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ATTORNEYS FOR PLAINTIFF NICKY JENKINS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

(UNLIMITED JURISDICTION)

NICKY JENKINS, individually and on behalf
of Similarly Aggrieved Employees

PLAINTIFF,

VS.

CDIS, INC., a Virginia Corporation, and
DOES 1-100,

DEFENDANTS.

CASE NO.: 37-2020-00023731-CU-OE-CTL

**PENALTIES PURSUANT TO THE
LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF
2004 [Cal. Labor Code §§ 2699, et
seq.] AND**

JURY DEMAND

Plaintiff Nicky Jenkins (hereinafter referred to as "Plaintiff") by and through his

undersigned attorneys, for their PAGA Class Action Complaint against Defendant CDIS, INC. and Does 1 through 100 (CDIS, INC. and Does 1 through 100 shall collectively be referred to as “Defendants”), respectfully alleges the following:

I. NATURE OF ACTION

1. Plaintiff brings this action on behalf of himself and as a representative action behalf of similarly aggrieved employees against Defendants for civil penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”) based on Defendants’ failure to pay regular and overtime wages and Defendants’ unauthorized deductions and failure to pay the promised rate, failure to provide off-duty meal breaks, failure to authorize and permit rest breaks, failure to issue accurate itemized wage statements, failure to reimburse necessary business expenses, and failure to pay all wages due upon separation. As a result of these acts or omissions, Defendants have violated California statutory laws as described below.

II. JURISDICTION AND VENUE

2. Venue is proper in this county under California Business and Professions Code §17203 and California Code of Civil Procedure §§ 395(a) and 395.5. Defendants’ principal place of business in California is in San Diego County, and Defendants employ workers who performed work in San Diego County, California. Many of the acts, as well as the course of conduct charged herein, occurred in San Diego County.

3. Defendants are within the jurisdiction of this Court, employ many employees – including Plaintiff – in San Diego County. As such, Defendants have obtained the benefits of the laws of the State of California.

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate, of those defendants fictitiously sued as DOES 1 through 100 inclusive

1 and so Plaintiff sue them by these fictitious names. Plaintiff is informed and believe that each of
2 the DOE Defendants reside in the State of California and are in some manner responsible for the
3 conduct alleged herein. Upon discovering the true names and capacities of these fictitiously
4 named defendants, the Plaintiff will amend this complaint to show the true names and capacities
5 of these fictitiously named defendants.

6 5. In addition, Plaintiff assert no claims arising under federal law. Rather, Plaintiff
7 brings causes of action based solely on, and arising from, California law. These claims arise from
8 Defendants' common and systemic failure to comply with the California Labor Code regarding
9 their employees.

10 **III. THE PARTIES**

11 6. Plaintiff Nicky Jenkins is a California resident who was employed by Defendants
12 from approximately September 2019 through January 6, 2020 as a non-exempt Installation
13 Technician performing work throughout San Diego and Orange Counties.

14 7. Upon information and belief, Defendant CDIS, Inc., is a Virginia Corporation. The
15 Defendants' principal place of business in California is located at 4749 Oceanside Blvd, Ste C,
16 Oceanside CA 92057.

17 8. Defendants transact millions of dollars of business in the State of California. Plaintiff
18 is ignorant of the true names and capacities, whether individual, corporate, or associate, of those
19 defendants fictitiously sued as DOES 1 through 100 inclusive and so the Plaintiff sue them by
20 these fictitious names. The Plaintiff is informed and believe that each of the DOE Defendants
21 resides in the State of California and are in some manner responsible for the conduct alleged
22 herein. Upon discovering the true names and capacities of these fictitiously named defendants,
23 the Plaintiff will amend this complaint to show the true names and capacities of these fictitiously
24 named defendants.
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1 **IV. ALLEGATIONS**

2 9. Plaintiffs bring this case pursuant to PAGA on behalf of the following
3 Similarly Aggrieved Employees who shall be referred to interchangeably as “Similarly
4 Aggrieved Employees” and the “PAGA Class” Members:
5

6 **All non-exempt employees who both, 1) worked at least one shift for CDIS,**
7 **Inc. in California at any time from January 10, 2019 the conclusion of this**
8 **action (the “PAGA Period”), and 2) were compensated, at least partly, via a**
9 **point-system.**

10 10. Plaintiff believes that there are at least 100 current and former employees in the
11 Class.
12

13 11. The PAGA Class will be manageable because of common questions of law
14 and fact which exist as to all PAGA Class Members, including whether Defendants paid all regular
15 and/or overtime wages to PAGA Class Members, provided them with meal break periods,
16 authorized and permitted rest breaks, reimbursed PAGA Class Members for necessary business
17 expenses, issued complete and accurate itemized wage statements, and paid all wages due at
18 separation of employment.

