous), Plaintiff is still entitled to receive statutory penalties up to a maximum of thirty (30) days, as well as attorney's fees and costs, under Labor Code section 203 and 218.5.

50. Richardson caused the deficiency in final pay, and is liable for the same under Labor Code § 558.1 along with Juno.

FIFTH CAUSE OF ACTION

Inaccurate Wage Statements

(Against Juno Capital Partners, Richardson, And Does 1 Through 10, Inclusive)

51. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 50 inclusive as though fully set forth herein.

52. Labor Code section 226, subdivision (a), requires that employers (such as the Company) furnish to their employees, semi-monthly or at the time of each payment of wages, an accurate itemized statement in writing showing their: (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

53. Labor Code section 226(a) applied to the Company's employment of Plaintiff.

54. Plaintiff's wage statements at Juno, including his final wage statement, were inaccurate. McGarvey's wage statement that he was issued in connection with his separation from employment at Juno was inaccurate in that failed to include all the gross and net wages earned (Labor Code, § 226(a)(1) & (5)), including, among other things, fees/commissions, bonus pay, vacation wages, and buyout of his ownership interest or shares in Juno. The

Company's wage statements also inaccurately describe the compensation being paid to employees, using labels or descriptors that do not correspond to the types of wages actually being paid, in violation of Labor Code § 226(a), including (a)(1).

55. The Company was required to maintain, for three years at a central location within the state of California, copies of wage statements that complied with Labor Code § 226(a). The Company's wage statements were inaccurate, deficient, or otherwise non-compliant with Labor Code § 226(a) as discussed above. Thus, the Company did not keep the records required by law.

56. Richardson caused the wage statement violations, and is liable for the same under Labor Code § 558.1 along with Juno.

57. Plaintiff has suffered the requisite "injury" as a result of the violations, and the violations were "knowing and intentional," as those terms are used in Labor Code section 226. Plaintiff is entitled to the greater of (i) all actual damages or (ii) $50 for the initial wage statement violation, and $100 for each subsequent violation, not to exceed an aggregate penalty of $4,000 (Labor Code, § 226(e)(1)), in addition to attorney's fees and costs.

SIXTH CAUSE OF ACTION

Unreimbursed Expenses

(Against Juno Capital Partners, Richardson, And Does 1 Through 10, Inclusive)

58. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 57 inclusive as though fully set forth herein.

59. At all relevant times, Labor Code section 2802 required and continues to require employers to fully reimburse employees for expenses incurred in the discharge of their work-related duties or while carrying out the directions of their employer.

60. McGarvey incurred expenses while working at Juno for which he was not reimbursed, including (without limitation) those set forth below, in violation of Labor Code section 2802.

61. Among other things, Juno and Richardson required McGarvey to utilize his personal cell phone for work-related purposes (such as to conduct work-related

communications) without proper reimbursement. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.)

62. Richardson caused the Labor Code section 2802 violations, and is liable for the same under Labor Code § 558.1 along with Juno.

63. In addition to other appropriate relief, Plaintiff is entitled to full reimbursement of all expenses owed, plus interest, attorney's fees and costs, as provided for in Labor Code section 2802.

SEVENTH CAUSE OF ACTION

Violation Of Labor Code § 98.6

(Against Juno Capital Partners, and Does 1 Through 10, Inclusive)

64. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 63 inclusive as though fully set forth herein.

65. Labor Code § 98.6 applied to Plaintiff's employment at Juno.

66. Labor Code § 98.6 provides:

> (a) A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to their rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that they are owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of themselves or others of any rights afforded them.

67. During his employment at Juno, McGarvey made written or oral complaints to Richardson and Juno about owed unpaid wages, including, without limitation, a bonus which McGarvey had earned and which remained unpaid and deferred for a long period of time. The owed wages were disclosed to, and known by, Richardson and Juno.

68. After McGarvey's protected activity of complaining about and disclosing

owed wages, McGarvey was discriminated and retaliated against in that Richardson forced McGarvey to choose between a demotion at Juno with a massive reduction in salary or to work as an independent contractor (not as an employee) of Juno with no healthcare benefits. Before this forced decision was even finalized, Richardson and Juno terminated McGarvey's employment with Juno. The discrimination and retaliation McGarvey experienced, including his separation from employment at Juno, violated Labor Code §§ 98.6,

69. After McGarvey's termination, in a further act of discrimination and retaliation, Richardson and Juno had McGarvey work as an "independent contractor" for Juno, and Richardson and Juno demanded and required that McGarvey sign a release of claims if McGarvey wanted to receive compensation for his independent contractor work and receive unpaid bonus compensation from Juno which he had already earned.

70. McGarvey was harmed and damaged by the violations of Labor Code § 98.6. For the violations of Labor Code § 98.6, McGarvey seeks and is entitled to all remedies and damages available by law, including, without limitation, lost wages and work benefits caused by the violations. In addition, McGarvey seeks the $10,000 civil penalty specified in Labor Code § 98.6 for each violation. If these civil penalties can be recovered directly under Labor Code § 98.6, McGarvey seeks these penalties directly through this seventh cause of action. If these civil penalties can only be recovered via PAGA, McGarvey will seek such penalties through a separate PAGA cause of action.

71. The Company's acts, inactions, discrimination, retaliation and wrongful termination of Plaintiff were done in callous disregard of the law, and Plaintiff's welfare, and contravened fundamental public policies of the State of California. These actions were such that they were despicable, and subjected Plaintiff to cruel and unjust hardship in knowing disregard of his rights. These actions were designed to cause (and did cause) injury to Plaintiff. These actions constitute malice and/or oppression, and justify the imposition of punitive damages against the Company.

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EIGHTH CAUSE OF ACTION

Violation Of Labor Code § 1102.5

(Against Juno Capital Partners, Richardson, and Does 1 Through 10, Inclusive)

72. Plaintiff realleges and incorporates by reference paragraphs 1 through 71 inclusive as though fully set forth herein.

73. Labor Code § 1102.5 applied to Plaintiff's employment at Juno.

74. Labor Code § 1102.5 provides:

> (a) An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.
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> (b) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.
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> (c) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

> (d) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for having exercised their rights under subdivision (a), (b), or (c) in any former employment.

75. During his employment at Juno, McGarvey made written or oral complaints to Richardson and Juno about owed wages, including, without limitation, a bonus which McGarvey had earned and which remained unpaid and deferred for a long period of time. (Among other things, the failure to pay all wages owed in a timely manner violates Labor Code § 204.) The owed wages were disclosed to, and known by, Richardson and Juno.

