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ELECTRONICALLY  
**FILED**  
*Superior Court of California,  
County of San Francisco*  
**07/03/2023**  
**Clerk of the Court**  
BY: VERA MU  
Deputy Clerk

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO

12 EVANGELINA FAVILA, on behalf of  
13 the State, aggrieved employees, and the  
14 class,

15 Plaintiff,

16 vs.

17 THE CHARLES SCHWAB CORPORATION;  
18 CHARLES SCHWAB & CO., INC.;

19 CHARLES SCHWAB BANK SSB; and DOES  
20 1 through 10,

21 Defendants.

Case No. CGC-23-606896

**FIRST AMENDED CLASS ACTION  
AND PAGA COMPLAINT**

1. Declaratory and injunctive relief as to the Aspects of Self Agreement
2. Declaratory and Injunctive Relief as to the Speech Suppression and Restraint of Trade Requirements
3. Unfair Business Practices
4. PAGA

Complaint Filed: June 5, 2023  
Trial Date: Not yet set

22 **INTRODUCTION**

23 1. Plaintiff Evangelia Favila was a long-term employee of Defendants The Charles  
24 Schwab Corporation, Charles Schwab & Co., Inc. and Charles Schwab Bank, SSB (collectively  
25 “Defendants” or “Schwab”). During her employment, she – and other aggrieved employees –  
26 were subject to illegal agreements, policies, and practices. She remains subject to these illegal  
27 agreements. Through this litigation she seeks penalties, an injunction, and declaratory relief on  
28 an individual and representative basis.

1 **PARTIES AND JURISDICTION**

2 2. Plaintiff Favila resides in San Francisco, California and worked for Schwab

3 3. Defendants do business in San Francisco, California. Schwab is a multinational  
4 financial services firm. Defendants are joint employers and/or a single employer of Plaintiff, the  
5 aggrieved employees, and class members.

6 **FACTS**

7 4. Favila worked for Schwab from August 2009 until May 2022.

8 5. Through the course of her employment, and following her employment, she was  
9 and remains subject to Schwab’s illegal agreements, policies and practices.

10 6. On information and belief, all Schwab employees based in California are subject  
11 to these illegal agreements, policies and practices and are thus aggrieved employees and putative  
12 class members. More specifically:

13 **“ASPECTS OF SELF” AGREEMENT**

14 7. Schwab has and maintains a policy of requiring employees (including Plaintiff) in  
15 consideration for, and as a condition of, initial and continued employment, to grant Schwab the  
16 right to exploit their identity and other biometric information. For example, in its standard  
17 “Confidentiality, Nonsolicitation, and Intellectual Property Ownership Agreement” (“Ownership  
18 Agreement”), Schwab requires employees to irrevocably agree and perpetually consent that:

19 a. Schwab and those working on its behalf may record and use their picture,  
20 photograph, portrait, video, audio recording, reproductions of their likeness, voice or  
21 name, quotes, statements, text, graphics, artwork, and other content contributed by the  
22 employees (collectively “Aspects of Self”).

23 b. Schwab may use its employees’ Aspects of Self in connection with any  
24 internal or external Schwab business or project.

25 c. Schwab has the right to use, publish, display or exhibit its employees’  
26 Aspects of Self as Schwab sees fit.

27 d. Schwab owns the copyright on its employees’ Aspects of Self.  
28

1 e. Schwab has the right to use its employees' Aspects of Self in any and all  
2 media, worldwide.

3 f. Schwab's employees must release Schwab, its agents, employees,  
4 licensees, and assigns from any all claims arising from Schwab's use or sale of its  
5 employees' Aspects of Self.

6 8. On information and belief, Schwab requires all its employees to sign an Aspect of  
7 Self Agreement similar to the one it required of Plaintiff.

8 **SPEECH SUPPRESSION**

9 **AND RESTRICTIVE COVENANT REQUIREMENTS**

10 9. Schwab also has a policy of requiring its employees (including Favila) to agree to,  
11 and comply with, illegal confidentiality, speech suppression, and restrictive covenant policies,  
12 agreements, and practices. For example, in its Ownership Agreement, Schwab requires, as a  
13 condition of initial and continued employment, that its employees never use or disclose "all  
14 information learned during my employment . . . that is not generally known to the public." This  
15 includes information about wages and working conditions. Schwab also requires employees –  
16 including Plaintiff – to sign and comply with compensation, incentive plan, shared employment,  
17 and other agreements and writings with illegal confidentiality, speech suppression, and restraint  
18 of trade terms.