19 **V. FACTUAL ALLEGATIONS**

20 **A. Facts Relevant to Defendants’ Failure to Pay Regular and Overtime Wages**

21 12. Defendants compensated Mr. Jenkins and Similarly Aggrieved Employees
22 using a point system. On information and belief, under the Defendants’ point system, one point is
23 equivalent to five minutes of work, and is equal to \$1.65. Defendants only allowed Mr. Jenkins
24 and Similarly Aggrieved Employees to accrue points when assisting customers at customer
25 locations, and not at any other time in their shifts.
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1 13. As a result of this compensation system, Defendant failed to compensate
2 Mr. Jenkins and Similarly Aggrieved Employees for their time worked when they were not
3 accruing points, including time worked while:

- 4 • driving between work locations;
- 5 • time spent before each customer visit reviewing the customer's concerns;
- 6 • time reviewing the daily schedules; and
- 7 • time composing and sending text messages to Defendants and customers.

8 14. Because Mr. Jenkins and Similarly Aggrieved Employees frequently worked
9 over eight hours per day, Defendants should have compensated their unpaid time spent
10 performing these job duties at an overtime rate of pay.

11 15. A further consequence of Defendants' "point system" is that it deprived Mr.
12 Jenkins and Similarly Aggrieved Employees of regular overtime and double time which they
13 worked. Rather than paying Mr. Jenkins and Similarly Aggrieved Employees overtime rates of
14 pay for the higher of 1) hours worked in excess of eight hours per day, or 2) forty hours per week,
15 the Defendants' point system masked hours worked under the guise of "points," and failed to
16 compensate Mr. Jenkins and Similarly Aggrieved Employees at an overtime and double time
17 rates of pay for overtime and double time worked.

18 16. CDIS also failed to pay all wages owed when it illegally deducted the
19 wages of Mr. Jenkins and Similarly Aggrieved Employees for toll road violations, parking
20 tickets, and other expenses, which also violated Cal. Labor Code §§ 221 through 224 by
21 deducting wages earned and paid to employees, paying less than the agreed-upon wages, and
22 making unauthorized wage deductions.

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1 **B. Facts Relevant to Meal and Rest Breaks Violations**

2 17. Defendants assigned Plaintiff and Similarly Aggrieved Employees work schedules
3 which did not allow for timely, off-duty meal breaks. Defendants failed to relieve Mr. Jenkins
4 and Similarly Aggrieved Employees of duties so that they could take an off-duty meal beaks by
5 the fifth hour of work, and by the tenth hour of work.

6 18. Defendants also failed to authorize and permit rest breaks for Mr. Jenkins and
7 Similarly Aggrieved Employees. Their schedules do not allow time for off-duty rest breaks.

8 19. Further, Defendants' compensation structure does not compensate for rest breaks.
9 Defendants employ a point system which is essentially a piece rate system, whereby employees
10 are only paid when accruing points, which means they are only being paid when performing job
11 duties. Defendants did not, and do not, pay Plaintiff and PAGA Class Members separately for
12 rest periods. Moreover, when Defendants failed to authorize and permit rest breaks, they also
13 failed to pay Plaintiff and PAGA Class Members one hour of premium pay for each of those
14 days.
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16 20. During the PAGA Class Period, Defendants failed to pay one hour of premium
17 pay for each day that Plaintiff and PAGA Class Members missed a meal break, failed to pay
18 Plaintiff and PAGA Class Members one hour of premium pay for each day that they were not
19 authorized nor permitted to take a 10 minute rest break.
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21 **C. Facts Relevant to Unreimbursed Expenses**

22 21. Defendants required Mr. Jenkins and all Similarly Aggrieved Employees to use
23 their personal mobile phones to perform mandatory job duties, which included sending and
24 receiving text messages and phone calls.

25 22. Defendants knew or should have known that Mr. Jenkins and all Similarly
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Aggrieved Employees were incurring necessary business expenses by using their own mobile phones for necessary job duties. Despite this knowledge Defendants neither provided Mr. Jenkins, nor Similarly Aggrieved Employees, with a mobile phone or other communication device to perform these mandatory job duties, nor did Defendants reimburse Mr. Jenkins and the Similarly Aggrieved Employees for their mobile phone expenses while performing these job duties, in violation of Cal. Labor Code §2802.

