

01/05/2019

SBABO VS. CLAIMLOGIX - PAGA Claim Notice & Civil Litigation

ClaimLogix and Bononi Law Firm:

As much of the information overlaps, I felt it was best to address to correct the record, address civil complaints and allow this letter to serve as notice to ClaimLogix (with a copy being sent certified mail to the DLSE) of the intent to file a PAGA Claim. The evidence that plaintiffs often need to substantiate their claims is often found in the defendant employer's hands. The rules of discovery are set forth in California. Cal. Code Civ. Proc. § 2017.010. In the permissible scope of discovery, I am allowed to see any information not considered privileged, that is relevant to the subject matter involved in the pending action or appears reasonably calculated to lead to the discovery of admissible evidence. I have attached an excel spreadsheet outline my request for discovery.

Additionally, a significant amount of time was spent reviewing thousands of emails, interactions, text and documents to correct the inaccuracies, with supporting documents, that were presented in the defense's letter. I realize that I am not an attorney and very well may have some misunderstandings, but with one way communication, I have not been able to clarify details or ClaimLogix's position on many of these issues. As such, I am now formally seeking documents and statements for discovery so I may narrow my issues before presenting the court.

Civil Complaints & PAGA:

1. Violations of wage and hours laws (including misclassification)
2. Fraudulent Misrepresentation & Misconduct
3. Breach of contract
4. Retaliation

PAGA Claim

To my knowledge, there was no attempt to reach to any other staff to confirm whether or not they had experienced any difficulties in obtaining their paycheck. Despite me informing the defense that others relayed to me that they had similar experiences, I was never asked the names. One would assume that the defense's legal representative confirmed that there was no obvious claim for PAGA before sending to a pro per applicant, a letter delegitimizing their inquiry, characterizing it as a threat, thus creating a hostile work environment. The vague statement offered in the 12.13.2019 letter claims that appropriate communication and efforts were taken by ClaimLogix employees had been sent the information several times, yet no proof has been offered.

And yes, I understand that “only 25%” of the penalties paid go to the person bringing the action forward. And I am also aware that the purpose of the PAGA is not to recover damages or restitution, but to create a means to allow private citizens to enforce the labor code. The concern of the defense should be violations, not who gets what, as ClaimLogix would be 100% responsible for any violations, which I believe there to be numerous. I had sought to resolve, and asked questions about much of the issues now being discussed to management's attention, usually on multiple occasions. I was not able to resolve any due to their refusal to participate in the process. As such, PAGA is being utilized as it was attended: to bring action against non-compliant employers. The way ClaimLogix handled my request prior is baffling from a professional standpoint and is what contributed to my stress claim. However, through online research, I learned that there are laws intended to rectify this situation.

Request for admission: Per ClaimLogix's defense attorney, all employees were provided login information for ADP within a reasonable time frame of it being implemented.

Interrogatory #7: Please clarify the date and briefly outline the steps taken to verify the applicant's statement that she did not have access to wage statements for the period of March through August. Provide copies of any communications of these efforts. Please provide the date and a copy of the original email sent to the applicant advising that the company had moved to ADP.

Various managers/owners were included in my multiple emails in seeking access to my paychecks. It was known by multiple people that I had been seeking these. Finally getting access in August does not negate the fact that I did not have access to my paystubs for six months. When I finally did see them, there was an error with my sick pay calculation and the insurance stipend of \$250 per month as outlined in my contract had not been paid. A dispute exists whether or not interest should have been paid. Also, I informed the defense attorney that other employees relayed to me that they have not been paid ClaimLogix's portion of expenses for cell phone and internet.

Request for Admission: ClaimLogix has paid all employees an appropriate amount to contribute to their employees expenses related to cell phone and internet.

Pay stub - inaccurate record keeping

I discussed with the defense attorney and sought an explanation as to the sudden change in my sick leave, which had not changed, despite being sick the prior week. I was surprised to find out that I had 35 hours (since my pay stubs had showed the same for so long) and also questioned whether or not I was still employed since cashing out like this (without any communication to me whether I wanted to or not), and being denied access to the companies CRM system, Filemaker.

Under Labor Code 226, employers are required to document:

- *gross wages earned;*
- *total hours worked;*
- *the number of piece-rate units earned and the applicable piece rate if the employee is paid on a piece-rate basis;*
- *all deductions;*
- *net wages earned; start and end dates of the pay period;*
- *the name of the employee and the last four digits of their social security number or an employee ID number;*

- *the name and address of the employing legal entity;*
- *all applicable hourly rates and the corresponding hours worked at each hourly rate.*

Besides not receiving a wage statement, I believe that there are numerous other violations of labor code 226.

#1 Wage and Hour Violations

Violation of Labor Code Section 226a

I'm quite surprised to read in the 12.13.19 letter that there was the belief that I did not make claims to violations of Labor Code Section 226a, thus not suffering injuries and not entitled to penalties. This was actually something discussed in length and even acknowledged in the defenses letter that I received access sometime in August or September. Other members of management were cc'd on my request for access to my wage statements far before the lawsuit was filed.

Throughout your employment with ClaimLogix, your wage statement have been available to you through ADP's website. You stated during our December 10 telephone call that you have accessed your wage statements through ADP's website since August or September. Employees have received multiple communications from the company outlining that wage statement were available through ADP's website. ClaimLogix has made a good faith effort to provide its employees with wage statements each time wages were paid.

The letter drafted by the defense attorney states that "multiple communications from the company outlining the wage statements were available through the ADP website." Despite there being multiple emails sent, I was not included on one.