19 10. The Ownership Agreement also prohibits employees from soliciting other  
20 employees for eighteen months following their employment. It also expressly prohibits  
21 employees from using its expansive and illegal definition of "Confidential Information" to solicit  
22 Schwab clients, and further requires employees to limit their communications and contacts with  
23 individuals via social media platforms or otherwise.

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1 **CLASS ALLEGATIONS**

2 11. Plaintiff brings this action on behalf of the following Classes.

3 **Classes**

4 12. **Aspects of Self Class.** All current and former California-based employees of  
5 Schwab who signed or were required to comply with an Aspects of Self Agreement (or its  
6 substantial equivalent) through the conclusion of this case.

7 13. **The Speech Suppression Class.** All current and former California-based  
8 employees of Schwab who were or are required to sign or comply with an agreement, policy or  
9 practice prohibiting the use or disclosure of information, including information about wages,  
10 working conditions, and potentially illegal conduct.

11 14. **The Restraint of Trade Class.** All current and former California-based  
12 employees of Schwab who were or are required to sign or comply with an agreement prohibiting  
13 the post-termination solicitation of employees, customers, or clients or limiting or impeding their  
14 right or ability to contact or communicate with such persons for networking purposes of  
15 otherwise.

16 15. Plaintiff reserves the right to refine the definition of the proposed Classes  
17 (including the applicable time frames) based on further investigation and discovery. Plaintiff also  
18 reserves the right to add additional claims on behalf of the proposed Classes.

19 **Class Treatment is Appropriate**

20 16. Plaintiff’s claims should be resolved on a class-wide basis.

21 17. The Classes are so numerous that joinder of all members is impracticable.

22 18. There are questions of law or fact common to the Classes. These include, but are  
23 not limited to:

24 a. Do employees have a California constitutional right to privacy in their  
25 Aspects of Self?

26 b. Is “consent” to the use of an employee’s Aspects of Self voluntary when it  
27 is a condition of employment?  
28

1 c. Can Schwab lawfully require employees to give up their Aspects of Self in  
2 consideration for employment?

3 d. Can Schwab lawfully require its employees to release future claims arising  
4 from the use or sale of their Aspects of Self?

5 e. Do Schwab's confidentiality, gag rule, and non-solicitation requirements  
6 violate the California Labor, Business & Professions, and Government Codes?

7 f. Does Schwab require its employees to sign writings that violate Labor  
8 Code § 432.5 because they contain terms and conditions that Schwab knows are  
9 prohibited by law?

10 19. Schwab has acted or refused to act on grounds that apply generally to the Classes,  
11 such that injunctive and declaratory relief is appropriate respecting the Classes as whole.  
12 Moreover, inconsistent or varying adjudications with respect to individual class members would  
13 establish incompatible standards of conduct for Schwab. Alternatively, adjudications with respect  
14 to individual class members would, as a practical matter, substantially impair or impede the  
15 ability of absent individual class members to protect their interests.

16 20. Plaintiff's claims are typical of the claims of the Classes she seeks to represent.

17 21. Plaintiff will fairly and adequately represent and protect the interests of the  
18 Classes. Plaintiff does not have interests which are adverse to the interests of absent class  
19 members.

20 22. Class counsel is experienced and qualified and capable. It has litigated numerous  
21 class action and representative cases.

## 22 CAUSES OF ACTION

23 23. In light of the above, Plaintiff brings the following claims.

### 24 FIRST CAUSE OF ACTION

#### 25 (Declaratory and Injunctive Relief as to the Aspects of Self Agreement)

26 24. California's constitutional right to privacy was established for a public reason. It  
27 "prevents business interests from collecting and stockpiling information about us and from  
28 misusing information gathered for one purpose in order to serve other purposes or to embarrass

1 us.” The constitutional right to privacy encompasses one’s right to their voice, appearance, name,  
2 biographical material, emotions, expressions, and personalities, *i.e.*, their “likeness.”

