

ENDORSED
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ALAMEDA COUNTY
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CLERK OF THE SUPERIOR COURT
By TANIA PIERCE Deputy

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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

FIRST AMENDED COMPLAINT FOR
PENALTIES FOR

1. VIOLATIONS OF LABOR CODE § 2698
ET SEQ. (PAGA)
2. ADDITIONAL VIOLATIONS OF LABOR
CODE § 2698 *ET SEQ.* (PAGA), IN
RELATION TO LABOR CODE § 226

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.

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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

1 employees to use such seats when it does not interfere with the performance of their duties, in
2 violation of Labor Code § 1198 and Industrial Welfare Commission Wage Order 1-2001, Section
3 14; Wage Order 4-2001, Section 14; Wage Order 7-2001, Section 14; and Wage Order 9-2001,
4 Section 14. *See, e.g., Bright v. 99 Cents Only Stores* (2010) 189 Cal.App.4th 1472; *Home Depot*
5 *U.S.A., Inc. v. Sup. Ct.* (2010) 191 Cal.App.4th 210.

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

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

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

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

- 23 a. The aggrieved employee shall give written notice by certified mail to the
24 LWDA and the employer (hereinafter “Employee’s Notice”) of the specific
25 provisions of the Labor Code alleged to have been violated, including the
26 facts and theories to support the alleged violations;
- 27 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the
28 employer and the aggrieved employee by certified mail that it does not

1 intend to investigate the alleged violation within 60 calendar days of the
2 postmark date of the Employee's Notice. Upon receipt of the LWDA's
3 Notice, or if the LWDA does not provide notice within 65 calendar days of
4 the postmark date of the Employee's Notice, the aggrieved employee may
5 commence a civil action pursuant to Labor § 2699 to recover civil penalties
6 in addition to any other penalties to which the employee may be entitled.

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

14 **FIRST CAUSE OF ACTION**
15 **VIOLATIONS OF LABOR CODE § 2698 ET SEQ.**
16 **(PAGA)**
Against Defendants

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

20 16. As set forth above, Defendants violated Labor Code § 1198 and Industrial Welfare
21 Commission Wage Order 1-2001, Section 14; Wage Order 4-2001, Section 14; Wage Order 7-
22 2001, Section 14; and Wage Order 9-2001, Section 14. *See, e.g., Bright v. 99 Cents Only Stores*
23 *(2010) 189 Cal.App.4th 1472; Home Depot U.S.A., Inc. v. Sup. Ct. (2010) 191 Cal.App.4th 210.*

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

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SECOND CAUSE OF ACTION
ADDITIONAL VIOLATIONS OF LABOR CODE § 2698 ET SEQ.,
IN RELATION TO LABOR CODE § 226
(PAGA)
Against CitiStaff

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

19. On July 7, 2020, James filed an amended claim notice with the LWDA, which she served on CitiStaff and Tesla by certified mail, alleging the following Labor Code violations **as to and, as a proxy of the LWDA, on behalf of all of CitiStaff's current and former employees within and throughout California during the relevant time period** (the same as with James' First Cause of Action as to CitiStaff, in terms of the scope of "aggrieved employees" on whose behalf James seeks civil penalties under PAGA):

- a. CitiStaff, in accordance with a companywide and statewide policy within and throughout California that has affected all of its current and former California employees to whom it furnished wage statements from three years prior to July 7, 2017, to the present, has failed to keep a "copy" of the wage statements (as the term "copy" is defined in Labor Code § 226(a)) that it furnished to all of its current and former California employees during these time periods for at least three years that accurately shows net wages earned, in violation of its duty to maintain such copies for at least three years at the place of each employee's employment or at a central location within the State of California under Labor Code § 226(a). To be clear, CitiStaff's violations of Labor Code § 226(a) for wage statements furnished to California employees from July 7, 2017, to date, arise from its failure to *maintain* (i.e., as opposed to a failure to *furnish*) copies of wage statements for at least three years that are either "a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately

shows all of the information required by this subdivision,” including Labor Code § 226(a)(5)’s requirement to accurately show “net wages earned, in violation of Labor Code §§ 226(a) and 226(a)(5). The “copy” that CitiStaff maintains inaccurately shows “Net” pay as \$0.00 for pay periods within the past three years in which each current and former employee’s net pay was greater than \$0.00. CitiStaff’s failure to maintain “copies” of wage statements accurately showing net wages earned affected all of its California employees, both exempt and non-exempt, to whom it furnished wage statements during this time period.

20. In addition, James’ July 7, 2020 amended claim notice alleged the following Labor Code violations **as to and, as a proxy of the LWDA, on behalf of all of CitiStaff’s current and former non-exempt employees within and throughout California during the relevant time period:**

- a. CitiStaff, in accordance with a companywide and statewide policy within and throughout California, has failed to maintain a “copy” of the wage statements (again, as the term “copy” is defined in Labor Code § 226(a)) that it has furnished to all of its non-exempt California employees from three years prior to July 7, 2017, to the present, that accurately shows “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee,” as required by Labor Code § 226(a)(9), in violation of its duty under Labor Code §§ 226(a) and 226(a)(9) to maintain a compliant “copy” of such wage statements for at least three years. As above, this is a violation of Labor Code §§ 226(a) and 226(a)(5).

21. James is an “aggrieved employee” under PAGA because the Labor Code violations contained herein have been committed against her. In addition, CitiStaff violated Labor Code § 226(c) as to James, because it did not produce a “copy” of her wage statements (again, as the term “copy” is defined in Labor Code § 226(a)) “no later than 21 calendar days from the date of” Ms.

James' initial written request for these this copy of records, i.e., March 6, 2020.

22. On September 11, 2020, James filed an amended claim notice with the LWDA, which she served on CitiStaff and Tesla by certified mail, correcting a typo in her July 7, 2020 amended claim notice.

23. As of the filing of this complaint, more than 65 days have passed without the LWDA providing written notice that it intends to investigate the allegations in July 7, 2020 and September 11, 2020 amended claim notices. Accordingly, James has satisfied the administrative prerequisites under Labor Code § 2699.3 to amend her existing complaint to add cause of action arising under PAGA.

24. Wherefore, James seeks civil penalties under PAGA.

PRAYER FOR RELIEF

WHEREFORE, James prays judgment against Defendants as follows:

1. For civil penalties recoverable under PAGA, including but not limited to those available under Labor Code §§ 226.3 and 2699(f); and
2. For statutory attorneys' fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5 and Labor Code § 2699(g);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b); and
4. For such other and further relief as the court deems just and proper.

DATED: November 17, 2020

MAYALL HURLEY P.C.

By



NICHOLAS F. SCARDIGLI
WILLIAM J. GORHAM III
Attorneys for Plaintiff
MARISSA JAMES

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 2453 Grand Canal Boulevard, Stockton, California 95207 that is located in the county where the mailing and/or delivery below took place.

On November 17, 2020, I served the following document:

FIRST AMENDED COMPLAINT FOR PENALTIES

addressed to:

Charles C. Slater
Dominic G. Mendoza
CitiStaff Solutions, Inc.
1111 W. Town & Country Rd., Suite 30
Orange, CA 92868
Email: cslater@citistaffsolutions.com;
dmendoza@citistaffsolutions.com
Attorneys for CitiStaff Solutions, Inc.

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Attorneys for Defendant Tesla, Inc.

☒ **(Via Email) Pursuant to Emergency Rule 12 – Electronic Service** – I caused such document to be transmitted by email was reported as complete without error.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 17, 2020, at Stockton, California.



NICHOLAS F. SCARDIGLI