Interrogatory #8: Please provide the date and copies of the two most recent communications that ClaimLogix sent to staff providing direction to employees to sign up for ADP to get access to their wage statements. If each staff was sent it individually, please provide those dates.

Can you please forward me any support for the defenses claim that this was provided either to myself or other staff? Were the statements in this letter confirmed by the defense attorney with their client ClaimLogix? The statements in the defenses letter does not relate to my own experience in which I had to request access to my pay stubs 03/25/2019, 07/19/19, 07/21/19, 07/31/19 (via text), 08/07/19, and 08/19/19.

Cost of the Wage Statement Penalty

If the employee is entitled to a wage statement penalty, they can recover *the greater of*:

- \$50.00 for the initial pay period in which the violation occurs;
- \$100.00 for each subsequent pay period in which the violation occurs, up to a total of \$4,000.00;

Misclassification:

Interrogatory #9: Please state which category of exempt workers in which ClaimLogix determined applied to the applicants exempt status.

Interrogatory #10: Please provide the name of each full time employees, part-time employees, and contract workers and their job title for any and all persons whom worked at or for ClaimLogix at any point in 2019.

It is ClaimLogix's position that I am not misclassified. I believe that I should have been a non-exempt employee. I had very little autonomy, even in sales. I was not able to approach this part of my job the way that worked for me. I was instructed to focus on Sedgwick and Athens office visits. I spent the weeknds or other time focusing on online outreach such as LinkedIn, because it was the only way I could reach large group of candidates with such limited time available to me to meet my objectives.

There are also numerous emails introducing me with 4-5 different titles. However, in all of those roles, I did not manage people, I did not run a department, I did not have control of my schedule to complete my task. I was billing time to clients, and clocking my own time as well. Based on the involvement of some contract workers, there is a very high likelihood that they were also misclassified. As such, the name and job title has been requested as a part of discovery.

Commissions & Unpaid Wages

The contract provided and signed between the parties was inadequate per CA State Law. I did not realize that ClaimLogix did not really have an effective, transparent way in which I would be able to determine my sales or commission prior to my employment. I sought clarification at least five times or more and more often than not, was ignored. Thus resulting in the need to file a wage claim violation. I have not received any pay for any commissions from ClaimLogix, at all. Per the 12.13.19 letter "Claim Logix believes you were properly paid for all hours worked and for all commissions earned." California labor code states that the employer should pay whatever wages are undisputed and if they fail to do so, the "good faith" defense will be defeated whatever the outcome of the wage dispute.

There are a number of issues with regard to unpaid wages and commissions:

1. ClaimLogix flip-flopping on how commission is paid.
2. Whether or not there is a decrease or increase in accounts receivable on Athens Concord & Sedgwick Roseville.
3. 2% Commissions on Sedgwick Roseville and Tristar.
4. Emails sent by ClaimLogix stating that I am due money, but in bad faith, have not paid.

5. Unpaid commissions on MV Transportation. And a dispute exists as to whether or not I am entitled to commissions through my last day as a ClaimLogix employee.
6. Absent verifiable evidence, which for one reason or another is being kept secret as to the details of the Everest deal, I am seeking commissions of 3% of the Everest Account through last day worked.

Whether I managed it or not, does not make a difference. Furthermore, I was not allowed to manage any accounts. All that was determined by management, and really we don't really have an "account management" position. When ClaimLogix determined it would be managed by Jack and Liz, it didn't make sense that I would be getting the 3% on new business, and that Liz would be doing the account management. This was when I realized that there was never really an intent or plan to move me into account management. My contacts information was put on the pipeline as instructed and an email was sent to the team that I was pursuing this account. There was never any mention about Jack pursuing that account, or mention about how it came about but I did learn after doing the work that the account was from the same office and persons whom I had included the names on the pipeline. There was no success in the Southern California office Jack notes in his own email that he was being ignored by Laura. Then, approximately 2 months after I put the decision-maker's information on the pipeline, a deal is made and Jack specifically mentions my contact (he incorrectly put Orange, but everyone knows its Oakland) and said to focus on this carrier and find a way to get in there..

Anyway, Rece has a contact in Everest Orange who she's worked with so let's focus on this carrier and find a way to get in there. I will keep after Laura because she was assigned to oversight the lien process..she told me she would meet with me, but obviously, she has been ignoring me for months..which unfortunately how she roles sometimes...so I am trying to have patience with her, as we go back a long time....

Request for Admission: The Everest Deal was the result of an incoming inquiry by an executive in the Oakland office reaching out to Jack at some point between March 01 - May 31, 2019. There was no outreach efforts ClaimLogix to either Marlowe or Marijoy Arguelles or any other decision maker in the Oakland office.

Rece Sbabo

Subject: FW: ClaimLogix Lien Resolution Services

Rece Sbabo
ClaimLogix, LLC
rsbabo@claimlogix.com
844-425-2465 x704

From: Rece Sbabo
Sent: Tuesday, March 5, 2019 11:14 AM
To: Jack Countway <jcountway@claimlogix.com>
Subject: RE: ClaimLogix Lien Resolution Services

I reached out to Marlowe today. He is located in Oakland. Hopefully he will respond... think he may recognize my name. That's one good thing about a unique name. 😊

From: Jack Countway <jcountway@claimlogix.com>
Sent: Friday, March 1, 2019 12:39 PM
To: Rece Sbabo <rsbabo@claimlogix.com>; Liz Felizzola <lfelizzola@claimlogix.com>; Daniel Stevens <dstevens@claimlogix.com>; Anthony Landry <standry@claimlogix.com>
Subject: FW: ClaimLogix Lien Resolution Services

FYI, I am pushing my best here! Some of things I have heard from Everest, is that their lien vendors are expensive...we know that Everest, being a carrier, self administers some claims and outsources claims to several TPAs. One is Gallagher Bassett, the other is American Claims (San Diego is corporate HQ) and American Claims owns/operates a lien company called Marquee (many Managed care services are wrapped in there as well...). And they are expensive and I heard this from an Exec SVP at Everest (from Laura and someone higher level).