76. After McGarvey's protected activity of complaining about and disclosing owed wages, McGarvey was discriminated and retaliated against in that Richardson forced McGarvey to choose between a demotion at Juno with a massive reduction in salary or to work as an independent contractor (not as an employee) of Juno with no healthcare benefits. Before this forced decision was even finalized, Richardson and Juno terminated McGarvey's employment with Juno. The discrimination and retaliation McGarvey experienced, including his separation from employment at Juno violated Labor Code 1102.5(b) and (c).

77. After McGarvey's termination, in a further act of discrimination and retaliation, Richardson and Juno had McGarvey work as an "independent contractor" for Juno, and Richardson and Juno demanded and required that McGarvey sign a release of claims if McGarvey wanted to receive compensation for his independent contractor work and receive his unpaid bonus from Juno which he had already earned. The release would have also wiped out McGarvey's equity in Juno and other compensation from McGarvey's employment at Juno due and owing to McGarvey. This violated Labor Code § 1102.5(b), (c) and/or (d).

78. As a person acting on behalf of the employer (Juno), Richardson is liable for the violations of Labor Code § 1102.5 along with Juno.

79. McGarvey was harmed and damaged by the violations of Labor Code § 1102.5. For the violations of Labor Code § 1102.5, McGarvey seeks and is entitled to all remedies and damages available by law. Among other things, McGarvey seeks the civil

penalty of $10,000 for each violation of Labor Code § 1102.5 as specified in the statute itself. (Labor Code, § 1102.5(f) [setting forth a $10,000 civil penalty per employee for each violation].) If these civil penalties can be recovered directly under the statute, McGarvey seeks those penalties directly under this eighth cause of action. If these civil penalties can only be recovered via PAGA, McGarvey will seek such penalties through a separate PAGA cause of action after PAGA's administrative exhaustion period has expired.

80. The Company's and Richardson's acts, inactions, discrimination, retaliation and wrongful termination of Plaintiff were done in callous disregard of the law, and Plaintiff's welfare, and contravened fundamental public policies of the State of California. These actions were such that they were despicable, and subjected Plaintiff to cruel and unjust hardship in knowing disregard of his rights. These actions were designed to cause (and did cause) injury to Plaintiff. These actions constitute malice and/or oppression, and justify the imposition of punitive damages against the Company.

NINTH CAUSE OF ACTION

Wrongful Termination In Violation Of Public Policy

(Against Juno Capital Partners, and Does 1 Through 10, Inclusive)

81. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 80 inclusive as though fully set forth herein.

82. During his employment at Juno, McGarvey made written or oral complaints to Richardson and Juno about owed wages, including, without limitation, a bonus which McGarvey had earned and which remained unpaid and deferred for a long period of time. The owed wages were disclosed to, and known by, Richardson and Juno.

83. After McGarvey's protected activity of complaining about and disclosing owed wages, McGarvey was discriminated and retaliated against in that Richardson forced McGarvey to choose between a demotion at Juno with a massive reduction in salary or to work as an independent contractor (not as an employee) of Juno with no healthcare benefits. Before this forced decision was even finalized, Richardson and Juno hastily and intentionally terminated McGarvey's employment with Juno.

84. After McGarvey was terminated, Richardson and Juno kept McGarvey on as an "independent contractor" for Juno, and Richardson and Juno demanded and required that McGarvey sign a release of claims if McGarvey wanted to receive compensation for his independent contractor work and receive his unpaid bonus compensation from Juno which he had already earned. The release would have also wiped out McGarvey's equity in Juno and other compensation from McGarvey's employment at Juno due and owing to McGarvey.

85. McGarvey's termination was thus designed to position Juno to back away from its commitments and obligations to McGarvey, to avoid paying compensation due and owing McGarvey (including a bonus) from his employment at Juno, and to create a situation where Juno could create leverage for itself and extract a favorable release from McGarvey, a release that covered compensation already due McGarvey from his employment at Juno.

86. Plaintiff's termination from the Company violated various fundamental and substantial California public policies, including, without limitation, the public policies behind Labor Code §§ 98.6, 203, 206.5, 232, and 1102.5, and Penal Code § 496(a). (See also *Gould v. Maryland Sound Industries, Inc*. (1995) 31 Cal.App.4th 1137.)

87. The Company's wrongful termination of Plaintiff was a substantial factor in causing Plaintiff harm, including, but not limited to emotional distress, pain and suffering, lost wages, and lost benefits.

88. The Company's acts, inactions, and wrongful termination of Plaintiff were done in callous disregard of the law, and Plaintiff's welfare, and contravened fundamental public policies of the State of California. These actions were such that they were despicable, and subjected Plaintiff to cruel and unjust hardship in knowing disregard of his rights. These actions were designed to cause (and did cause) injury to Plaintiff. These actions constitute malice and/or oppression, and justify the imposition of punitive damages against the Company.

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TENTH CAUSE OF ACTION

Misclassification As An Independent Contractor

(Against Juno Capital Partners, Richardson, And Does 1 Through 10, Inclusive

89. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 88 inclusive as though fully set forth herein.

90. After his employment at Juno ended, McGarvey worked without compensation for Juno as an independent contractor for a several-month period. Richardson was aware that McGarvey was working for Juno without compensation during this several-month period.

91. As an independent contractor, McGarvey performed work that was inside the usual course of Juno's business, and McGarvey did not meet any applicable test for independent contractor status. Indeed, McGarvey performed the same work and/or job functions as an "independent contractor" as he did as an "employee" of Juno.

92. When McGarvey worked an "independent contractor" he instead qualified as, and should have been classified as, an employee of Juno, and he should have received all the entitlements that California law confers upon employees. However, he was willfully misclassified in order to lessen Juno's expenditures.

93. As a result of the misclassification as an independent contractor, among other things, McGarvey was not (a) paid at least the applicable California minimum wage for each hour he worked (Labor Code §§ 1194, 1194.2, 1197, 1197.1, 1199, and 226.7(d)), (b) paid all the overtime and/or double-time compensation owed to him for work performed during overtime and/or double-time hours (Labor Code §§ 510, & 1198), (c) reimbursed for incurred expenses as required by law (Labor Code, § 2802), (d) issued accurate and itemized wage statements as required by law (Labor Code, § 226), or (e) issued a final paycheck that tendered to him all wages due (Labor Code, §§ 201-203). Moreover, as a result of the misclassification, Juno failed to maintain wage statements for McGarvey's work, in violation of Labor Code § 226(a).

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94. Among other things, McGarvey suffered wage loss as a result of the misclassification, unreimbursed expenses as a result of the misclassification, and "injury" under Labor Code § 226 as a result of knowing and intentional wage statement violations associated with the misclassification. When McGarvey's "independent contractor" work came to end (work for which he should have been classified as an employee), he was not issued final pay in the time required by the Labor Code, and this willful failure to pay gives to rise to penalties under Labor Code § 203.

