

1 MESERVY LAW, P.C.
LONDON D. MESERVY (SB# 216654)
2 401 West A Street, Suite 1712
San Diego, CA 92101
3 Telephone: 1-858-779-1276
Facsimile: 1-866-231-8132
4 london@meservylawpc.com

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By Marc David, Deputy Clerk

5 DENTE LAW, P.C.
MATTHEW S. DENTE (SB# 241547)
6 5040 Shoreham Place
San Diego, CA 92122
7 Telephone: 619.550.3475
Facsimile: 619.342.9668
8 matt@dentelaw.com

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN DIEGO
14 CENTRAL DIVISION
15

16 MANUEL POSADAS, as a Private Attorney
General,

17 Plaintiff,

18 v.

19 JPMORGAN CHASE BANK, AND DOES 1-
20 10, INCLUSIVE,

21 Defendants.
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CASE NO. 37-2018-00005816-CU-OE-CTL

CLASS ACTION

**[PRIVATE ATTORNEY GENERAL
ACTION AS TO PLAINTIFFS' SECOND
CAUSE OF ACTION]**

FIRST AMENDED COMPLAINT FOR:

**(1) FAILURE TO REIMBURSE
EMPLOYEE EXPENSES; AND**

**(2) VIOLATION OF CALIFORNIA
LABOR CODE § 2802 BROUGHT
UNDER THE CALIFORNIA PRIVATE
ATTORNEYS GENERAL ACT OF 2004
(CAL. LAB. CODE § 2698, ET SEQ.).**

DEMAND FOR JURY TRIAL

1 GLICK LAW GROUP, P.C.
2 NOAM GLICK (SB# 251582)
3 225 Broadway, Suite 2100
4 San Diego, CA 92101
5 Tel: (619) 382-3400
6 Fax: (619) 615-2193
7 noam@glicklawgroup.com

8 Attorneys for Plaintiff Manuel Posadas
9 and Class Members

10 JAMES HAWKINS APLC
11 JAMES R. HAWKINS (SB# 192925)
12 9880 Research Drive, Suite 200
13 Irvine, California 92618
14 Telephone: (949) 387-7200
15 Facsimile: (949) 387-6676
16 james@jameshawkinsaplc.com

17 LAW OFFICES OF SEAN S. VAHDAT & ASSOCIATES, APLC
18 SEAN S. VAHDAT SBN 239080
19 1224 East Katella Avenue, Suite 211
20 Orange, CA 92867
21 Telephone: (949) 496-2011
22 Facsimile: (949) 313-7088
23 sean@vahdatlaw.com

24 Attorneys for Plaintiff Jennifer Salas
25 and Class Members

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1 COMES NOW Plaintiffs Manuel Posadas and Jennifer Salas (“Plaintiffs”), individually
2 and on behalf of others similarly situated, and also as Private Attorney Generals and assert claims
3 against defendant JPMorgan Chase Bank (“Chase”) and Does 1-10, inclusive (each a “Defendant”
4 and collectively “Defendants”) as follows:

5 **JURISDICTION AND VENUE**

6 1. This class action is brought under California Code of Civil Procedure §382. The
7 monetary damages and restitution sought by Plaintiffs exceed the minimum jurisdiction limits of
8 the California Superior Court and will be established according to proof at trial.

9 2. This is also a private attorney general action for recovery of civil penalties under
10 the California Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698,
11 *et seq.* ("PAGA"). *See Arias v. Superior Court* 46 Cal. 4th 969 (2009). PAGA permits an
12 "aggrieved employee" to bring a private attorney general action on behalf of themselves and the
13 State of California to address an employer's violations of the California Labor Code. In this case,
14 Defendants violated California Labor Code § 2802 as set forth more fully below. Plaintiffs seek
15 PAGA penalties on behalf of themselves, Defendants’ other current and former California
16 employees, and the State of California.

17 3. This Court has jurisdiction over this action under the California Constitution
18 Article VI §10, which grants the California Superior Court original jurisdiction in all causes
19 except those given by statute to other courts. The statutes under which this action is brought do
20 not give jurisdiction to any other court.

21 4. This Court has jurisdiction over Defendants because, upon information and belief,
22 each Defendant is either a resident of California, has sufficient minimum contacts in California,
23 or otherwise intentionally avails itself of the California market so as to render the exercise of
24 jurisdiction over it by the California Courts consistent with traditional notions of fair play and
25 substantial justice.

26 5. Venue is proper in this Court because upon information and belief, one or more of
27 the Defendants, reside, transact business, or have offices in this County and the acts or omissions
28 alleged herein took place in this County.

PARTIES

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2 6. Plaintiff Manuel Posadas is, and at all times mentioned in this complaint was a
3 resident of San Diego County, California.

4 7. Plaintiff Jennifer Salas is, and at all times mentioned in this first amended
5 complaint was a resident of Orange County, California.

6 8. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
7 mentioned herein Chase was licensed and qualified to do business in California. On information
8 and belief, Plaintiffs allege that at all relevant times referenced herein Chase did and continues to
9 transact business throughout California.