Anyway, Rece has a contact in Everest Orange who she's worked with so let's focus on this carrier and find a way to get in there. I will keep after Laura because she was assigned to oversight the lien process...she told me she would meet with me, but obviously, she has been ignoring me for months...which unfortunately how she roles sometimes...so I am trying to have patience with her, as we go back a long time....

Thanks,

Jack Countway
ClaimLogix LLC
Vice President of Business Development
818 419 8382
www.claimlogix.com
jcountway@claimlogix.com

From: Jack Countway <jcountway@claimlogix.com>
Date: Friday, March 1, 2019 at 12:24 PM
To: "Laura O'Leary@everestire.com" <Laura.O'Leary@everestire.com>
Subject: Re: ClaimLogix Lien Resolution Services

1

Hi Laura,

Just checking back with you! We are really hearing some major rumblings with our competitors...and we are doing great. We just hired another Northern CA Hearing Rep/Walk Through Specialist...it's going well and want to show you some data we shared with our largest client (its a carrier...claims are with GB...). We passed a stewardship with flying colors...we outlined average cost per lien conference, % of closures from attending lien conferences (80%), and much more. We have handled almost 300 files with this carrier and we are killing it...I really want to get you to meet our COO at some point...and sorry to keep nagging you! I just want to stay in touch with you if you are planning to make changes etc... PLEASE take a look at what we're doing...thanks Laura!!

Jack Countway
ClaimLogix LLC
Vice President
818 419 8382
www.claimlogix.com
jcountway@claimlogix.com

From: "Laura O'Leary@everestire.com" <Laura.O'Leary@everestire.com>
Date: Monday, September 10, 2018 at 12:16 PM
To: Jack Countway <jcountway@claimlogix.com>
Subject: RE: ClaimLogix Lien Resolution Services

Hello Jack,

Check back in a few weeks.

Laura O'Leary
Director Managed Care
Everest Insurance
Western Regional Office | P.O. Box 69 | Orange, CA 92668
(T) +1 714.371.9630 | (F) +1 714.371.9675 | Laura.oleary@everestire.com

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Everest Insurance's markets property, casualty, specialty and other lines of admitted and non-admitted direct insurance on behalf of Everest Re Group, Ltd., and its affiliated companies.

From: Jack Countway <jcountway@claimlogix.com>
Sent: Monday, September 10, 2018 10:18 AM
To: Laura O'Leary
Subject: ClaimLogix Lien Resolution Services

Hi Laura,

Whats up! I heard you might have taken over the lien program for Everest? I met and talked to Leah in Dana Point.

Are you available to chat this week or set up a meeting? I would like to put together a presentation for you in regard to our services, data, reports, active client matrix, references, updates on the Special Adj. Unit. scenario, and redacted savings reports...I can send something to you.

2

We are expanding and have hired another new Hearing Rep, Donna Soto, and we have a best in class team...so all going well! I can get you a reference at Lockton, and also Old Republic (Gallagher handles).

Let me know as it would be great to work with you! We also have a dedicated Field Account Mgr and so she and I would tag team to Account Manage, etc...we do a lot of work for Gallagher and so we are in a good position (we know the system, etc...) as far as being able to grab doc's and move files quickly..

Thanks Laura,

Unpaid Commissions: Purposely Being Withheld by ClaimLogix

Under Labor Code Section 2751, employers must provide commissioned employees with a written agreement detailing how their commissions will be calculated and paid. This duty applies even if only some of the employee's wages are in the form of commissions. Employers must give each such employee a signed copy of the commission agreement and obtain from the employee a signed receipt. The conditions determining when a commission is "earned" must be defined in the commission agreement. I did not have this

included in my commission agreement. Your letter states that per my commission agreement, commissions are not earned until the customer pays its invoice.

The defense letter states that per the terms of my commission, commissions are not earned they have paid their invoice. The contract I have does not include this language. Please send me the copy that you have.

Commissions

Commissions, while wages, are not due until they are earned. *Koehl v. Verio, Inc.*, Cal.App.4th 1313, 1315 (2006). Per the terms of your commission agreement, commissions are not earned until the customer pays its invoice. Thereafter, commissions are calculated and paid quarterly. You have not earned commissions for every pay period as you now contend.

I actually already raised *Koehl v. Verio, Inc.* (Cal. Ct. App. 2016) as I feel that it supports my position by confirming that commissions are earned when all the contractual conditions for requiring payment have been met. Once those conditions have been fulfilled, the commission is considered a wage and the employer is legally-obligated to pay it the same way they would any other wage. Earned commissions are subject to the same rules as regular wages: most commissions must be paid, in full, at least *twice per month* on dates the employer has designated in advance as pay days. So in this case, ClaimLogix has determined that our commission is based on when the client pays. When this condition is met, then commissions earned between the 1st and the 15th of the month, must be paid no later than the 26th of that month. For commissions earned between the 16th and the end of the month, must be paid by the 10th of the following month. ClaimLogix cannot then go on to arbitrarily pick a date to pay, such as the end of the quarter. I believe the defense letter confirms that it is policy for ClaimLogix to systematically paying commissions late.

