

EXHIBIT 5

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

HOLLY GARRETT, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.

Defendant.

Case No.: CVRI2103869

**FIRST AMENDED COMPLAINT –
PAGA ENFORCEMENT ACTION**

(1) Claim for Civil Penalties Pursuant to
PAGA §§ 2698-2699.5 for Violations of
California Labor Code and Wage Order 4-
2001

1 Plaintiff Holly Garrett, as an aggrieved employee and on behalf of the State of California
2 and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code §§ 2698-2699.5 (“PAGA”) to recover civil penalties on
6 behalf of Plaintiff, the State of California, and other current and former employees who worked
7 for Defendant in California as non-exempt, hourly-paid nurse case manager employees (“non-
8 party Aggrieved Employees”). Plaintiff alleges that such employees suffered violations of the
9 California Labor Code and IWC Wage Order 4-2001, as set forth in this complaint at any time
10 between one year prior to the filing of the written notice to the Labor and Workforce
11 Development Agency (“LWDA”) in this case on June 9, 2021. Plaintiff’s share of civil penalties
12 sought in this action does not exceed \$75,000.

13 2. This Court has jurisdiction over this action under California Constitution, Article
14 VI, § 10. The overall amount in controversy exceeds \$25,000. The statute under which this
15 action is brought does not specify any other basis for jurisdiction.

16 3. This Court has jurisdiction over Defendant because Defendant has sufficient
17 minimum contacts in California, and otherwise intentionally avails itself of the California
18 market so as to render the exercise of jurisdiction over them by the California courts consistent
19 with traditional notions of fair play and substantial justice. Also, Defendant employed the
20 Plaintiff and all other aggrieved employees in California.

21 4. There is no basis for federal diversity jurisdiction in this action given that
22 California is the real party in interest in this action, and is not a “citizen” for purposes of
23 satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir.
24 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in
25 controversy requirement for federal diversity jurisdiction in this action, and that diversity
26 jurisdiction cannot be established when Plaintiff’s share of the civil penalties attributable to
27 violations personally suffered is less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendant employed Plaintiff and other employees within the County of Riverside and have violated the requirements of the applicable Wage Order in this County, which gives rise to the civil penalties sought in this action. Cal. Code Civ. P. § 393(a) (venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose). Because Defendant has employees in Riverside County and the State of California could bring this action to recover penalties in Riverside County, venue is proper. *Ibid.*

5. Further, venue is proper in this Court because Defendant is a non-California citizen and has its principal place of business in Illinois, and it has not filed a statement with the California Secretary of State designating a county in which it maintains a principal place of business in accordance with California Corporations Code §§ 16959 & 18200. (See Cal. Code Civ. P. § 395.5, *Easton v. Superior Court* (1970) 12 Cal.App.3d 243, 246-247, 90 Cal.Rptr. 642). Thus, Defendant has no right to any particular venue and suit may be brought against Defendant in any county in California.

6. PAGA authorizes aggrieved employees to sue their current or former employers for various civil penalties for violations of certain provisions in the California Labor Code as private attorneys general. Labor Code Section 1198 makes a violation of a Wage Order a violation of the Labor Code.

PARTIES

7. **Plaintiff Holly Garrett** (“Plaintiff” or “Garrett”) is an individual residing in Riverside County, California. She has standing to file this lawsuit. Garrett was a nurse case manager employee of Defendant who worked remotely from her home in Riverside County, California. She was employed beginning in or around 2018 through approximately February 2021.

8. **Defendant Sedgwick Claims Management Services, Inc.** (“Defendant” or “Sedgwick”) is a foreign corporation organized under the laws of the state of Illinois that does business in California. It may be served with process through its registered agent, Corporation

Service Company dba CSC Lawyers Incorporating Service (C1592199) at 2710 Gateway Oaks Drive, Suite 150N; Sacramento CA 95833.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

9. Plaintiff worked for Defendant as a nonexempt, hourly-paid nurse case manager employee, providing claims management services regarding worker's compensation claims on behalf of Defendant's customers. Case management services also include reviewing medical records, coordinating medical treatment with providers, communications with customers and patients, and other related activities, all of which are more specific tasks falling under Plaintiff's more general claims management duties.

10. Defendant employs thousands of nurse case manager employees across the country, and over 100 such employees in the State of California.

11. Plaintiff worked for Defendant in the State of California beginning in or about 2018 through approximately February 2021. Plaintiff began her employment with York Risk Services Group, Inc. ("York"), which is a company offering similar (if not identical) services to Sedgwick. York was acquired by Sedgwick sometime in 2019. Based on information and belief, York is a subsidiary of Sedgwick.