95. Plaintiff is entitled to the unpaid balance of all forms of unpaid wages he is owed including minimum wages and overtime/double-time. Pursuant to Labor Code section 1194, Plaintiff is entitled to recover the unpaid balance of the full amount of California wages owed, including interest thereon, reasonable attorney's fees, and costs of suit. Plaintiff is also entitled to statutory penalties under Labor Code §§ 226, 226.8, and 203, and attorney's fees and costs.

96. Richardson caused the misclassification and the violations of Labor Code §§ 226, 226.8, 203, 1194, and 2802, and therefore is individually liable (Labor Code, § 558.1), along with Juno.

ELEVENTH CAUSE OF ACTION

Recordkeeping Violations

(Against Juno Capital Partners, and Does 1 Through 10, Inclusive)

97. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 96 inclusive as though fully set forth herein.

98. Through counsel, McGarvey submitted a records request to Juno for his personnel records and signed records under Labor Code § 1198.5 and Labor Code § 432. In response, Juno produced a single record. Juno failed to maintain and/or produce the records required by Labor Code §§ 1198.5 and 432. To the extent Juno produces additional records in the future, that production would be untimely under Labor Code §§ 1198.5 and 432.

99. For the violation of Labor Code § 1198.5, Plaintiff is entitled to recover the statutory penalties specified by law (Labor Code, § 1198.5(k) [$750 penalty]), injunctive

relief to obtain compliance with Labor Code § 1198.5, and attorney's fees and costs (Labor Code, § 1198.5(l)).

100. This eleventh cause of action alleged herein is for the violation of Labor Code § 1198.5. Plaintiff will assert a separate PAGA claim for the violation of Labor Code § 432.

TWELFTH CAUSE OF ACTION

Unfair Or Unlawful Business Practices

(Against Juno Capital Partners, And DOES 1 Through 10, Inclusive)

101. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 100 inclusive as though fully set forth herein.

102. At all relevant times, the Company's practices, as alleged above, have been unfair, unlawful, deceptive, and harmful to Plaintiff, others similarly situated, and the general public. The Company's illegal practices, as alleged in this Complaint, constitute violations of Business and Professions Code sections 17200 et seq. A practice that violates any state law or regulation may constitute the basis of an unlawful business practice prohibited by Business and Professions Code sections 17200 et seq.

103. In addition to the illegal practices alleged above, the Company failed to provide McGarvey with sick leave as required by law (Labor Code, § 246), or provide McGarvey with itemized wage statements or other documentation regarding his sick leave (Labor Code § 246(i)).

104. In light of all the above-mentioned violations, pursuant to Business and Professions Code sections 17200 et seq., Plaintiff is entitled to restitution of wages and other property held by the Company and/or other relief requiring the Company to pay all wages and other sums due to Plaintiff and to disgorge profits obtained through the unlawful, unfair, or deceptive business practices. The Company has been unjustly enriched as a result of its unlawful, unfair or deceptive business practices.

105. Plaintiff is entitled to restitution for the Company's actions, the equitable remedy of disgorgement, and reasonable attorney's fees and costs.

106. Plaintiff meets the standing requirements for seeking relief pursuant to

Business and Professions Code section 17203, in that he has suffered injury in fact and has lost money as a result of the Company's actions, as more fully set forth in this pleading.

THIRTEENTH CAUSE OF ACTION

Civil Penalties Under PAGA

(Against All Juno Capital Partners, Richardson, And DOES 1 Through 10, Inclusive)

107. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 106 inclusive as though fully set forth herein.

108. Plaintiff's PAGA Notice is attached hereto as **Exhibit A**, and his Amendment To PAGA Notice is attached hereto as **Exhibit B**, and both of these exhibits are hereby incorporated by reference in this pleading.

109. Pursuant to PAGA, Plaintiff, on behalf of himself and all other aggrieved employees identified in Exhibit A and Exhibit B, brings this action as a non-class representative action under PAGA for civil penalties based on violation of the California Labor Code and the applicable IWC Wage Order(s).

110. Pursuant to PAGA, Plaintiff asserts this action for civil penalties for the violations alleged in Exhibit A and Exhibit B, including, without limitation, for:

a. Civil rights violations, including discrimination, retaliation, and wrongful termination;

b. Unreimbursed expenses;

c. Failure to pay all wages owed upon separation;

d. Inaccurate wage statements;

e. Illegal agreements;

f. Misclassification as an independent contractor; and

g. Recordkeeping violations.

111. Labor Code section 2699(f)(2) provides for civil penalties that are available under PAGA, including default civil penalties, civil penalties that are specified in other statutes and recoverable under PAGA, and enhanced civil penalties. For the alleged violations, Plaintiff prays for the maximum civil penalties available under PAGA. Among

other civil penalties, Plaintiff prays for those available under Labor Code section 2699(f)(B) as well as those available, via PAGA, under Labor Code § 226.8.

112. If, at trial in this case, (i) civil penalties are available for Plaintiff's claims under Labor Code § 1102.5 and/or 98.6, and (ii) if those civil penalties are recoverable directly under the applicable statute *regardless* of PAGA (meaning those civil penalties can be recovered by Plaintiff by a private right of action directly under the applicable statute without the necessity of invoking PAGA), and (iii) if, for the same underlying violation, awarding both those civil penalties directly recoverable under the applicable statute and civil penalties under PAGA would result in an impermissible double recovery, then (iv) Plaintiff will make an election of remedies to avoid the impermissible double recovery.

113. If, at trial in this case, (i) civil penalties are available for Plaintiff's claims under Labor Code § 1102.5 and/or 98.6, and (ii) if those civil penalties are recoverable directly under the applicable statute regardless of PAGA, and (iii) if, for the same underlying violation, awarding both those civil penalties directly recoverable under the applicable statute and civil penalties under PAGA would not result in an impermissible double recovery, then (iv) Plaintiff will elect to recover both those civil penalties directly under the applicable statute and the civil penalties recoverable under PAGA.