Even considering the policy to pay quarterly, I have not received a single penny in any commissions where I am positive that invoices have been paid and its past the quarter it was earned in. These were forwarded "referral" email and to Jack. (Please request these from ClaimLogix). These were to set Jack as a follow up in September and acknowledged, but still remain unpaid.

The law states that ClaimLogix should pay the undisputed amount. Yet I have not received any (zero) pay from ClaimLogix for any commissions. Employers that have no policy and that repeatedly fail to comply with the wage statement law are more likely to be committing knowing and intentional violations.

Unpaid Commissions- Lien Referrals and/or increased business

I am told that there was not an increase in accounts receivable, however based on documentation I have viewed, I do not believe this to be the case. Regardless, State law

states that this should be available to any employees whose commissions depend on performance. I do want to note that on page 3 of the 12.13.19 letter, I am told "There was no Revenue growth in the Athens Concord account from quarter 2 to quarter 3 and therefore you do not qualify for the 2% Commission."

Production of Documents #13: Any and all documents used to determine that there was not increased business for Athens Concord, TriStar Concord, or Sedgwick Roseville/Sacramento, including the calculation done showing that there was negative revenue over the same period the prior year.

Interrogatory: Please describe in detail the method in which ClaimLogix used to determine that there was no increase in business on the accounts worked on by the applicant. Include a copy of the calculation which illustrate the values used to determine this. Please document the formula which is used to calculate the southern California Rep. Liz Fezzolia's commissions.

I worked on the Athens Concord and Sedgwick Sacramento/Roseville account from February through October. I also worked on TriStar Concord March - July 2019. All of the documents being included in request for documents should include the invoices for these three companies for 2018 and 2019.

Violations:

1. California Law dictates any undisputed wages should be paid. Despite having multiple instances from ClaimLogix stating I am owed money, I have not been paid any commissions at all. Even with representation, they still are willfully ignoring this labor code that was specifically established to protect workers like myself.
2. The defense then goes on change their statement again in the 12.13.19 letter which states on page 5, "While ClaimLogix believes you were properly **paid for all hours worked and for all commissions earned**, the company recognizes that you are unhappy in your position and it appears to be a breakdown in your working relationship with the company. I am told that I will be paid commissions on the MV account and will be paid once the invoices are paid. I have yet to see any payments or commissions, for anything . This would indicate to me that ClaimLogix has not received any payments from MV Transportation.

3. Payment of Holiday Pay. The labor code states that if an employee does not have the option to work due to an irregular change is scheduled (such as this), that you can not reduce their pay.

Request for document: Please provide the referrals from MV Transportation from the new relationship, beginning in 2019 through the date this letter is responded to. Provide the status of the file and provide invoices for any files in which invoices were sent, whether paid or not.

If an employer fails to pay commissions, an employee has the right to file a breach of contract lawsuit against his employer to recover his actual unpaid commissions, attorney's fees, and costs. An employee may also be able to recover exemplary damages (i.e., double the amount of unpaid commissions) as compensation for the delay in payment.

#2 Misconduct / Breach of Contract

- As indicated above, there is a breach of contract for unpaid commissions.
- There was a breach of contract when my insurance stipend was not being paid.
- Never received the revised 50/50 time split that was agreed to and promised in Sept. 2019. 09/25/19 I was advised by Jack that it's "almost done. Have to get approvals" when I inquired about the status of it.
- There has been significant misrepresentation by the employer by intentionally misrepresenting the position to convince the applicant to close down business and move to ClaimLogix.
- There were no account management opportunities on new business.
- Various statements made which directly contradict each other to mislead the applicant.

I do not believe it was ever intended for me to be a Director of Operation, an account manager, Sales or any other managerial position. I believe a sales/account management role was added to convince me to take the job as I did not see the benefit in doing the similar work as I was doing, but for another company rather than for myself. I believe that I was brought over for my expertise and for contacts in Northern California and to cover

the hearings. I believe this is evident in the original offer letter sent to me, and the changes made to the second offer letter which I signed.

It wasn't until after I started that I realized that much of what I was told wasn't going to happen. Additionally, this benefited ClaimLogix as their competitors no longer had my services (there are very, very few independent representatives in Northern Ca). There were numerous other situations that did not take place such as company card, that I would work one day a week at the Athen's office, and that I would move into account management once landed an account to manage. I was not in any type of managerial position and there was no discussion, path or plan for me to be an account manager. I believe I was (perhaps presented by Jack to his co-owners) to be a lien representative that could be exploited for my connections in a territory ClaimLogix had not been able to penetrate, while knocking out my business. I would not give up my business to take a role that I feel would be a demotion, and the decision behind me starting my own business was to spend less time at a desk, and more with people. But when I felt that I was being treated unfairly and not paid commissions, there was no attempt by ClaimLogix to rectify that situation. My only path was to be pushed into one of two options, both of which are not options that I felt was fair and I felt used.

