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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Mouang Saechao, Deputy

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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF STANISLAUS
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11 JAVIER BRACERO, on behalf of himself and all	) NO. CV-20-002975
12 aggrieved employees,	)
13 Plaintiff,	) COMPLAINT
14 v.	)
15 DATA PATH, INC., and DOES 1 to 100,	) 1. PAGA Penalties
Defendants.	) 2. Wage and Hour Violations
	) 3. Meal Period Violations
	) 4. Rest Period Violations
	) 5. Wage Statement Penalty
	) 6. Waiting Time Penalty

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19 PRELIMINARY ALLEGATIONS

- 20 1. Plaintiff Javier Bracero is a resident of Stanislaus County.
- 21 2. Defendant Data Path, Inc. is a corporation based in Stanislaus County.
- 22 3. Plaintiff does not know the names and capacities of Does 1 to 100 and therefore uses
- 23 fictitious names. Plaintiff will amend pursuant to Code of Civil Procedure section 474 when
- 24 the names and capacities are known.
- 25 4. Plaintiff sent a PAGA letter by certified mail to Data Path, Inc. and the Labor and
- 26 Workforce Development Agency through its online portal on April 20, 2020.
- 27 5. Since more than 65 days have passed and LWDA did not investigate, Plaintiff may now file
- 28 a complaint for PAGA penalties.

- 1 6. PAGA allegations are not subject to arbitration pursuant to *Iskanian v. CLS Transportation*
2 *of Los Angeles, LLC* (2014) 59 Cal.4th 348.
- 3 7. The PAGA period is from April 20, 2019 to present.
- 4 8. Plaintiff and the aggrieved employees worked in IT support positions for Defendants.
- 5 9. Plaintiff and the aggrieved employees were misclassified as exempt.
- 6 10. Although Labor Code 515.5 exempts employees in the computer software field, Plaintiff
7 and the aggrieved employees were not working in the computer software field.
- 8 11. Rather, Plaintiff and the aggrieved employees were performing customer service work.
- 9 12. Due to the misclassification, Plaintiff and the aggrieved employees were not paid properly.

11 FIRST CAUSE OF ACTION

12 PAGA PENALTIES

13 Against All Defendants

- 14 13. Plaintiff incorporates by reference paragraphs 1 to 12 of the complaint.
- 15 14. The first basis for PAGA penalties is that Plaintiff and the aggrieved employees did not
16 receive overtime for work over 8 hours a day. The applicable PAGA penalties are found in Labor
17 Code sections 1194.2 and 1197.1
- 18 15. The second basis for PAGA penalties is that Plaintiff and the aggrieved employees did not
19 receive meal periods. The applicable PAGA penalties are found in Labor Code section 2699.
- 20 16. The third basis for PAGA penalties is that Plaintiff and the aggrieved employees did not
21 receive rest breaks. The applicable PAGA penalties are found is Labor Code section 2699.
- 22 17. The fourth basis for PAGA penalties is that Plaintiff and the aggrieved employees did not
23 receive all wages due after they stopped working for Defendants. The applicable PAGA penalties
24 are found in Labor Code section 2699.
- 25 18. The fifth basis for PAGA penalties is that Plaintiff and the aggrieved employees did not
26 receive statutorily compliant wage statements. The applicable PAGA penalties are found in Labor
27 Code section 226.3.

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1 SECOND CAUSE OF ACTION
2 WAGE AND HOUR VIOLATIONS

3 Against All Defendants

4 19. Plaintiff incorporates by reference paragraphs 1 to 12 of the complaint.

5 20. Plaintiff worked more than eight hours a day but was not paid overtime for work over eight
6 hours in a day.

7 21. Pursuant to Labor Code section 1194, Plaintiff is entitled to all unpaid overtime plus
8 interest, costs, and attorney fees.

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10 THIRD CAUSE OF ACTION
11 MEAL PERIOD VIOLATIONS

12 Against All Defendants

13 22. Plaintiff incorporates by reference paragraphs 1 to 12 of the complaint.

14 23. Pursuant to Labor Code section 512 and Wage Order 4, Plaintiff should have received
15 thirty-minute meal periods for every five hours of work.

16 24. Plaintiff did not receive these meal periods, thus pursuant to Labor Code section 226.7,
17 Plaintiff is entitled to an additional hour of compensation for each missed meal period.

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19 FOURTH CAUSE OF ACTION
20 REST PERIOD VIOLATIONS

21 Against All Defendants

22 25. Plaintiff incorporates by reference paragraphs 1 to 12 of the complaint.

23 26. Pursuant to Wage Order 4, Plaintiff should have received a ten-minute meal period for
24 every four hours of work.

25 27. Plaintiff did not receive these rest periods, thus pursuant to Labor Code section 226.7,
26 Plaintiff is entitled to an additional hour of compensation for each missed rest period.

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FIFTH CAUSE OF ACTION
WAGE STATEMENT PENALTY

Against All Defendants

28. Plaintiff incorporates by reference paragraphs 1 to 13 of the complaint.
29. Plaintiff's wage statements did not comply with Labor Code section 226.
30. As a result, Plaintiff is entitled to the wage statement penalty.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTY

Against All Defendants

31. Plaintiff incorporates by reference paragraphs 1 to 12 of the complaint.
32. Plaintiff was still owed overtime compensation when he stopped working for Defendants.
33. As a result, Plaintiff is entitled to the waiting time penalty.

PRAYER

First Cause of Action

1. All applicable PAGA penalties
2. Attorney fees and costs

Second Cause of Action

1. Payment of all unpaid overtime plus interest
2. Attorney fees and costs
3. Other relief the court deems proper

Third Cause of Action

1. Premium pay for each missed break
2. Other relief the court deems proper

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1 Fourth Cause of Action

2 1. Premium pay for each missed break

3 2. Other relief the court deems proper

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5 Fifth Cause of Action

6 1. Wage statement penalty

7 2. Other relief the court deems proper

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9 Sixth Cause of Action

10 1. Waiting time penalty

11 2. Other relief the court deems proper

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13 Date: July 9, 2020

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Attorney for Plaintiff

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Javier Bracero

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