114. In connection with this PAGA cause of action, Plaintiff also seeks attorney's fees and costs as authorized by PAGA.

Future Amendment

115. Plaintiff reserves the right to amend this Complaint to name additional parties, to add additional parties to already pleaded causes of action, to include an additional cause of action under PAGA, and to include additional causes of action which are presently unknown but which are uncovered in the discovery process.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment as follows on the above causes of action:

On the First Cause Of Action

1. For all recoverable damages according to proof, including, without limitation,

any loss or out-of-pocket damages, benefit-of-the-bargain damages, and any economic and non-economic tort damages (such as emotional distress damages);

2. For treble damages, attorney's fees, and costs pursuant to Penal Code, § 496(c); and

3. For punitive damages according to proof;

On The Second Cause Of Action

4. For all unpaid compensation and amounts due according to proof;

5. For attorney's fees and costs pursuant to Labor Code § 218.5;

On The Third Cause Of Action

6. For a determination by the court that Plaintiff is entitled to an ownership interest in Juno and the amount of the ownership;

7. For a determination of the value of the ownership;

8. For a determination of the distributions McGarvey should have received consistent with his ownership interest;

9. For all recoverable damages caused by the breach;

10. For a full and accurate accounting;

On The Fourth Cause Of Action

11. For statutory penalties under Labor Code § 203, up to the statutory maximum;

12. For attorney's fees and costs as pursuant to Labor Code, § 218.5;

On The Fifth Cause Of Action

13. For statutory penalties under Labor Code § 226, or actual damages incurred as a result of the wage statement violations, according to proof;

14. For attorney's fees and costs as authorized by law (Labor Code, § 226(h));

On The Sixth Cause Of Action

15. For the full reimbursement of expenses owed, including interest thereon, under Labor Code § 2802;

16. For attorney's fees and costs as authorized by law (Labor Code, § 2802(c));

///

On The Seventh Cause Of Action

17. For all recoverable damages (including economic and non-economic damages) according to proof;

18. For the $10,000 civil penalty for each violation, as specified in Labor Code § 98.6(b)(3);

19. For punitive damages according to proof;

20. For attorney's fees and costs to the extent authorized by applicable law;

On The Eighth Cause Of Action

21. For all recoverable compensatory damages (including economic and non-economic damages) according to proof;

22. For the $10,000 civil penalty for each violation, as specified in Labor Code § 1102.5(f);

23. For punitive damages according to proof;

24. For attorney's fees and costs as authorized by law (Labor Code, § 1102.5(j));

On The Ninth Cause Of Action

25. For all recoverable compensatory damages (including economic and non-economic damages) according to proof;

26. For punitive damages according to proof;

On The Tenth Cause Of Action

27. For all recoverable damages and unpaid wages, including minimum wages and overtime/double-time;

28. For liquidated damages pursuant to Labor Code § 1194.2;

29. For statutory penalties or damages under Labor Code § 226;

30. For statutory penalties under Labor Code § 203;

31. For reimbursement of all expenses owed under Labor Code § 2802;

32. For attorney's fees and costs (Labor § 218.5, 218.6, 226(h), 1194, & 2802 (c));

On The Eleventh Cause Of Action

33. For the $750 statutory penalty (Labor Code, § 1198.5(k);

34. For injunctive relief to obtain compliance with Labor Code § 1198.5 (Labor Code, § 1198.5(l));

35. For attorney's fees and costs (Labor Code, § 1198.5(l));

On The Twelfth Cause Of Action

36. For restitution of all unpaid wages and other monies withheld from Plaintiff together with the disgorgement of any profits received as a result of the Company's unlawful, deceptive, or unfair business practices;

37. For attorney's fees and costs to the extent authorized by applicable law;

On The Thirteenth Cause Of Action

38. For all forms of civil penalties recoverable under PAGA, and for entry of judgment in favor of Plaintiff and other aggrieved employees;

39. For attorney's fees and costs pursuant to PAGA;

On All Causes Of Action

40. For all available interest, including prejudgment and post-judgment interest, including, without limitation, the interest authorized by Labor Code §§ 218.6, 1194, 2802(b) and Code of Civil Procedure §§ 3287 and 3289; and

41. For all such other relief as the Court deems just and proper.

Dated: March 17, 2024 **SCHEPPACH BAUER PC**

By: ______________________

JOHN M. SCHEPPACH
Attorneys for Plaintiff
MICHAEL MCGARVEY

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims and causes of action so triable.

Dated: March 17, 2024 **SCHEPPACH BAUER PC**

By: ______________________

JOHN M. SCHEPPACH
Attorneys for Plaintiff
MICHAEL MCGARVEY

EXHIBIT A

SCHEPPACH | BAUER PC

Scheppach Bauer PC
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Phone: (949) 209-8880

John M. Scheppach
Email: jmscheppach@sbpc.law
Direct Dial: (949) 209-8895

PAGA NOTICE

December 24, 2024

VIA CERTIFIED MAIL TO:	**VIA ONLINE SUBMISSION TO:**
JUNO CAPITAL PARTNERS, LLC Attn: John Gregory Richardson Managing Partner & Registered Agent For Service Of Process 41 Sneckner Court Menlo Park, CA 94025 **JOHN GREGORY RICHARDSON** 41 Sneckner Court Menlo Park, CA 94025	**The State Of California,** **Labor & Workforce Development Agency** Current Website Address https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html/

Re: *Michael McGarvey, et al. v. Juno Capital Partners, et al.*
PAGA Notice

Dear Employer, John Richardson, And The LWDA:

Michael McGarvey ("McGarvey"), on behalf of himself and all other aggrieved employees, and through his undersigned representative, hereby provides notice pursuant to the California Private Attorneys General Act of 2004, Labor Code sections 2698 – 2699.8 ("PAGA"), of alleged violations of the California Labor Code committed by Juno Capital Partners, LLC (the "Company," "Juno Capital Partners," or "Juno"). Pursuant to the requirements of PAGA, the Labor Code provisions allegedly violated, including the alleged facts and theories in support thereof, are set forth below. All citations herein are to the California Labor Code as it is presently constituted. The Labor Code may be amended in one or more respects after the date of this PAGA Notice. This PAGA Notice invokes all available forms of tolling.

In addition to the Company, this PAGA Notice is alleged against John Gregory Richardson ("Richardson"), a managing partner, owner, and director of Juno who is alleged to have caused the asserted Labor Code violations. (*Atempa v. Pedrazani* (2018) 27 Cal.App.5th 809; Labor Code, §§ 558 and 558.1.) This PAGA Notice is also alleged against DOES 1 through 10, inclusive, as additional responsible parties. These DOES include, without limitation, any predecessor, successor, or affiliate entity who was the joint employer of McGarvey or who was otherwise responsible for the Labor Code violations herein asserted. If and when such additional responsible parties are ascertained, this PAGA Notice may be amended to name such additional responsible parties, and any such amendment shall relate back to this PAGA Notice.

I. **BACKGROUND**.

Juno Capital Partners is a growth equity firm based in California that provides its business clients with capital support as well as advisory services. Juno styles itself as a "boutique merchant bank specializing in global investment and advisory services to leading digital entertainment companies." (Juno website, junocapitalpartners.com, last visited 12/23/24). Juno employs numerous employees in California and alleged "independent contractors" in California. According to its website, Juno currently has offices in San Francisco and Los Angeles.

McGarvey worked at Juno for a number of years performing its core business functions such as investment and advisory work and working on business transactions, projects, and deals. Juno hired McGarvey as an employee under a written offer letter which promised him, among other things, salary, bonuses, commissions/fees, vacation, and an ownership interest in Juno. During his employment at Juno, McGarvey was also offered and promised various forms of compensation for his work, including in writing.