The majority of my psych claim stems from this. I had deep regret for giving up my self-employment, in which ClaimLogix was a client of my mine. It was a tough road, but I had gotten to the point where I was comfortably supporting myself and my children, working on average 4 days a week. I was pursued by ClaimLogix and each time I spoke with Jack, the perks/details of the job got better and better. I finally decided to accept the position since the company was young and there was potential to run the entire territory of Northern California and to get a team established under me. So I was quite surprised when what Jack and I had discussed over the phone was much different than the first offer letter I received. In addition, having the sales/marketing position be a second job/role after working 40 hours, the 2% commission on increased business was left out. This was a big red flag to me and in hindsight, are issues that are now being disputed.

D. Compensation Plan:

This is an exempt full time position of \$78,000 annual salary. You will be eligible for a commission of \$15 additional per hour for every "billable" hour after 40 "billable" hours each week. The commissions will be paid quarterly. "Billable" is defined as billable time specifically billed to our clients, not any ClaimLogix internal or corporate administrative or any other billable time. You will be eligible to receive mileage for business related travel, such as specific to traveling to the Workers Compensation Appeals Board (WCAB), or to any other related business travel, except for travel to and from ClaimLogix's business location. All other business related expenses such as parking, office supplies, or business meals, will be reimbursed accordingly.

Bad Faith:

A finding of bad faith can significantly affect the damages awarded in federal retaliation for harassment lawsuits, this may come into play as punitive damages, issued in addition to damages for back and front pay, emotional distress and legal fees. They are typically the largest portion of a plaintiff's total settlement. Without good faith, employers may also have to pay "liquidated damages" in suits involving laws such as the FLSA and the Equal Pay Act (EPA). This essentially means damages are doubled.

There was no policy in place to protect me, or for me to refer to if a dispute arose. I tried to bring it up with an owner, since we do not have HR, and there was no interest in discussing the issues that were brought up related to the sales role. An account that I had fairly landed was made a house account and given to my counterpart to manage. I became distressed when my repeated attempts for clarification as to why an account I felt I fairly earned, was determined to not be mine. I at first addressed this directly with the VP Jack. I was first told that it was because this office was not in my territory (despite contradiction the signed offer letter). On 09/10/19, I texted Jack that it didn't make sense for Liz to manage the MV account account, and that Fresno is considered Northern California territory. I stated to Jack that landing these accounts and not being given the opportunity to grow them would affect my commission and I asked to connect so we could figure out the sales stuff since I had a few referrals. I stated that it did not make sense because rarely, and none that I am aware of, do business consider Fresno as a southern California territory, even the WCAB includes in Northern California. The second reason I was given by our VP was that it was an office that he had visited for years and that he knew the adjusters on that account. If the standard that any account, company or office that I earned their business on would not count if our VP Jack Countway had known them or visited their office previously, I certainly would not have

taken the job. This is not in line with industry standards, this would encompass just about every single office I had access to as they did not previously have a Northern California representative. After this was brought to Jack's attention, along with the question of "if he had such a strong relationship and had been visiting that office for years, why was he not able to secure the business in that time?" Yet, I was able to do this through "linkedin magic," which I prefer to call good ol' fashion networking and in sales, asking for the business. I let Jack know it was important for me to get to manage this as I would not be in control of my level of commission on an account I brought in but was not allowed to work. He acknowledges this in his text messages. The defense letter states that there was a pre-established relationship at that office for 4 to 5 years. My contract states that any new business still counts even if they were a prior client this is considered new business as they had not done work with us in a number of years. I believe that if there was the relationship that is said to have existed at this broadspire office, then the deal should have been landed by the people that are there visiting. I was not allowed the opportunity to manage the account so I dispute the defense's letter that they are predominantly doing the account management as I was not given the opportunity. He gave me two different answers why I wouldn't get it, told me I would get it, and then said he had to talk to the managers and then said I wouldn't get it.

- ClaimLogix continues to show bad faith actions as there has been no action to rectify the situation related to any of the violations since it has been brought to their attention.
- It is bad faith to not include any evidence to show the applicant which would have resolved the issue weeks ago.
- It is bad faith to withhold undisputed wages.
- It is bad faith to characterize the applicant address the issues of wage statements being a threat.
- Willful violation of the law by not providing the applicant the personnel & Payroll file, which has been requested.
- Text Received from Jack on 09/10/19: "Accounts receivable. Will you pay commissions based on what's received from AR. Not from what's invoiced. It lags for a quarter."

Misconduct/Bad Faith

- 1) Failure to Provide Personnel & Payroll file.
- 2) Compliance with State and Federal Requirements

- 3) Not supplying employee handbook at the time of employment, or when it has been requested.
- 4) Payment policies inline with the labor code.

Personnel file and Payroll

My personnel file and payroll was requested 12/11/2019. A follow up email was sent January 2, 2019. I did receive a very incomplete document/summary of paid wages, however this document does not comply with the State's requirements for record keeping.

Employers are required to permit current and former employees to inspect or copy payroll records pertaining to that current or former employee. [Labor Code Section 226\(b\)](#) An employer who receives a written or oral request from a current or former employee to inspect or copy his or her payroll records shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. Failure by an employer to permit a current or former employee to inspect or copy his or her payroll records within the 21 calendar day period entitles the current or former employee to recover a penalty from the employer in a civil action before a court of competent jurisdiction. [Labor Code Section 226, subdivisions \(c\) and \(f\)](#)

I have not received a copy of my personnel file, nor acknowledgement that it is being prepared. This is an outstanding issue & another non-compliance by ClaimLogix.