3 25. Labor Code § 450 was established for a public reason. It states that no employer  
4 may compel or coerce any employee or applicant to patronize their employer in the purchase of a  
5 thing of value. Under this statute, the “purchase of a thing of value” includes the “purchase” of  
6 the job itself. In addition, Labor Code § 450 prohibits employers from requiring the payment of  
7 “consideration of any type” in exchange for employment, including the payment of the  
8 employees’ right to their Aspects of Self.

9 26. Labor Code § 432.5 was established for a public reason. It states (among other  
10 things) that no employer shall require any employee to agree, in writing, to any term or condition  
11 which is known by the employer to be prohibited by law.

12 27. Civil Code § 1668 states that “all contracts which have as their object, directly or  
13 indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person  
14 of another, or a violation of law, whether willful or negligent, are against the policy of the law.”  
15 Civil Code § 3513 states that “a law established for a public reason cannot be contravened by  
16 private agreement.” Civil Code § 1667 defines an “unlawful contract” as one that is “contrary to  
17 an express provision of the law,” “contrary to the policy of express law, though not expressly  
18 prohibited,” or “otherwise contrary to good morals.” Government Code §§ 17200 *et seq.* makes it  
19 an unlawful and unfair business practice to require employees to sign a contract that violates the  
20 above laws.

21 28. In light of the facts and laws set forth above, a case or controversy exists as to  
22 whether Schwab’s requirement that employees sign and comply with the Aspects of Self  
23 Agreement, as well as the Aspects of Self Agreement itself, are unlawful and unenforceable.

24 29. Plaintiff and the Class seek a judicial declaration of their rights and obligations  
25 under the Aspects of Self Agreement. Specifically, they seek a judicial declaration, and ancillary  
26 injunctive relief, that Schwab’s requirement that employees agree to the Aspects of Self  
27 Agreement, and that the Aspects of Self Agreement itself, are unlawful and unenforceable.  
28 Among other things, they seek a judicial declaration that:

1 a. The Aspects of Self Agreement is unlawful and unenforceable because  
2 employees have a constitutional right to privacy, and this constitutional right is a public  
3 right that cannot be waived by private agreement under Civil Code § 3513.

4 b. The Aspects of Self Agreement is unlawful and unenforceable because the  
5 employees’ “consent” to the waiver as a condition of, and in consideration for,  
6 employment is not voluntary.

7 c. Schwab violates its employees’ constitutional right to privacy by using  
8 their Aspects of Self.

9 d. The Aspects of Self Agreement violates Labor Code § 450 because an  
10 employer cannot require its employees to give up their Aspects of Self in consideration for  
11 employment.

12 e. The Aspects of Self Agreement is unlawful and unenforceable because it  
13 contains a release of all claims (including for intentional torts) that purports to exempt  
14 Schwab and others from responsibility for their own fraud, willful injury to the person of  
15 another, and/or a violation of the law, all in violation of Civil Code §§ 1667-68.

16 f. The Aspects of Self Agreement violates Labor Code § 432.5 because  
17 Schwab requires its employees to sign it as a condition of employment, and it is known by  
18 Schwab to be prohibited by law.

19 **SECOND CAUSE OF ACTION**

20 **(Declaratory and Injunctive Relief as to the Speech Suppression and Restraint of Trade**

21 **Requirements)**

22 **(On Behalf of Plaintiff, the Speech Suppression, and the Restraint of Trade Classes)**

23 30. Business & Professions Code § 16600 states that any agreement in restraint of  
24 trade is void. The Cartwright Act provides that any combination in restraint of trade is “unlawful,  
25 against public policy and void.” *See* Business & Professions Code § 16726.

26 31. Government Code § 19264.5 makes it an unlawful employment practice to require  
27 an employee to sign a non-disparagement or other document that purports to deny the employee  
28 the right to disclose information about unlawful acts in the workplace, including but not limited

1 to, information pertaining to sexual harassment or any other unlawful or potentially unlawful  
2 conduct.