12. Plaintiff did not receive all of the compensation she was entitled to when she was required to work over forty hours in a given workweek or over eight hours in a specific day for Defendant, because Defendant frequently refused to pay her for assigned work which resulted and required over eight hours of work in a day, often leaving up to four hours per day or more of uncompensated work.

13. Specifically, Plaintiff was assigned a caseload of approximately 60 cases. Plaintiff was required to bill per activity she performed, as it relates to cases assigned to her by Defendant. Her billable time was then submitted as an invoice to an insurance company or to Worker's Compensation (*i.e.*, clients of Sedgwick). In addition, Defendant would compensate Plaintiff based solely on her billable time. This pay practice is problematic, and results in liability against Defendant, because Plaintiff's billable time does not fully encompass her actual

1 work time. Indeed, on or about March 2020 it became Defendant's formal policy and/or practice
2 that Plaintiff and other similarly situated employees not be paid for more than eight hours in a
3 day / five days a week, notwithstanding work performed beyond eight hours in a day and/or
4 forty hours in a workweek, and Defendant's actual and/or constructive knowledge of said work.

5 14. Plaintiff reported this failure to pay her for assigned work which she completed
6 over eight hours in a day and/or forty hours in a week, but Defendant failed to compensate her
7 for those hours of work. Indeed, Plaintiff submitted billable time to Defendant that reflected
8 overtime work, on occasions covered for other similarly situated employees that required her to
9 work overtime, and prepared and submitted reports during weekends. Regardless, Defendant
10 failed to pay Plaintiff overtime pay.

11 15. When Plaintiff and similarly situated nurse case managers worked over forty
12 hours in a workweek or more than eight hours in a day, which happened frequently, they were
13 eligible to receive overtime wages. Because she and the non-party Aggrieved Employees are
14 hourly paid, no exemptions from overtime pay can apply.

15 16. However, Defendant typically requires its nurse case manager employees to
16 perform uncompensated work "off-the-clock" before and after their scheduled shifts. Plaintiff
17 was required to perform "off-the-clock" duties after her shift had ended including
18 communications and correspondence with other employees and customers, completing
19 paperwork, and reviewing medical records. The time that Plaintiff and similarly situated nurse
20 case managers spent completing these pre- and post-liminary duties without pay was more than
21 *de minimus*.

22 17. Defendant's failure to compensate Plaintiff and similarly situated nurse case
23 managers for work they performed "off-the-clock" resulted in overtime violations.

24 18. For instance, during the pay period beginning July 19, 2020 and ending July 25,
25 2020, Plaintiff earned 40 hours of pay at the rate of \$43.70 per hour. Defendant generally only
26 paid Plaintiff Garrett for a standard forty hours per week, or eight hours of work for each
27 individual day over a total of five days.

1 19. Although Defendant only paid Plaintiff for 40 hours of work that week, the total
2 number of hours which Defendant billed its various customers for Plaintiff's work that week
3 totaled 72.2 hours.

4 20. Plaintiff alleges that this extra, uncompensated time frequently totaled to at least
5 an additional 10 hours of work per week, if not more.

6 21. Plaintiff also frequently worked more than eight hours a day, and occasionally
7 more than twelve hours per day.

8 22. By way of example, Plaintiff was paid for only 8 hours of work on Wednesday,
9 July 22, 2020. However, Defendant billed a total of 14.4 hours of Plaintiff's work on that same
10 day to various customers, consistent with the fact that Plaintiff worked more than 8 hours on
11 that day.

12 23. Regardless, Defendant only compensated Plaintiff for eight hours at her normal
13 pay rate of \$43.70, totaling approximately \$349.60, which does not include premium pay for
14 overtime worked under the FLSA and California law.

15 24. Under the applicable provisions of the California Labor Code, Plaintiff would
16 have been entitled to 6.4 hours of overtime, with 2.4 hours of that being due at an overtime rate
17 of double her regular rate of pay.

18 25. Accordingly, for that single day, Plaintiff is owed additional overtime pay totaling
19 \$471.96; 4 hours at her standard overtime rate of \$65.55 and 2.4 hours at her double overtime
20 rate of \$87.40.

21 26. Plaintiff alleges that this extra, uncompensated time frequently totaled to at least
22 an additional 2 hours of work per day, if not more.