Personnel files and records

Effective January 1, 2013, California law provides that current and former employees (or a representative) have the right to inspect and receive a copy of the personnel files and records that relate to the employee's performance or to any grievance concerning the employee. [Labor Code Section 1198.5](#) Inspections must be allowed at reasonable times and intervals, but not later than 30 calendar days from the date the employer receives a written request. Upon a written request from a current or former employee, or a representative, the employer shall provide a copy of the personnel records, at a charge not to exceed the actual cost of reproduction, not less than 30 calendar days from the date the employer receives the request.

If an employer fails to permit a current employee, former employee, or representative to inspect or copy personnel records within the times specified, or times agreed to by mutual agreement, the current employee, former employee, or the Labor Commissioner may recover a penalty of \$750.00 from the employer. A current or former employee may

also bring an action for injunctive relief to obtain compliance, and may recover costs and reasonable attorney's fees in such an action through the court process.

Section 226 request may provide "a computer-generated record" in lieu of actual wage statement copies, provided that record contains all nine specified items of information, such as all hourly rates, hours worked, gross wages earned, etc. And, as of January 1, 2019, employers must provide the employee a copy of the wage statements or computer-generated record upon request. Employer must provide responsive documents within 30 days. A failure to timely respond to these requests could lead to penalties, civil litigation, and, in some cases, criminal liabilities.

Mandatory Federal and State Notices:

Employers in California must post information on both state and federal employment laws. Failing to post required notices can have serious consequences, including penalties and even criminal charges.

California employers must post the following federal notices:

- *Employee Rights Under the Fair Labor Standards Act*
- *Equal Employment Opportunity Is The Law*
- *Employee Rights and Responsibilities Under the Family Medical Leave Act (employers with 50 or more employees only)*
- *Your Rights Under USERRA (Uniformed Services Employment and Reemployment Rights Act)*
- *Employee Rights: Employee Polygraph Protection Act*

California employers must also post the following notices specific to California law:

- *Official Notice: California Minimum Wage Order*
- *Payday Notice*
- *California Law Prohibits Workplace Discrimination and Harassment*
- *Notice A: Your Rights and Obligations as a Pregnant Employee (employers with five to 49 employees only)*
- *Notice B: Family Care and Medical Leave and Pregnancy Disability Leave (employers with 50 or more employees only)*
- *Safety and Health Protection on the Job*
- *Notice to Employees: Injuries Caused By Work*
- *Emergency Phone Numbers*
- *Whistleblowers Are Protected*
- *Healthy Workplaces Healthy Families Act of 2014: Paid Sick Leave*

- *Time Off to Vote*
- *Notice to Employees (unemployment compensation, disability insurance, paid family leave)*

To the best of my knowledge, ClaimLogix's employees are 100% remote. It is a regular business practice to communicate with their staff via email. Despite having the resources needed to have a company intranet/shared forum already live and in play, and there would be no additional expense or negative impact to the company, ClaimLogix chooses not to utilize it. The continued refusal to acknowledge my inquiries, respond to reasonable questions, and continued lack of transparency seems to be the culture of ClaimLogix management. The amount for federal posting fines increased to more than **\$34,000 per violation, per location. State and local fines range from \$100 to \$1,000 each**, plus the cost of lawsuits or investigations.

I question the existence of a company handbook in which Christy of Benoni Law Firm mentioned during our phone conversation when I questioned why I was not receiving the same holiday pay/benefit as my colleagues. I inquired if I was the only employee not receiving holiday pay when the company was closed for business. Christy stated to me that I would not be eligible because I did not work two days before. I inquired as to where this policy information was because I had never heard of this, or any other company policy similar to this. Christy stated that it was in our employee handbook. I let her know that we didn't have one. I followed up numerous times for this document and have been ignored. There's no evidence that one does exist nor that it was ever provided to me. If one does exist, I have requested this on four separate occasions and have not received one reply.

Records for all employees. Employers found guilty of violating the FLSA can face fines and penalties and be required to pay back wages to current and former employees if this federal labor law is broken. I am formally requesting electronic copies of my personnel and payroll records.

When we spoke on 12/10/2019, I had asked why I was not paid holiday pay and whether other people were not paid for it. You stated because I did not work the day before and that this information is in the employee handbook. Can you please provide the date ClaimLogix alleges they provided this to me? Two other employees have stated to me that they have not received a handbook as well.

Perhaps her suggestion that we had an employee handbook was because she was working on an article for her employer, yet she never has sought to correct it, or acknowledge my request for a copy of ours. Based on the article published 12.29.19 by Christy of Bononi Law Group it is agreed that company policy is important to have outlined for employees. Superiors should have procedures to handle any claims made and it also states that it should be prohibited for any form of retaliation for coming

forward with a complaint. It's agreed between the parties that the employer should explain the leave policy in detail if you need time off due to medical reasons and that the law protects this right.

#3 Retaliation:

I understand that it is your position that there has not been any retaliatory actions or harassment by ClaimLogix. There is a significant amount of mental anguish trying to make sense of what I believe to be apparent violations, which have been, and continue to be ignored by ClaimLogix. This is compounded by the fact that much of the disputes could potentially be resolved simply by forwarding the emails which are said to exist. Yet,



ClaimLogix and/or their defense firm decided the best course of action is withhold key pieces of information, thus promoting the litigation, which I feel are tactics to prolong this process, causing me unnecessary stress. I was forced to accept a role in which I felt was a big demotion and significant loss of income, and told that my earned commission would no longer be payable to me in that role, since I was no longer in sales. I inquired about and subsequently learned on 09/10/2019 that ClaimLogix had determined that I not earn commission for the MV Transportation. I had been trying to seek any clarification account for the basis of this decision, which even

today, I have not been given a clear answer, just that Jack knew Kelli. When I persisted, Jack responded that he "is the one that assigns accounts." This was concerning as it was the first time I had heard that our accounts, no matter who brought them in, could arbitrarily be assigned based on the whims of management. I was told that all the information I need to determine my commissions was in my contract and referred me back to it saying "it's not rocket science." There was no interest by ClaimLogix to discuss this and it was clear that me asking these questions frustrated them.