D. Facts Relevant to Defendants' Failure to Issue Wage Statements Compliant With Cal. Labor Code Section 226, and Failure to Pay All Wages Due at Separation of Employment

23. Defendants' failure to pay all regular and overtime wages owed resulted in Defendants issuing inaccurate itemized wages statements to Mr. Jenkins and Similarly Aggrieved Employees in violation of Cal. Labor Code §226. The itemized wage statements which Defendants issued to them failed to state the hours worked, as well as the pay rate for regular, overtime and double time wages. Moreover, the itemized wage statements failed include wages and hours for the time which Mr. Jenkins and Similarly Aggrieved Employees time spent performing job duties without way, as described above. The itemized wage statements also failed to include required premium payments for the Defendants' failure to provide meal breaks, and its failure to authorize and permit rest breaks.

24. When employees separate from the Defendants, Defendants failed to compensate them all wages owed at the time of separation of employment, and it has failed to pay all wages owed to all Similarly Aggrieved Employees who no longer work for the Defendants.

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- Deducting wages earned and paid to employees, paying less than the agreed-upon wages, and making unauthorized wage deductions, in violation of Cal. Labor Code §221 through §224;
- Failure to reimburse business expenses in violation of Cal. Labor Code § 2802
- Failure to issue accurate itemized wage statements per Cal. Labor Code §§ 226; and
- Failure to pay wages due upon separation in accordance with Cal. Labor Code §§ 201-203.

28. Section 2699.3(a)(1) of the Labor Code provides that, prior to bringing suit, an aggrieved employee “shall give written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.” Pursuant to Labor Code § 2699.3, on January 10, 2020, Plaintiff gave notice to the Labor and Workforce Development Agency and CDIS, Inc. of the specific Labor Code provisions alleged to have been violated herein. CDIS, Inc. changed its agent for service of process, and on, April 27, 2020, in an abundance of caution, Plaintiff again gave notice to Defendant through its new agent for service of process of the specific Labor Code provisions alleged to have been violated herein. Labor Code § 2699.3 (2) (a) requires the LWDA to notify the employee or representative within 60 calendar days of the date of the PAGA notice that it does not intend to investigate. Therefore, as of March 10, 2020 (or, even using the data of the second letter, as of June 26, 2020), the administrative prerequisites under California Labor Code section 2699.3(a) were satisfied, and Plaintiff has authorization to recover civil penalties, unpaid wages, and reimbursements against Defendants, in addition to other remedies, for violation of

1 California Labor Code sections 201-203, 221, 223, 224, 226, 226.7, 510, 512, 1194, 1198.5,
2 2802. Under PAGA, Plaintiff and other similarly aggrieved employees are entitled to recover the
3 maximum civil penalties permitted by law from Defendants for its violations of the California
4 Labor Code and the applicable California IWC Wage Order, as alleged in this Complaint.
5 Plaintiff and other Similarly Aggrieved Employees are also entitled to recover their attorneys'
6 fees and costs under Labor Code Section § 2699.
7

8 **VII. JURY DEMAND**

9 29. Plaintiff hereby demand trial by jury of their and the proposed Class's claims
10 against Defendants.
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12 **VIII. PRAYER FOR RELIEF**

13 30. Wherefore, Plaintiff, on behalf of himself and members of the PAGA Class pray
14 for judgment against Defendants as follows:

15 An Order that this action may proceed and be maintained as a PAGA Class action on
16 behalf of the Class;

17 31. On the First Cause of Action:

- 18 (a) A civil penalty against Defendants in the amount of \$100 for the initial
19 violation and \$200 for each subsequent violation as specified in Labor
20 Code § 2699(f)(2) based on Defendants' violation of Cal. Labor Code §§
21 201-203, 221, 223, 224, 226, 226.7, 510, 512, 1194, 1198.5, 2802;
22 (b) All penalties available under the Labor Code Private Attorneys General
23 Act of 2004;
24 (c) An award of reasonable attorneys' fees against Defendants as specified in
25 Labor Code § 2699(g)(1), for all the work performed by the undersigned
26 counsel in connection with the PAGA claims; and
27 (d) An award of all costs incurred by the undersigned counsel for Plaintiff in
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1 connection with Plaintiff's and aggrieved employees' PAGA claim against
2 Defendants, as provided for in Labor Code § 2699(g)(1).

3 32. All other relief as this Court deems proper.

4 Dated: July 9, 2020

Respectfully submitted,

5 MICHAEL MALK, ESQ. APC

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7 By: Michael Malk
Michael Malk
8 Counsel for Plaintiff and the Class
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