23 27. Defendant's violations of the California Labor Code resulted in violations under
24 PAGA for which Plaintiff now seeks applicable penalties.

25 28. Such overtime violations were not limited to this particular pay period, but
26 occurred regularly throughout Plaintiff's tenure with Defendant. Similar overtime violations
27 occurred with respect to other similarly situated nurse case manager employees.

1 29. On information and belief, this policy or practice of Defendant to only pay wages
2 for standard eight-hour days and to fail to pay for mandatory pre- and post-liminary work
3 performed “off-the-clock” was uniformly and consistently applicable to all of its nurse case
4 manager employees in California.

5 30. The above-described mandatory work time completed “off-the-clock” was not
6 included in Plaintiff’s and non-party Aggrieved Employees’ itemized wage statements.

7 31. Defendant willfully did not pay Plaintiff and non-party Aggrieved Employees the
8 sums due pursuant to work performed “off-the-clock” at the time of their separation from
9 employment with either Defendant.

10 32. Defendant either knew or should have known that Plaintiff was required to work
11 “off-the-clock.” Defendant knew that the number of hours it billed its customers exceed the
12 actual number of hours paid to its nurse case managers for the very same work.

13 33. Frequently, Defendant expected its nurse case managers, including Plaintiff, to
14 work through meal and rest breaks. As a result, Plaintiff did not receive meal and rest breaks
15 required by the California Labor Code.

16 34. Defendant did not pay any statutorily-prescribed penalty for its failure to relieve
17 its workers during mandatory meal and rest breaks.

18 35. On information and belief, this failure to provide all meal and rest breaks required
19 by state law applied to all nonexempt, hourly-paid nurse case manager employees of Defendant.

20 36. Because of this policy and/or practice, Defendant failed to pay Plaintiff and
21 similarly situated nurse case manager employees all wages to which they were entitled by law.

22 37. Defendant willfully failed to pay Plaintiff and similarly situated nurse case
23 manager employees the sums due pursuant to uncompensated or undercompensated meal and
24 rest breaks at the time of their separation from employment with Defendant.

25 38. At all times set forth herein, PAGA provides that any provision of law under the
26 Labor Code and applicable IWC Wage Order that provides for a penalty to be assessed and
27 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
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Order may, as an alternative, be recovered in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code Section 2699.3.

39. PAGA defines an “aggrieved employee” in Labor Code Section 2699(c) as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

40. Plaintiff and other current and former nurse case manager employees of Defendant are “aggrieved employees” as defined by Labor Code Section 2699(c) in that they are all Defendant’s current or former California employees who experienced violations of the relevant provisions of the California Labor Code and IWC Wage Order.

41. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated. including the facts and theories to support the alleged violation.
- (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation (“LWDA’s Notice”) within sixty (60) calendar days or the postmark date of the aggrieved employee's notice. Upon receipt of the LWDA Notice. or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee’s notice, the aggrieved employee may commence

1 a civil action pursuant to California Labor Code Section 2699 to recover civil
2 penalties.

3 42. On June 9, 2021, Plaintiff provided written notice by online filing to the LWDA
4 and by certified mail to Defendant of the specific provisions of the California Labor Code
5 alleged to be violated, including facts and theories to support the alleged violations, in
6 accordance with California Labor Code Section 2699.3. Plaintiff's written notice was
7 accompanied by the requisite filing fees of seventy-five dollars (\$75). That same day, the
8 LWDA PAGA Administrator confirmed receipt of the written notice and assigned PAGA Case
9 Number LWDA-CM-834484-21.

10 43. As of the date of the filing of this complaint, over 65 days have passed since
11 Plaintiff sent initial notice described above to the LWDA, and the LWDA has not responded
12 that it intends to investigate Plaintiff's claims.

13 44. Thus, Plaintiff has satisfied the administrative prerequisites under California
14 Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations of the
15 relevant provisions of the California Labor Code and IWC Wage Order.

16 45. Defendant at all times relevant to this complaint was an employer who violated
17 Plaintiff and other non-party Aggrieved Employees' rights by violating sections of the
18 California Labor Code and IWC Wage Order as set forth in this complaint.

19 46. Pursuant to PAGA, Plaintiff, acting in the public interest as a private attorney
20 general, seeks assessment and collection of civil penalties for herself and all other non-party
21 Aggrieved Employees and the State of California against Defendant for violations of the
22 relevant provisions of the California Labor Code and IWC Wage Order.