After no resolution, my contract to go 50/50 not showing up and most inquiries being flat out ignored, I reached out to Tony (October 6th I believe). Again after a period of nothing

really happening and waiting, I reached out to management again and then a call was arranged for 10/21/2019 to include Daniel and Jack. During the phone conversation I expressed my frustrations and it stopped being a discussion, and Jack went on a tirad, and I don't remember what as my brain checks out during high periods of stress, like raised voices.. The last thing that I remember thinking was whether or not the other two on the line were going to step in and why were they letting it go on so long. I do remember there was an awkward period of silence and then I was asked to make a decision right then and there.

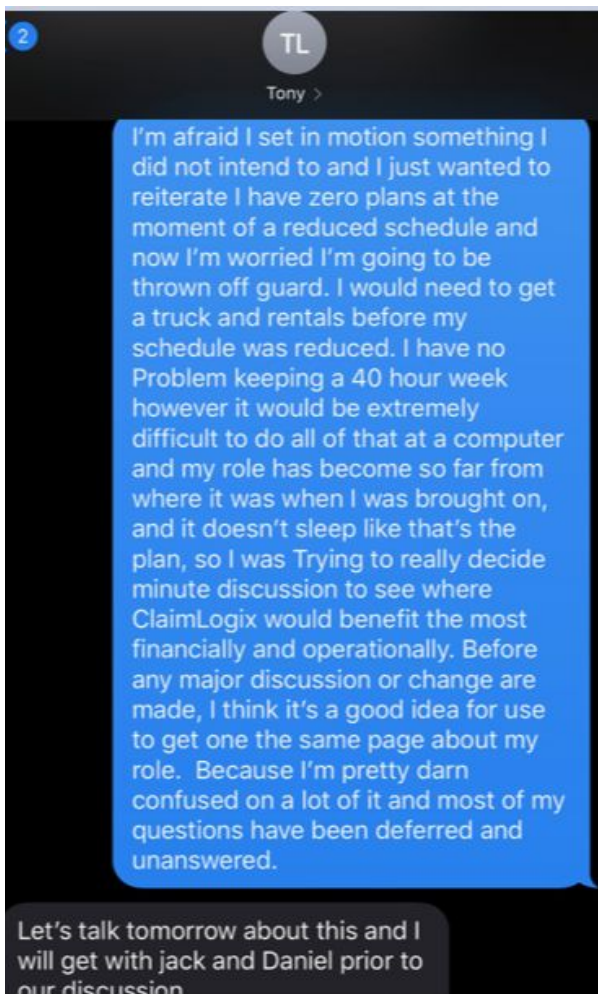
California State law states that:

- (2) There shall be a rebuttable presumption of unlawful retaliation if an employer denies an employee the right to use accrued sick days, discharges, threatens to discharge, **demotes**, suspends, or in any manner discriminates against an employee within 30 days of any of the following:*
 - (A) The filing of a complaint by the employee with the Labor Commissioner or alleging a violation of this article.*
 - (B) The cooperation of an employee with an investigation or prosecution of an alleged violation of this article.*
 - (C) Opposition by the employee to a policy, practice, or act that is prohibited by this article.*

I had also brought up to management that it was not reasonable to be faulted for lack of growth for an entire region as large as Northern California, when I was permitted 8-10 hours a week to do so and not allowed to direct my activities how I saw fit, with a very small budget and usually getting push back for the request I did submit.. Sales is relationship business and doing this less than part-time was not reasonable. It was requested that focus on Athen's, which travel there and back, plus pick up supplies and emailing with management to coordinate took approximately 5 hours alone. Plus my time spent there, my allotted hours per week, were gone. An email was sent out to the team taking a jab about me taking donuts and hoping it will help to increase sales. Although it was pretenced as "not directing this at sales," it was clear that this was a jab at me as there is only one other person in sales. I am the one that took donuts to clients. The reason I did so was because I often had coupons for buy a dozen get a dozen and they were affordable. My request for expenses for client visits were often met with rejection or complaints. I had to make an argument for any ideas or request I had for client visits. This was especially frustrating when just about every sales call, the two other people in sales were on their way to lunch, had a happy hour schedule, or were bringing gift baskets and themed gifts to clients.

As I shared with Tony and many others, I generally enjoyed working for ClaimLogix. It was the constant misinformation and flip flopping of policies and secretiveness of deals that frustrated me. When my deal got stolen, I felt defeated. In response to your claim that I requested to reduce my hours, that I was not happy in my current position and wanted to reduce my hours to pursue a Furniture business is a bit absurd. I have a small, old 2006 Lexus IS350 compact car that can barely fit four people. I live on the second floor of an apartment. Certainly my neighbors would not be keen on me running a furniture business and power tools in my apartment, assuming I could even get furniture transported in my car and up my stairs as 115 lb female.