Both before and after McGarvey worked at Juno as an employee, Juno and Richardson had McGarvey work as an "independent contractor" of Juno performing the same job duties and/or functions that McGarvey performed as an employee.

II. **ALLEGED LABOR CODE VIOLATIONS**.

A. **Discrimination, Retaliation, And Wrongful Termination**.

Labor Code § 98.6 provides in pertinent part: "A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter … , or because the employee or applicant for employment has … made a written or oral complaint that they are owed unpaid wages, or …because of the exercise by the employee or applicant for employment on behalf of themselves or others of any rights afforded them." (Underscore added.) Furthermore, Labor Code § 232 prohibits an employer from discharging, disciplining, or otherwise discriminating "against an employee who discloses the amount of his or her wages." In addition, Labor Code § 1102.5(b) prohibits an employer, or any person acting on behalf of the employer, from, among other things, retaliating against an employee for disclosing information "to a person with authority over the employee" if the "employee has a reasonable cause to believe that the information discloses a violation of" law. And Labor Code § 1102.5(c) prohibits an employer, or any person acting on behalf of the employer, from retaliating against an employee for refusing to participate in an activity that would violate law.

McGarvey experienced discrimination, retaliation, and a wrongful termination in contravention of Labor Code §§ 98.6, 232, and 1102.5(b) and (c).

During his employment at Juno, McGarvey made written or oral complaints to Richardson and Juno about owed wages, including, without limitation, a bonus which McGarvey had earned and which remained unpaid and deferred for a long period of time. (Among other things, the failure to pay all wages owed in a timely manner violates Labor Code § 204.) The owed wages were disclosed to, and known by, Richardson and Juno.

After McGarvey's protected activity of complaining about and disclosing owed wages, McGarvey was discriminated and retaliated against in that Richardson forced McGarvey to choose between a demotion at Juno with a massive reduction in salary or to work as an independent contractor (not as an employee) of Juno with no healthcare benefits. Richardson purposely created a rushed and pressurized scenario for McGarvey. Before this forced decision was even finalized, Richardson and Juno terminated McGarvey's employment with Juno. The discrimination and retaliation McGarvey experienced, including his separation from employment at Juno, violated Labor Code §§ 98.6, 232, and 1102.5(b) and (c).

As discussed below, after McGarvey's termination, in a further act of discrimination and retaliation, Richardson and Juno had McGarvey work as an "independent contractor" for Juno, and Richardson and Juno demanded and required that McGarvey sign a release of claims if McGarvey wanted to receive compensation for his independent contractor work and receive his unpaid bonus from Juno which he had already earned.

B. Unreimbursed Expenses.

McGarvey brings this PAGA claim for unreimbursed expenses on behalf of himself and on behalf of all other employees of Juno who incurred unreimbursed expenses during the applicable limitations period.

Labor Code § 2802 requires employers to reimburse employees for expenses incurred in the discharge of their work-related duties or while carrying out the directions of their employer. McGarvey and other aggrieved employees of Juno incurred expenses for which they were not reimbursed, including (without limitation) those set forth below, in violation of Labor Code § 2802.

McGarvey and other Juno employees routinely utilized their personal cell phones for work-related tasks and activities, but were not reimbursed for this expense. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.)

The Company's failure to properly pay the expenses of McGarvey and the other aggrieved employees violates and is actionable under Labor Code § 2802(a)-(c).

C. Failure To Pay All Wages Owed Upon Separation From Employment.

McGarvey brings this PAGA claim for failure to pay all wages owed upon separation from employment on behalf of himself and all other employees of Juno who were separated from employment during the applicable limitations period and were not provided all their wages due upon separation.

Labor Code § 201 and 202 impose a time requirement on employers when it comes to providing the final wages of separated employees. A failure to pay all the wages due to a separated employee in the time required by the Labor Code creates additional liability under Labor Code § 203. Moreover, the Labor Code requires that earned vacation wages be paid out upon separation. (Labor Code, § 227.3.)

At the time of McGarvey's separation from employment at Juno, he was owed but was not paid various types of wages, including, without limitation, fees/commissions, bonus pay, vacation wages, and his ownership interest or share in Juno. Richardson caused this deficiency in final pay. Juno's failure to pay all wages due to McGarvey upon his separation from employment violated, inter alia, Labor Code §§ 201, 203, and 227.3.[1]

The Company issued a payment to McGarvey well after his separation from employment, which was late under, and violated, Labor Code §§ 201 and 204.

D. Inaccurate Wage Statements.

McGarvey brings this PAGA claim on behalf of himself and all other employees of Juno who were issued inaccurate wage statements within the applicable limitations period.

Labor Code section 226, subdivision (a), requires that employers (such as the Company) furnish to their employees, semi-monthly or at the time of each payment of wages, an accurate itemized statement in writing showing the "(1) gross wages earned, (2) total hours worked by the employee …, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, …, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, … , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee[.]"

Among other violations, McGarvey's wage statement that he was issued in connection with his separation from employment at Juno was inaccurate in that failed to include all the gross and net wages earned (Labor Code, § 226(a)(1) & (5)), including, among other things, fees/commissions, bonus pay, vacation wages, and buyout of his ownership interest or share in Juno. The Company's wage statements also inaccurately describe the compensation being paid to employees, using labels or descriptors that do not correspond to the types of wages actually being paid, in violation of Labor Code § 226(a), including (a)(1).

In addition, the Company failed to reflect on McGarvey's and other aggrieved employees' wage statements, or on other writings, the amount of paid sick leave available for use by the employee, in violation of Labor Code § 246(i).

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[1] To the extent the Company claims that McGarvey quit as opposed to being discharged, a characterization that McGarvey vigorously disputes, the Company would have still violated Labor Code §§ 202, 203, and 227.3, as McGarvey still did not receive all wages owed to him within the time mentioned in Labor Code § 202.

E. Illegal Agreements.

Labor Code § 206.5 makes it illegal for an employer to "require the execution of a release of a claim or right on account of wages due." Moreover, Labor Code § 432.5 prohibits an employer or agent, manager, superintendent, or officer thereof, from requiring any employee to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.

After McGarvey was forced to choose between a demotion with a massive reduction in salary or to work as an independent contractor (not as an employee) of Juno, Richardson required McGarvey to execute a document which contained a release as a condition of Richardson receiving compensation already due from McGarvey's employment at Juno, including an unpaid bonus. The release would have also wiped out McGarvey's equity in Juno and other compensation from McGarvey's employment at Juno due and owing to McGarvey. This violated Labor Code § 206.5 and 432.5.

F. Misclassification As An Independent Contractor.

McGarvey brings this PAGA claim for misclassification as an independent contractor on behalf of himself and all other workers of Juno during the applicable limitations period who were misclassified as independent contractors of Juno.