10 9. Whenever in this complaint reference is made to any act, deed, or conduct of
11 Chase, the allegation means that Chase engaged in the act, deed, or conduct by or through one or
12 more of its manager, members, officers, directors, agents, employees, or representatives, who was
13 actively engaged in the management, direction, control, or transaction of the ordinary business
14 and affairs of Chase.

15 10. Plaintiffs are ignorant of the true names and capacities, whether individual,
16 corporate, associate, or otherwise, of the defendants sued herein as Does 1 through 10, inclusive
17 and therefore sues said defendants (the "Doe Defendants") by such fictitious names. Plaintiffs
18 will amend this complaint to insert the true names and capacities of the Doe Defendants at such
19 time as the identities of the Doe Defendants have been ascertained.

20 11. Plaintiffs are informed and believe, and thereon allege, that the Doe Defendants
21 are the partners, agents, or principals and co-conspirators of Chase, and of each other; that Chase
22 and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted
23 the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such
24 acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability
25 of the Defendants as alleged herein.

26 12. Plaintiffs are further informed and believe, and thereon allege, that at all times
27 herein material, each Defendant was completely dominated and controlled by its co-Defendants
28 and each was the alter ego of the other. Whenever and wherever reference is made in this

1 complaint to any conduct by a Defendant, such allegations and references shall also be deemed to
2 mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever
3 and wherever reference is made to individuals who are not named as Defendants in this
4 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant
5 times acted on behalf of Defendants named in this complaint within the scope of their respective
6 employments.

7 **ALLEGATIONS REGARDING CALIFORNIA LABOR CODE PAGA ACTION**

8 13. This is a private attorney general action for recovery of penalties under PAGA,
9 California Labor Code § 2698, et seq. PAGA permits an "aggrieved employee" to bring a lawsuit
10 on behalf of themselves and the state of California to address an employer's violations of the
11 California Labor Code. In this case, Defendants violated California Labor Code § 2802 as set
12 forth more fully below. Plaintiffs seeks PAGA penalties on behalf of himself, Defendants' other
13 current and former California employees, and the State of California.

14 14. Plaintiffs' Second Cause of Action is suitable for treatment as a private attorney
15 general action under PAGA for the following reasons:

16 (a) The violations set forth in Plaintiffs' Second Cause Of Action allege
17 violations of the California Labor Code for which the Code provides a civil penalty to be assessed
18 and recovered by the Labor and Workforce Development Agency ("LWDA") or any department,
19 division, commission, boards, agencies, or employees, or for which a penalty is provided for
20 under Labor Code § 2699(f); and

21 (b) Plaintiffs each are an "aggrieved employee" because they were employed
22 by Defendants and had the offending violations committed against them;

23 (c) Plaintiffs seek to recover civil penalties under PAGA for Labor Code
24 violations committed against them and other "Current and Former Employees;"

25 (d) Plaintiffs have complied with the requirement to commence a civil action
26 under Labor Code § 2699.3;

27 (e) Plaintiff have complied with the exhaustion requirements of PAGA by
28 providing notice on November 2, 2017 and February 28, 2018 to the LWDA and by certified

1 letter to Defendants concerning the PAGA claims Plaintiffs intended to pursue. More than sixty-
2 five days elapsed since Plaintiffs served the PAGA notice and the LWDA did not take any action.

3 (f) "Current and Former Employees" for the purposes of the PAGA claims
4 include any and all persons who are or were employed as Relationship Managers and similar
5 positions however titled, by Defendants in the state of California.

6 **CLASS ACTION ALLEGATIONS**

7 15. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all
8 other persons similarly situated, and thus, seek class certification under California Code of Civil
9 Procedure §382.

10 16. All claims alleged herein arise under California law for which Plaintiffs seek relief
11 as authorized by California law.

12 17. The proposed class is comprised of and defined as:

13 Any and all persons who are or were employed as Business Relationship Manager
14 ("BRM") I, II, III, or Senior BRM, by Defendants in the state of California within
15 four (4) years prior to the filing of the complaint in this action until resolution of
16 this lawsuit (hereinafter collectively referred to as the "Class" or "Class
17 Members").

18 18. There is a well-defined community of interest in this litigation and Class Members
19 are easily ascertainable as set forth below:

20 a. Numerosity: The members of the Class are so numerous that joinder of all
21 members of the Class would be unfeasible and impractical. The membership of the entire Class,
22 are unknown to Plaintiffs at this time, however, the membership of the Class is estimated to be
23 approximately (700) individuals and the identity of such membership is readily ascertainable by
24 inspection of Defendants' employment records.

25 b. Typicality: Plaintiffs are qualified to, and will fairly and adequately protect
26 the interests of each member of the Class with whom they have a well-defined community of
27 interest. Plaintiffs' claims herein alleged are typical of those claims which could be alleged by
28 any member of the Class and the relief sought is typical of the relief which would be sought by
each member of the Class in separate actions. All members of the Class have been similarly

1 harmed by failing to be reimbursed for business expenses due to Defendants' policies and
2 practices that affected each member of the Class similarly. Further, Defendants benefited from the
3 same type of unfair and/or wrongful acts as to each member of the Class.

