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ENDORSED
FILED
ALAMEDA COUNTY

MAY 15 2020

CLERK OF THE SUPERIOR COURT
By Nicole Sale Deputy

Attorneys for Plaintiff MARISSA JAMES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

MARISSA JAMES,

Plaintiff,

vs.

CITISTAFF SOLUTIONS INC.; TESLA,
INC.; and DOES 1-10, inclusive,

Defendants.

Case No.: **RG20061660**

COMPLAINT FOR PENALTIES FOR

1. VIOLATIONS OF LABOR CODE § 2698
ET SEQ. (PAGA)

Plaintiff Marissa James ("James") brings this action against CitiStaff Solutions Inc. ("CitiStaff"); Tesla, Inc. ("Tesla"); and Does 1-10, inclusive as referred to herein, as a proxy of the California Labor and Workforce Development Agency ("LWDA") under the California Labor Code Private Attorneys General Act of 2004 ("PAGA") for civil penalties on behalf of herself and current and other former employees of CitiStaff and Tesla, as well as statutory attorneys' fees and costs. As grounds James therefore alleges:

PARTIES

1. James is and was at all times relevant herein an individual and a resident of California.
2. CitiStaff is and was at all times relevant herein a California corporation.
3. Tesla is a Delaware corporation qualified to do business in California, with a principal place of business in California.
4. CitiStaff, Tesla, and Does 1-10 are collectively referred to as Defendants.

5. James is not aware of the true names and capacities of the defendants sued herein as Does 1-10, whether individual, corporate, associate, or otherwise, and, therefore, sues such defendants by these fictitious names. James will amend this complaint to allege their true names and capacities when ascertained. James is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged and that the violations alleged herein were caused by such defendants. Unless otherwise indicated, each defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-defendant.

VENUE

6. Venue is proper in this Court because unlawful acts as to James alleged herein took place in Alameda County.

PAGA ALLEGATIONS

7. James was employed in Fremont, California, within the last year with CitiStaff and Tesla as joint employers. CitiStaff is a staffing company that provides Tesla with workers for its factory.

8. After James was bused to work from the San Joaquin County Fairgrounds, Tesla exerted control over James' employment, including but not limited to deciding her schedule, determining her work duties, providing her with the tools and equipment of the job, and enforcing its employment policies on James and other aggrieved employees in California.

9. Within the relevant time period, including within the past year, and in accordance with a uniform, statewide policy throughout California, CitiStaff and Tesla have knowingly and intentionally refused and failed to (1) provide all working employees with suitable seats when the nature of the work reasonably permits the use of seats; (2) place an adequate number of suitable seats in reasonable proximity to the work area when employees are not engaging in the active duties of their employment and the nature of the work requires standing; and (3) permit the employees to use such seats when it does not interfere with the performance of their duties, in violation of Labor Code § 1198 and Industrial Welfare Commission Wage Order 1-2001, Section 14; Wage Order 4-2001, Section 14; Wage Order 7-2001, Section 14; and Wage Order 9-2001,

1 Section 14. *See, e.g., Bright v. 99 Cents Only Stores* (2010) 189 Cal.App.4th 1472; *Home Depot*
2 *U.S.A., Inc. v. Sup. Ct.* (2010) 191 Cal.App.4th 210.

3 10. During her employment, James and other aggrieved California employees, current
4 and former, were told that they are not permitted to sit during work hours, not even during
5 “downtime” during which employees are not engaged in the active duties of their employment but
6 are still “on the clock,” waiting to resume their active duties. Downtime can last hours.

7 11. During these downtimes and at other time during which the nature of the work
8 reasonably permitted the use of seats, James and the other aggrieved California employees, current
9 and former, were not permitted to sit. In fact, during orientation, James and the other aggrieved
10 California employees, current and former, were warned that Elon Musk, Tesla’s largest shareholder
11 and its Chief Executive Officer, once saw an employee sitting and terminated that employee simply
12 for sitting.

13 12. James experienced this unlawful policy repeatedly during her employment with
14 CitiStaff and Tesla. In fact, James was disciplined for leaning against a wall, which CitiStaff and
15 Tesla equate to sitting. James’ former employers were very clear: there is no sitting at work, not
16 even when the nature of the work reasonably permitted the use of seats. This unlawful policy
17 continues.

18 13. Pursuant to the provisions of Labor Code § 2699.3, an aggrieved employee may
19 pursue a civil action arising under PAGA after the following requirements have been met:

- 20 a. The aggrieved employee shall give written notice by certified mail to the
21 LWDA and the employer (hereinafter “Employee’s Notice”) of the specific
22 provisions of the Labor Code alleged to have been violated, including the
23 facts and theories to support the alleged violations;
- 24 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the
25 employer and the aggrieved employee by certified mail that it does not
26 intend to investigate the alleged violation within 60 calendar days of the
27 postmark date of the Employee’s Notice. Upon receipt of the LWDA’s
28 Notice, or if the LWDA does not provide notice within 65 calendar days of

1 the postmark date of the Employee's Notice, the aggrieved employee may
2 commence a civil action pursuant to Labor § 2699 to recover civil penalties
3 in addition to any other penalties to which the employee may be entitled.

4 14. On March 6, 2020, James provided written notice by online submission to the
5 LWDA and by certified mail to CitiStaff and Tesla of their violations of the Labor Code set forth
6 herein, including the facts and theories to support the alleged violations. As of the filing of this
7 complaint, more than 65 days have passed without the LWDA providing written notice that it
8 intends to investigate the allegations in March 6, 2020 notice. Accordingly, James has satisfied the
9 administrative prerequisites under Labor Code § 2699.3 to bring a civil action to recover penalties
10 against CitiStaff and Tesla under PAGA.

11 **FIRST CAUSE OF ACTION**
12 **VIOLATIONS OF LABOR CODE § 2698 *ET SEQ.***
13 **(PAGA)**
14 **Against Defendants**

15 15. James hereby realleges and incorporates by reference each and every allegation set
16 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
17 allegations of this cause of action.

18 16. As set forth above, Defendants violated Labor Code § 1198 and Industrial Welfare
19 Commission Wage Order 1-2001, Section 14; Wage Order 4-2001, Section 14; Wage Order 7-
20 2001, Section 14; and Wage Order 9-2001, Section 14. *See, e.g., Bright v. 99 Cents Only Stores*
(2010) 189 Cal.App.4th 1472; *Home Depot U.S.A., Inc. v. Sup. Ct.* (2010) 191 Cal.App.4th 210.

21 17. Wherefore, James seeks civil penalties under PAGA.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, James prays judgment against Defendants as follows:

- 24 1. For civil penalties recoverable under PAGA, including but not limited to those
25 available under Labor Code § 2699(f); and
26 2. For statutory attorneys' fees and costs, including but not limited to those available
27 under Code of Civil Procedure § 1021.5 and Labor Code § 2699(g);

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- 1 3. For prejudgment and post-judgment interest according to any applicable provision
2 of law or as otherwise permitted by law, including those available under Civil Code
3 §§ 3287(a) and 3289(b); and
4 4. For such other and further relief as the court deems just and proper.

5
6 **DATED:** May 12, 2020

MAYALL HURLEY P.C.

7
8 By _____



NICHOLAS F. SCARDIGLI
Attorneys for Plaintiff
MARISSA JAMES