Labor Code § 226.8 makes it unlawful for any person or employer to engage in the willful misclassification of an individual as an independent contractor.

Both before and after his employment at Juno as an employee, McGarvey was misclassified as an independent contractor of Juno. After his employment at Juno ended, McGarvey worked without compensation for Juno as an independent contractor for a several-month period. Richardson was aware that McGarvey was working for Juno without compensation during this several-month period. As an independent contractor, McGarvey performed work that was inside the usual course of Juno's business, and McGarvey did not meet any applicable test for independent contractor status. Indeed, McGarvey performed the same work and/or job functions as an "independent contractor" as he did as an "employee" of Juno. Similarly, during the applicable limitations period, Juno utilized other workers to perform work within the usual course of Juno's business who did not meet any applicable test for independent contractor status.

During the applicable limitations period, Juno and Richardson willfully misclassified McGarvey and other workers as "independent contractors," all in violation of Labor Code § 226.8.

When McGarvey and other workers were considered "independent contractors" of Juno they instead qualified as, and they should have been classified as, employees, and they should have received all the entitlements that California law confers upon employees. However, they were willfully misclassified in order to lessen Juno's expenditures.

As a result of the misclassification as an independent contractor, McGarvey and other misclassified workers of Juno were not (i) paid at least the applicable California minimum wage for each hour they worked (Labor Code §§ 1194, 1194.2, 1197, 1197.1, 1199, and 226.7(d)), (ii) paid all the overtime and/or double-time compensation owed to them for the work they performed during overtime and/or double-time hours (Labor Code §§ 510, 511, & 1198), (iii) timely paid all wages owed to them during employment as required by law (Labor Code § 204 & 218), (iv) reimbursed for incurred expenses as required by law (Labor Code, § 2802), (v) issued accurate and itemized wage statements as required by law (Labor Code, § 226), (vi) provided with paid sick leave as required by law (Labor Code, § 246), or (vii) issued final paychecks that tendered to them all wages due (Labor Code, §§ 201-203). Moreover, as a result of the misclassification, Juno (viii) failed to keep accurate records of all hours worked, in violation of Labor Code § 1174(d), and failed to maintain wage statements for this work, in violation of Labor Code § 226(a).

G. Recordkeeping Violations.

Through counsel, McGarvey submitted a records request to Juno for his personnel records and signed records under Labor Code § 1198.5 and Labor Code § 432. In response, Juno produced a single record. Juno failed to maintain and/or produce the records required by Labor Code §§ 1198.5 and 432. To the extent Juno produces additional records in the future, that production would be untimely under Labor Code §§ 1198.5 and 432.

III. CIVIL PENALTIES SOUGHT.

For all the above-specified Labor Code violations, McGarvey seeks all available civil penalties against the Company that the law allows, including the default civil penalties provided by PAGA, and any civil penalties specifically provided by statute for the alleged Labor Code violations (including, without limitation, Labor Code §§ 210, 226.3, 226.8, 558, 1174.5) which are recoverable under PAGA. The civil penalties are also sought against Richardson for causing and participating in the violations alleged above.

To the extent any other entity under the control of or acting in concert with the Company, or to the extent any other owner, director, officer, or managing agent of the Company, caused or contributed to the Labor Code violations (see, e.g., Labor Code § 558.1), civil penalties are also sought as to such entities or responsible parties to the extent authorized by law.

To the extent some violations described herein give rise to civil penalties that can be obtained directly under the applicable statutes without invoking or seeking relief under PAGA, nothing herein is intended to preclude McGarvey from seeking those civil penalties directly under those statutes.

IV. RESERVATION OF RIGHTS.

McGarvey reserves the right to assert claims and theories for Labor Code violations and associated civil penalties that are uncovered through discovery (formal or informal) but which are presently unknown. McGarvey reserves the right to amend this PAGA Notice to allege such claims and theories, and to expressly name additional parties including (without limitation) through doe amendments. Any such amendment shall relate back to this PAGA Notice.

Very truly yours,

John M. Scheppach
Scheppach Bauer PC

EXHIBIT B

SCHEPPACH | BAUER PC

Scheppach Bauer PC
23181 Verdugo Drive, Suite 105-A
Laguna Hills, California 92653
Phone: (949) 209-8880

John M. Scheppach
Email: jmscheppach@sbpc.law
Direct Dial: (949) 209-8895

AMENDMENT TO PAGA NOTICE

January 10, 2025

VIA CERTIFIED MAIL TO:	**VIA ONLINE SUBMISSION TO:**
JUNO CAPITAL PARTNERS, LLC Attn: John Gregory Richardson Managing Partner & Registered Agent For Service Of Process 41 Sneckner Court Menlo Park, CA 94025 **JOHN GREGORY RICHARDSON** 755 Sansome Street, Suite 450 San Francisco, CA 94111	**The State Of California,** **Labor & Workforce Development Agency** Current Website Address https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html/

Re: *Michael McGarvey, et al. v. Juno Capital Partners, LLC et al.*
Amendment To PAGA Notice | LWDA-CM-1069175-24

Dear Employer, John Richardson, And The LWDA:

Michael McGarvey ("McGarvey"), on behalf of himself and all other aggrieved employees, and through his undersigned representative, hereby provides this amendment to the PAGA notice he submitted to the LWDA on December 24, 2024 ("PAGA Notice"), pursuant to the California Private Attorneys General Act of 2004, Labor Code sections 2698 – 2699.8, which PAGA Notice alleged violations of the Labor Code against Juno Capital Partners, LLC ("Juno") and John Gregory Richardson ("Richardson"). That PAGA Notice is incorporated by reference herein in full, and remains in full force and effect. This Amendment To PAGA Notice supplements page 3 of the PAGA Notice by adding the following underlined allegations against Juno and Richardson:

"As discussed below, after McGarvey's termination, in a further act of discrimination and retaliation, Richardson and Juno had McGarvey work as an "independent contractor" for Juno, and Richardson and Juno demanded and required that McGarvey sign a release of claims if McGarvey wanted to receive compensation for his independent contractor work and receive his unpaid bonus from Juno which he had already earned. The release would have also wiped out McGarvey's equity in Juno and other compensation from McGarvey's employment at Juno due and owing to McGarvey. This violated Labor Code § 1102.5(b), (c) and/or (d)."