4 c. Adequacy: Plaintiffs are qualified to and will fairly and adequately protect
5 the interests of each member of the Class with whom they have a well-defined community of
6 interest and typicality of claims, as demonstrated herein. Plaintiffs acknowledge that they have an
7 obligation to make known to the Court any relationships, conflicts, or differences with any
8 member of the Class. Plaintiffs' attorneys and the proposed counsel for the Class are versed in the
9 rules governing class action discovery, certification, litigation, and settlement and experienced in
10 handling such matters. Other former and current employees of Defendants may also serve as
11 representatives of the Class if needed.

12 d. Superiority: The nature of this action makes the use of class action
13 adjudication superior to other methods. A class action will achieve economies of time, effort,
14 judicial resources, and expense compared to separate lawsuits. The prosecution of separate
15 actions by individual members of the Class would create a risk of inconsistent and/or varying
16 adjudications with respect to the individual members of the Class, establishing incompatible
17 standards of conduct for the Defendants, and resulting in the impairment of the rights of the
18 members of the Class and the disposition of their interests through actions to which they were not
19 parties.

20 e. Public Policy Considerations: Employers in the state of California violate
21 employment and labor laws every day. Current employees are often afraid to assert their rights
22 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
23 because they believe their former employers may damage their future endeavors through negative
24 references and/or other means. The nature of this action allows for the protection of current and
25 former employees' rights without fear or retaliation or damage.

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1 f. Commonality: There are common questions of law and fact as to the Class
2 and Subclass that predominate over questions affecting only individual members including, but
3 not limited to:

4 1. Whether Defendants failed to reimburse Plaintiffs and Class
5 Members for business expenses they incurred in violation of California Labor Code § 2802;

6 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

7 19. Plaintiffs repeat and incorporate herein by reference and reallege each and every
8 allegation contained above, as though fully set forth herein.

9 20. Defendants employed Plaintiffs and others in the capacity of Relationship
10 Managers and similar positions, however titled (“Relationship Managers”) throughout California.

11 21. Defendants employed Plaintiffs as a Relationship Manager from in or about
12 December 2014 through in or about August 2017.

13 22. Defendants continue to employ Relationship Managers throughout the state of
14 California.

15 23. In order to perform their job duties, Relationship Managers were required to use
16 their mobile telephone to conduct business with Defendants and Defendants’ customers. Despite
17 these requirements, Defendants did not reimburse Relationship Managers for their mobile
18 telephones and mobile telephone service charged.

19 24. Plaintiffs are informed and believe, and thereon allege, that Defendants are and
20 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
21 of the requirements of California's wage and employment laws.

22 **FIRST CAUSE OF ACTION FOR FAILURE TO REIMBURSE EMPLOYEE EXPENSES**

23 **(By Plaintiffs and Class Members Against All Defendants)**

24 25. Plaintiffs repeat and incorporate herein by reference and reallege each and every
25 allegation contained above, as though fully set forth herein.

26 26. California Labor Code § 2802 provides in pertinent part that: “An employer shall
27 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
28 in direct consequence of the discharge of his or her duties”

1 the present, Defendants did not provide indemnification to Plaintiffs and their other Current and
2 Former Employees for these expenditures in violation of California Labor Code § 2802.

3 34. Plaintiffs seek civil penalties for Defendants' violations of California Labor Code
4 § 2802 under California Labor Code § 2699(f)(2).

5 35. Plaintiffs request civil penalties against Defendants for their violation of California
6 Labor Code § 2802 as provided under PAGA, plus reasonable attorneys' fees and costs, in
7 amounts to be proved at trial.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray judgment against Defendants, as follows:

10 **Class Certification**

- 11 1. That this action be certified as a class action;
12 2. That Plaintiffs be appointed as the representative of the Class;
13 3. That counsel for Plaintiffs be appointed as counsel for the Class.

14 **On the First Cause of Action**

- 15 1. For compensatory damages in an amount equal to the amount of unreimbursed
16 business expenses owed to Plaintiffs and Class Members;
17 2. For pre-judgment interest on any unreimbursed business expenses due from the
18 day that such amounts were to be reimbursed;
19 3. For reasonable attorneys' fees and costs under California Labor Code § 2802; and
20 4. For such other and further relief as the Court deems proper.

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On the Second Cause of Action

1. For penalties according to proof;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper.

Dated: April 10, 2019

MESERVY LAW, P.C.
DENTE LAW, P.C.
GLICK LAW GROUP, P.C.
JAMES R. HAWKINS, APLC
SEAN S. VAHDAT & ASSOCIATES, APLC

By: 
~~LONDON D. MESERVY~~ (SB# 216654)

Attorneys for Plaintiffs Manuel Posadas, Jennifer Salas, and Class Members