I did share a story in which a piece of furniture I redid (that I intended to keep but it



ultimately didn't work out) and sold for profit and I enjoyed what I had learned and mentioned it would be great if I could do something like that in the future, but there was no way I was anywhere near ready, had a concrete plan, or even though it all the way through as a legitimate business plan. On 10/09/19, I texted to Tony that I was afraid I set into motion something I did not intend to and stated "I just want to reiterate that I have zero plans at the moment of a reduced schedule and now I'm worried I'm going to be thrown off guard...I have no problem keeping a 40 hour work week." I stated that I felt everyone should get on the same page regarding my role before any changes are made. I was told that we would talk the next day and that Tony would discuss with Jack and Daniel beforehand. The following day, I received a text message altering my position, without any discussion. Just a text. From then on, I did not receive any additional

communication about my schedule or what may or may not work for both parties. That time of not knowing what was going on, or when anything would be addressed was very stressful. I wasn't sure what to think.

Reducing my hours and losing a \$250 stipend to start a furniture business, right before the holidays, in a second floor apartment, is not reasonable and I assure you that just about everyone I know can attest to the fact that is not something I would do. I mentioned several others ideas, including doing sales still, but just focusing on the Sacramento area to get some discussion going on how to make this work as I had, for the most part, enjoyed my time with ClaimLogix, but the secretiveness and unwillingness to explain basic policy, plus the numerous inconsistencies were becoming difficult for me. I had hoped to address it with Tony open a discussion, but it didn't happen.

When I was told that I would not be getting the MV account is when I started having issues getting my work done. I would replay things in my head, regrets, conversations, question why there was so much misinformation and why I didn't go with my gut and decline the offer. These thoughts led me to just spacing out. I don't even know if was thinking anything. I just remembered kind of noticing that I had just completely spaced out. As this happened more frequently, I fell further and further behind on my work causing me a significant amount of additional stress. I also felt a lot of anxiety when I would, for example, work on the Everest account or a client that I had referred and not been paid on. It made it very difficult for me to concentrate.

Discussion:

There have been various times in which the defense stated I was unhappy with my job. I have a few other messages in which I state that I was happy at ClaimLogix, except for the sales portion as it was unrealistic to be effective in a relationship type business, covering the region of Northern California, and only allowed one day a week. I was working way too much overtime hours. I actually confirmed the MV account over a weekend. But I worked extra hours because I told myself, "If I could just get one decent deal, I'll finally be able to move into account management," which had been my goal the entire time. My offer letter says "the position also requires slaws activities such as new business procurement and Account management of existing business and any new business." I was never allowed to manage any accounts. I tried many times to resolve the issues between ClaimLogix and myself, but was unable to do so.

3. Along those lines, I sought clarification about commission on "increase" current business. I asked how this is determined, how often paid and do I get a copy of this? Never got clarification. With two people going to the same office, how do differentiate increased business to whom? And I recently found out that I do not even have a territory, so that blurs the lines on how this is determined more. What determines new vs. old business? Throughout my time in the sales role, the way all this has been explained to me has changed various times. I sought clarification but I did not and still not able to find out anything related to what I feel, are reasonable questions. Healthcare contribution was to kick in after 90 days. I didn't get my stubs for a while, but saw it wasn't included.

I really enjoy working for ClaimLogix as a company, but it has difficult for me to continue in a role where my performance and commission is dependent on something that is not recorded/report, and something I can't get clear answers on or even a response to. The offer letter I am deferred to in incredibly vague. As stated, I feel in limbo and like I am going to be surprised with info again and it's been stressing me out.

Have a good weekend. Hope to hear from you soon.

Penalties & Labor Code

Pursuant to Section 2699 shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer. It is my position that I should be paid the following for commissions and account management:

- 3% of accounts receivable and MV Transportation and Everest National, through the last day of employment.
- 2% on increased accounts receivable for Athens Concord and Sedgwick Roseville
- Individual referrals from various accounts sent to ClaimLogix Referral Email.
- Any and all associated penalties for withholding payments
- holiday pay
- back pay for misclassification
- any additional wages, penalties, interest or damages that are due.

Additional Request to the Defense:

I feel like I have made a genuine good faith effort to provide you with the most accurate information and provide supporting evidence for my position and I request, going forward, the same from the defense. In the same letter, the defense states that I am owed money and will be paid, then later states it is the company's position that they have complied with wage and payroll laws, have not misclassified my position, and that the applicant has been appropriately compensated for all work. Please take notice that there has been emails stating that I am still owed, such as the 10.28.2019 letter titled "Commissions" by Jack Countway. I really need some clarity from the defense

It is also important to receive the request items of discovery so that I can properly evaluate my wage claim before the hearing. Should you need anything from me. Please don't hesitate to ask. I will get it over to you timely.

I request that the defense, in good faith, complies with the law and immediately issues any wage or commissions they have acknowledged are due and payable.

I request that the defense to provide more support for their position and confirm details and anything going forward is the position of ClaimLogix AND the defense. At 23 pages, you can imagine how time consuming this has been and I have not been able to get to my cases.

I am requesting to be reinstated to the role I was hired for, and be allowed to spend 50% of my time covering sales in Northern California territory or allowed to do sales 10 hours a week covering Sacramento and the surrounding region only. I am requesting that I account manage the MV Transportation account since my commissions are based on its performance.

Demand:

My demand remains at \$25,000 plus regular salary beginning Jan. 01, 2020. I feel this is a very fair value and it will remain through the hearing, which our deputy estimates will be around May or June. I will continue to work for ClaimLogix and give my best effort, now that I am able to complete this to clarify or correct some facts and put the defense on notice.

Regards,

Rece Sbabo