Very truly yours,

John M. Scheppach
Scheppach Bauer PC

SCHEPPACH | BAUER PC

Scheppach Bauer PC
23181 Verdugo Drive, Suite 105-A
Laguna Hills, California 92653
Phone: (949) 209-8880

John M. Scheppach
Email: jmscheppach@sbpc.law
Direct Dial: (949) 209-8895

PAGA NOTICE

December 24, 2024

VIA CERTIFIED MAIL TO:	**VIA ONLINE SUBMISSION TO:**
JUNO CAPITAL PARTNERS, LLC Attn: John Gregory Richardson Managing Partner & Registered Agent For Service Of Process 41 Sneckner Court Menlo Park, CA 94025 **JOHN GREGORY RICHARDSON** 41 Sneckner Court Menlo Park, CA 94025	**The State Of California,** **Labor & Workforce Development Agency** Current Website Address https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html/

Re: *Michael McGarvey, et al. v. Juno Capital Partners, et al.*
PAGA Notice

Dear Employer, John Richardson, And The LWDA:

Michael McGarvey ("McGarvey"), on behalf of himself and all other aggrieved employees, and through his undersigned representative, hereby provides notice pursuant to the California Private Attorneys General Act of 2004, Labor Code sections 2698 – 2699.8 ("PAGA"), of alleged violations of the California Labor Code committed by Juno Capital Partners, LLC (the "Company," "Juno Capital Partners," or "Juno"). Pursuant to the requirements of PAGA, the Labor Code provisions allegedly violated, including the alleged facts and theories in support thereof, are set forth below. All citations herein are to the California Labor Code as it is presently constituted. The Labor Code may be amended in one or more respects after the date of this PAGA Notice. This PAGA Notice invokes all available forms of tolling.

In addition to the Company, this PAGA Notice is alleged against John Gregory Richardson ("Richardson"), a managing partner, owner, and director of Juno who is alleged to have caused the asserted Labor Code violations. (*Atempa v. Pedrazani* (2018) 27 Cal.App.5th 809; Labor Code, §§ 558 and 558.1.) This PAGA Notice is also alleged against DOES 1 through 10, inclusive, as additional responsible parties. These DOES include, without limitation, any predecessor, successor, or affiliate entity who was the joint employer of McGarvey or who was otherwise responsible for the Labor Code violations herein asserted. If and when such additional responsible parties are ascertained, this PAGA Notice may be amended to name such additional responsible parties, and any such amendment shall relate back to this PAGA Notice.

I. BACKGROUND.

Juno Capital Partners is a growth equity firm based in California that provides its business clients with capital support as well as advisory services. Juno styles itself as a "boutique merchant bank specializing in global investment and advisory services to leading digital entertainment companies." (Juno website, junocapitalpartners.com, last visited 12/23/24). Juno employs numerous employees in California and alleged "independent contractors" in California. According to its website, Juno currently has offices in San Francisco and Los Angeles.

McGarvey worked at Juno for a number of years performing its core business functions such as investment and advisory work and working on business transactions, projects, and deals. Juno hired McGarvey as an employee under a written offer letter which promised him, among other things, salary, bonuses, commissions/fees, vacation, and an ownership interest in Juno. During his employment at Juno, McGarvey was also offered and promised various forms of compensation for his work, including in writing.

Both before and after McGarvey worked at Juno as an employee, Juno and Richardson had McGarvey work as an "independent contractor" of Juno performing the same job duties and/or functions that McGarvey performed as an employee.

II. ALLEGED LABOR CODE VIOLATIONS.

A. Discrimination, Retaliation, And Wrongful Termination.

Labor Code § 98.6 provides in pertinent part: "A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter … , or because the employee or applicant for employment has … made a written or oral complaint that they are owed unpaid wages, or …because of the exercise by the employee or applicant for employment on behalf of themselves or others of any rights afforded them." (Underscore added.) Furthermore, Labor Code § 232 prohibits an employer from discharging, disciplining, or otherwise discriminating "against an employee who discloses the amount of his or her wages." In addition, Labor Code § 1102.5(b) prohibits an employer, or any person acting on behalf of the employer, from, among other things, retaliating against an employee for disclosing information "to a person with authority over the employee" if the "employee has a reasonable cause to believe that the information discloses a violation of" law. And Labor Code § 1102.5(c) prohibits an employer, or any person acting on behalf of the employer, from retaliating against an employee for refusing to participate in an activity that would violate law.

McGarvey experienced discrimination, retaliation, and a wrongful termination in contravention of Labor Code §§ 98.6, 232, and 1102.5(b) and (c).

During his employment at Juno, McGarvey made written or oral complaints to Richardson and Juno about owed wages, including, without limitation, a bonus which McGarvey had earned and which remained unpaid and deferred for a long period of time. (Among other things, the failure to pay all wages owed in a timely manner violates Labor Code § 204.) The owed wages were disclosed to, and known by, Richardson and Juno.

After McGarvey's protected activity of complaining about and disclosing owed wages, McGarvey was discriminated and retaliated against in that Richardson forced McGarvey to choose between a demotion at Juno with a massive reduction in salary or to work as an independent contractor (not as an employee) of Juno with no healthcare benefits. Richardson purposely created a rushed and pressurized scenario for McGarvey. Before this forced decision was even finalized, Richardson and Juno terminated McGarvey's employment with Juno. The discrimination and retaliation McGarvey experienced, including his separation from employment at Juno, violated Labor Code §§ 98.6, 232, and 1102.5(b) and (c).

As discussed below, after McGarvey's termination, in a further act of discrimination and retaliation, Richardson and Juno had McGarvey work as an "independent contractor" for Juno, and Richardson and Juno demanded and required that McGarvey sign a release of claims if McGarvey wanted to receive compensation for his independent contractor work and receive his unpaid bonus from Juno which he had already earned.

B. Unreimbursed Expenses.

McGarvey brings this PAGA claim for unreimbursed expenses on behalf of himself and on behalf of all other employees of Juno who incurred unreimbursed expenses during the applicable limitations period.

Labor Code § 2802 requires employers to reimburse employees for expenses incurred in the discharge of their work-related duties or while carrying out the directions of their employer. McGarvey and other aggrieved employees of Juno incurred expenses for which they were not reimbursed, including (without limitation) those set forth below, in violation of Labor Code § 2802.

McGarvey and other Juno employees routinely utilized their personal cell phones for work-related tasks and activities, but were not reimbursed for this expense. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.)

The Company's failure to properly pay the expenses of McGarvey and the other aggrieved employees violates and is actionable under Labor Code § 2802(a)-(c).

C. Failure To Pay All Wages Owed Upon Separation From Employment.

McGarvey brings this PAGA claim for failure to pay all wages owed upon separation from employment on behalf of himself and all other employees of Juno who were separated from employment during the applicable limitations period and were not provided all their wages due upon separation.

Labor Code § 201 and 202 impose a time requirement on employers when it comes to providing the final wages of separated employees. A failure to pay all the wages due to a separated employee in the time required by the Labor Code creates additional liability under Labor Code § 203. Moreover, the Labor Code requires that earned vacation wages be paid out upon separation. (Labor Code, § 227.3.)