3 32. Labor Code §§ 232 and 1197.5 make it unlawful for an employer to prohibit  
4 employees from disclosing or discussing information about their own wages or the wages of  
5 others, including with respect to incentive plans. Labor Code § 232.5 makes it unlawful for an  
6 employer to prohibit employees from disclosing information about their working conditions.  
7 Labor Code § 1102.5 makes it unlawful for an employer to adopt or enforce any policy, rule or  
8 regulation prohibiting employees from disclosing information about reasonably-suspected  
9 violations of the law to government agencies. Labor Code § 98.6 makes it unlawful to threaten  
10 employees with discharge for engaging in lawful conduct off work premises during non-work  
11 hours. Labor Code § 432.5 states that no employer shall require any employee to agree, in  
12 writing, to any term or condition known by the employer to be prohibited by law.

13 33. These laws were established for a public reason.

14 34. Civil Code § 3513 states that “a law established for a public reason cannot be  
15 contravened by private agreement.” Civil Code § 1667 defines an “unlawful contract” as one that  
16 is “contrary to an express provision of the law,” “contrary to the policy of express law, though not  
17 expressly prohibited,” or “otherwise contrary to good morals.”

18 35. Government Code §§ 17200 *et seq.* makes it an unlawful business practice to  
19 require employees to comply with confidentiality requirements that violate the above laws.

20 36. In light of the facts and laws set forth above, a case or controversy exists as to  
21 whether Schwab’s confidentiality, speech suppression, and restraint of trade requirements are  
22 unlawful and unenforceable.

23 37. Plaintiff and the Class seek a judicial declaration of their rights and obligations  
24 with respect to Schwab’s confidentiality, speech suppression, and restraint of trade requirements.  
25 Specifically, they seek a judicial declaration that these requirements violate: Business &  
26 Professions Code §§ 16600 and 17200 *et seq.*, the Cartwright Act, Government Code § 12964.5,  
27 Civil Code § 3513, Civil Code § 1667, and Labor Code §§ 98.6, 232, 232.5, 432.5, 1102.5, and  
28 1197.5. Plaintiff and the Class also seek injunctive relief ancillary to the declaratory judgment.



1 **THIRD CAUSE OF ACTION**

2 **UNFAIR BUSINESS PRACTICES**

3 **(On Behalf of Plaintiff and the Class)**

4 38. California law prohibits any unlawful, unfair, or fraudulent business practice. *See*  
5 California Business and Professions Code section 17200.

6 39. Through its actions (as described above), Schwab has violated numerous  
7 California laws. Plaintiff and the Class have been harmed by Schwab's conduct.

8 40. Plaintiff and the Class seek a private and public injunction, and other appropriate  
9 relief, to remedy Schwab's other illegal and unfair business practices.

10 **FOURTH CAUSE OF ACTION**

11 **PAGA**

12 **(On Behalf of Plaintiff, the State of California, and Other Aggrieved Employees)**

13 41. Plaintiff filed a PAGA Notice with the Labor Workforce and Development  
14 Agency on or about April 28, 2023.

15 42. The exhaustion period under the PAGA for the following Labor Code violations is  
16 33 or 65 days and has thus passed: Labor Code §§ 98.6, 232, 232.5, 432.5, 450, 1102.5, and  
17 1197.5.

18 43. Schwab has violated and continues to violate the above-referenced Labor Code  
19 sections through the conduct referenced above.

20 44. Plaintiff thus seeks civil penalties on behalf of the State and the aggrieved  
21 employees, including herself.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, on behalf of herself, the Classes, the State, and the aggrieved  
24 employees prays against Schwab as follows:


- 25 1. An Order that this action may proceed and be maintained on a class-wide basis;  
26 2. An Order that this action is entitled to priority;  
27 3. Declaratory relief and ancillary injunctive relief;  
28 4. Appropriate private and public injunctive relief;

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- 5. Attorneys' fees and costs;
- 6. Disgorgement and restitution, according to proof;
- 7. Civil penalties, according to proof;
- 8. Interest; and
- 9. All other relief the Court deems equitable and proper.

Dated: July 3, 2023

BAKER CURTIS & SCHWARTZ, P.C.

By:   
\_\_\_\_\_  
Chris Baker  
Attorneys for Plaintiff  
EVANGELINA FAVILA