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FIRST CAUSE OF ACTION

California PAGA Claim, Cal. Labor Code §§ 2698-2699.5

**Civil Penalties Pursuant to Cal. Labor Code §§ 558, 2699
for Violations of Labor Code §§ 201-203, 226, 226.7, 510, 512, 1174,
1174.5, 1182.11, 1182.12, 1194, 1771, and 1774; Cal. Wage Order No. 4-2001**

**By Plaintiff on Behalf of the State of California and
Aggrieved Employees Against Defendant**

47. Under the California Private Attorneys General Act (“PAGA”) of 2004, Cal. Labor Code §§ 2698-2699.5, an aggrieved employee, on behalf of himself or herself and other current or former employees as well as the general public, may bring a representative action as a private attorney general to recover penalties for an employer’s violations of the California Labor Code and IWC Wage Orders. These civil penalties are must be allocated 75% to California’s Labor and Workforce Development Agency and 25% to the aggrieved employee. Cal. Labor Code § 2699.

48. Defendant’s policy or practice of requiring Plaintiff and the non-party Aggrieved Employees to complete mandatory pre- and post-shift work off-the-clock without any compensation resulted in violations of the California Labor Code’s overtime wage payment provisions. Cal. Labor Code §§ 510, 1194, 1771, 1774.

49. Defendant’s policy or practice of requiring Plaintiff and the non-party Aggrieved Employees to work without proper meal and rest breaks resulted in violations of the California Labor Code. California Labor Code §§ 226.7 & 512 and California Wage Order 4-2001, §§ 11(A), 12(A). Defendant did not pay mandatory penalties when it failed to fully relieve Plaintiff and non-party Aggrieved Employees of all duties for meal and rest breaks. Cal. Labor Code § 226.7 and California Wage Order 4-2001, §§ 11(B), 12(B).

50. Furthermore, Defendant’s failure to pay proper compensation to Plaintiff and the non-party Aggrieved Employees; failure to provide accurate, itemized wage statements and to keep and furnish accurate records of hours worked (Cal. Labor Code §§ 226, 1174, 1174.5); and failure to pay them all wages due immediately upon discharge and within the time required by

1 law after their employment ended (Cal. Labor Code §§ 201-203) is unlawful and constitutes
2 violations of the California Labor Code, each actionable under PAGA.

3 51. Plaintiff alleges, on behalf of herself and non-party Aggrieved Employees, as well
4 as the State of California, that Defendant has violated the following provisions of the California
5 Labor Code and the following provisions of California Wage Orders that are each actionable
6 through the Cal. Labor Code and PAGA, as previously alleged herein: Cal. Wage Order No. 4-
7 2001, Cal. Labor Code §§ 201-203, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1771, and 1774.

8 52. Plaintiff is also entitled to civil penalties to be paid by Defendant and allocated as
9 PAGA requires, pursuant to Cal. Labor Code § 2699(a), for Defendant's violations of the
10 California Labor Code and relevant IWC Wage Order(s) for which violations a civil penalty is
11 already specifically provided by law. Further, Plaintiff is entitled to civil penalties to be paid by
12 Defendant and allocated as PAGA requires, pursuant to § 2699(f) for Defendant's violations of
13 the California Labor Code and IWC Wage Orders for which violations a civil penalty is not
14 already specifically provided.

15 53. As described above, Plaintiff has satisfied the administrative prerequisites under
16 California Labor Code Section 2699.3(a) to recover civil penalties against Defendant for
17 violations of the relevant provisions of the California Labor Code and IWC Wage Order.

18 54. Under PAGA, Plaintiff and the non-party Aggrieved Employees and the State of
19 California are entitled to recover the maximum civil penalties permitted by law for the
20 violations of the California Labor Code and Wage Order(s) that are alleged in this Complaint.

21 **PRAYER FOR RELIEF**

22 55. Plaintiff, on behalf of the State of California and all other non-party Aggrieved
23 Employees, prays for relief and judgment against Defendant as follows:

- 24 a. For all civil penalties due under PAGA in an amount to be determined at trial, but
25 at least the jurisdictional amount of this court;
26 b. For post-judgment interest, at the legal rate, as provided by law;
27 c. For attorneys' fees and costs; and
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1 d. For such other and further relief as the Court may deem just, proper, and
2 equitable.
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4 Dated: September 28, 2021

Respectfully submitted,

5 SHELLIST | LAZARZ | SLOBIN LLP
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7
8 By: /s/ Melinda Arbuckle
Melinda Arbuckle

9 Counsel for Plaintiff Holly Garrett
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