At the time of McGarvey's separation from employment at Juno, he was owed but was not paid various types of wages, including, without limitation, fees/commissions, bonus pay, vacation wages, and his ownership interest or share in Juno. Richardson caused this deficiency in final pay. Juno's failure to pay all wages due to McGarvey upon his separation from employment violated, inter alia, Labor Code §§ 201, 203, and 227.3.[1]

The Company issued a payment to McGarvey well after his separation from employment, which was late under, and violated, Labor Code §§ 201 and 204.

D. Inaccurate Wage Statements.

McGarvey brings this PAGA claim on behalf of himself and all other employees of Juno who were issued inaccurate wage statements within the applicable limitations period.

Labor Code section 226, subdivision (a), requires that employers (such as the Company) furnish to their employees, semi-monthly or at the time of each payment of wages, an accurate itemized statement in writing showing the "(1) gross wages earned, (2) total hours worked by the employee …, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, …, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, … , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee[.]"

Among other violations, McGarvey's wage statement that he was issued in connection with his separation from employment at Juno was inaccurate in that failed to include all the gross and net wages earned (Labor Code, § 226(a)(1) & (5)), including, among other things, fees/commissions, bonus pay, vacation wages, and buyout of his ownership interest or share in Juno. The Company's wage statements also inaccurately describe the compensation being paid to employees, using labels or descriptors that do not correspond to the types of wages actually being paid, in violation of Labor Code § 226(a), including (a)(1).

In addition, the Company failed to reflect on McGarvey's and other aggrieved employees' wage statements, or on other writings, the amount of paid sick leave available for use by the employee, in violation of Labor Code § 246(i).

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[1] To the extent the Company claims that McGarvey quit as opposed to being discharged, a characterization that McGarvey vigorously disputes, the Company would have still violated Labor Code §§ 202, 203, and 227.3, as McGarvey still did not receive all wages owed to him within the time mentioned in Labor Code § 202.

E. Illegal Agreements.

Labor Code § 206.5 makes it illegal for an employer to "require the execution of a release of a claim or right on account of wages due." Moreover, Labor Code § 432.5 prohibits an employer or agent, manager, superintendent, or officer thereof, from requiring any employee to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.

After McGarvey was forced to choose between a demotion with a massive reduction in salary or to work as an independent contractor (not as an employee) of Juno, Richardson required McGarvey to execute a document which contained a release as a condition of Richardson receiving compensation already due from McGarvey's employment at Juno, including an unpaid bonus. The release would have also wiped out McGarvey's equity in Juno and other compensation from McGarvey's employment at Juno due and owing to McGarvey. This violated Labor Code § 206.5 and 432.5.

F. Misclassification As An Independent Contractor.

McGarvey brings this PAGA claim for misclassification as an independent contractor on behalf of himself and all other workers of Juno during the applicable limitations period who were misclassified as independent contractors of Juno.

Labor Code § 226.8 makes it unlawful for any person or employer to engage in the willful misclassification of an individual as an independent contractor.

Both before and after his employment at Juno as an employee, McGarvey was misclassified as an independent contractor of Juno. After his employment at Juno ended, McGarvey worked without compensation for Juno as an independent contractor for a several-month period. Richardson was aware that McGarvey was working for Juno without compensation during this several-month period. As an independent contractor, McGarvey performed work that was inside the usual course of Juno's business, and McGarvey did not meet any applicable test for independent contractor status. Indeed, McGarvey performed the same work and/or job functions as an "independent contractor" as he did as an "employee" of Juno. Similarly, during the applicable limitations period, Juno utilized other workers to perform work within the usual course of Juno's business who did not meet any applicable test for independent contractor status.

During the applicable limitations period, Juno and Richardson willfully misclassified McGarvey and other workers as "independent contractors," all in violation of Labor Code § 226.8.

When McGarvey and other workers were considered "independent contractors" of Juno they instead qualified as, and they should have been classified as, employees, and they should have received all the entitlements that California law confers upon employees. However, they were willfully misclassified in order to lessen Juno's expenditures.

As a result of the misclassification as an independent contractor, McGarvey and other misclassified workers of Juno were not (i) paid at least the applicable California minimum wage for each hour they worked (Labor Code §§ 1194, 1194.2, 1197, 1197.1, 1199, and 226.7(d)), (ii) paid all the overtime and/or double-time compensation owed to them for the work they performed during overtime and/or double-time hours (Labor Code §§ 510, 511, & 1198), (iii) timely paid all wages owed to them during employment as required by law (Labor Code § 204 & 218), (iv) reimbursed for incurred expenses as required by law (Labor Code, § 2802), (v) issued accurate and itemized wage statements as required by law (Labor Code, § 226), (vi) provided with paid sick leave as required by law (Labor Code, § 246), or (vii) issued final paychecks that tendered to them all wages due (Labor Code, §§ 201-203). Moreover, as a result of the misclassification, Juno (viii) failed to keep accurate records of all hours worked, in violation of Labor Code § 1174(d), and failed to maintain wage statements for this work, in violation of Labor Code § 226(a).

G. <u>Recordkeeping Violations</u>.

Through counsel, McGarvey submitted a records request to Juno for his personnel records and signed records under Labor Code § 1198.5 and Labor Code § 432. In response, Juno produced a single record. Juno failed to maintain and/or produce the records required by Labor Code §§ 1198.5 and 432. To the extent Juno produces additional records in the future, that production would be untimely under Labor Code §§ 1198.5 and 432.

III. <u>CIVIL PENALTIES SOUGHT</u>.

For all the above-specified Labor Code violations, McGarvey seeks all available civil penalties against the Company that the law allows, including the default civil penalties provided by PAGA, and any civil penalties specifically provided by statute for the alleged Labor Code violations (including, without limitation, Labor Code §§ 210, 226.3, 226.8, 558, 1174.5) which are recoverable under PAGA. The civil penalties are also sought against Richardson for causing and participating in the violations alleged above.

To the extent any other entity under the control of or acting in concert with the Company, or to the extent any other owner, director, officer, or managing agent of the Company, caused or contributed to the Labor Code violations (see, e.g., Labor Code § 558.1), civil penalties are also sought as to such entities or responsible parties to the extent authorized by law.

To the extent some violations described herein give rise to civil penalties that can be obtained directly under the applicable statutes without invoking or seeking relief under PAGA, nothing herein is intended to preclude McGarvey from seeking those civil penalties directly under those statutes.

IV. <u>RESERVATION OF RIGHTS</u>.

McGarvey reserves the right to assert claims and theories for Labor Code violations and associated civil penalties that are uncovered through discovery (formal or informal) but which are presently unknown. McGarvey reserves the right to amend this PAGA Notice to allege such claims and theories, and to expressly name additional parties including (without limitation) through doe amendments. Any such amendment shall relate back to this PAGA Notice.

Very truly yours,

John M. Scheppach
Scheppach Bauer PC