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VIA LWDA ONLINE PORTAL
<https://dir.tfaforms.net/268>

Labor and Workforce Dev. Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Alfredo Cresci v. Cox Automotive Corporation Services, LLC et al.

Case No.: 2:20-cv-06832-VAP-SK

LWDA Case No.: LWDA-CM-782952-20

Our Client: Alfredo Cresci

Our File No.: 4-089

Subject: Suppl. Private Attorneys General Act Notice of Labor Code Violations

To Whom It May Concern:

This is a supplemental notice of violations in connection with the above-referenced case involving Cox Automotive Corporation Services, LLC (“Employer(s)” or “Defendant(s)”), for which Plaintiff intends to seek “civil penalties” in a civil action under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) on behalf of himself, other current or former aggrieved employees, and the State of California. The original PAGA Notice was submitted on April 1, 2020. This supplemental notice is sent to the employer pursuant to the PAGA. As used in this PAGA notice, the term “violation” applied to Labor Code statutes has the same meaning as Labor Code § 22.

The PAGA statute only requires the PAGA representative to be an employee “against whom one or more of the alleged violations was committed,” meaning a PAGA plaintiff need only have experienced just one of the alleged violations, not all of them. *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 753 (2018); *Jeske v. Maxim Healthcare Servs.*, 2012 WL 78242, *13 (E.D. Cal. Jan. 10, 2012); *Holak v. K Mart Corp.*, No. 1:12-CV-00304-AWI-MJ) 2015 WL 2384895, at *5 (E.D. Cal. May 19, 2015) (“By the plain language of the statute, an aggrieved employee need only suffer one of the Labor Code violations alleged against his or her employer to be able to bring a PAGA claim on behalf of himself or herself and current or former employees who suffered any Labor Code violation at the hands of the employer. Plaintiff need not have actually suffered all of the Labor Code violations that he alleges to have taken place for purposes of seeking PAGA penalties.”).

And a corporate employer's owner, president, secretary, and directors are liable for civil penalties as an "other person" who caused violations of the Labor Code, even if there is no allegation that the alter ego doctrine applies or that there is any other basis on which to pierce the corporate veil. *Atempa v. Pedrazzani*, 27 Cal. App. 5th 809 (2018).

Original Factual Background

Plaintiff worked for Defendant as a remote account manager from February 7, 2018, until January 14, 2020. During Plaintiff's employment, Plaintiff worked over eight (8) hours per day and over forty (40) hours or more hours a week, without being paid overtime wages. Plaintiff also used his personal cell phone for work related purposes. Defendants failed to reimburse Plaintiff for cell phone use. Other account managers also worked over eight (8) hours per day and over forty (40) hours or more hours a week, without being paid overtime wages. Other account managers used their personal cell phone for work related purposes and Defendants failed to reimburse them.

Additional Factual Background

During Plaintiff's employment, Defendant required or directed that he use internet service to do his work, as an employee working remotely. Defendant failed to reimburse Plaintiff for any portion of his internet usage expenses. During Plaintiff's employment, and continuing to present, Defendant required or directed that other California employees, not just account managers, working remotely to use internet to do their work. Defendant failed to reimburse those other employees, not just account managers, for any portion of their internet usage expenses.

Labor Code Violations Providing Civil Penalties Established Pursuant to 2699(f)(2): §§ 2802

§ 2802

"An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." Lab. Code § 2802(a).

Here, Defendant required or directed that Plaintiff and other employees who worked remotely, to do work-related activities using internet data service. Defendant did not reimburse them for any portion of their expenses incurred as a result of the internet data service they used to do work-related activities for Defendant, in violation of Labor Code § 2802(a).

"Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Lab. Code § 558.1(a). It is currently unknown who caused Defendant to violate Labor Code § 2802.

Labor Code § 2802 does not have a civil penalty specifically provided. Thus, Labor Code § 2699(f) is applicable to impose civil penalties of one hundred dollars (\$100) for each



aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

Civil Action

Plaintiff intends to amend his civil action, on behalf of himself, other current and former aggrieved employees, and the State of California to seek civil penalties in a cause of action under the PAGA.

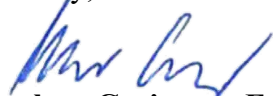
A PAGA claim “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46 Cal. 4th at 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) (“[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state.”). The PAGA conforms to the traditional criteria of qui tam actions, “except that a portion of the penalty goes not only to the citizen bringing the suit but to all employees affected by the Labor Code violation.” *Id.* at 382. As a law enforcement action, the issue is the employer’s conduct, not whether the employees suffered injury or harm. This is because the “harm” or “injury” at issue in a PAGA action is the harm to the public interest in “maximum compliance with the state labor laws.” *Arias*, 46 Cal. 4th at 980.

“When an employee brings a representative action under PAGA, he or she does so ‘as the proxy or agent of the state’s labor law enforcement agencies, not other employees.’ (*Esparza v. KS Industries, L.P.* (2017) 13 Cal.App.5th 1228, 1241 [221 Cal. Rptr. 3d 594].)” *Huff v. Securitas Sec. Servs. USA, Inc.*, No. H042852, 2018 Cal. App. LEXIS 474, at *6 (Ct. App. May 23, 2018). “The purpose of the PAGA is not to recover damages or restitution, but to create a means of ‘deputizing’ citizens as private attorneys general to enforce the Labor Code. [Citation.] (*Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 501 [128 Cal. Rptr. 3d 854].) The relief provided by the statute is [*7] designed to benefit the general public, not the party bringing the action. (*Ibid.*)” *Huff*, at *6-7.

The civil action will be a representative action and, as held by the California Supreme Court in *Arias*, need not meet the requirements for class certification. Moreover, the PAGA has no notice requirements for unnamed aggrieved employees in federal courts, unlike Rule 23 of the Federal Rules of Civil Procedure, nor may such employees opt out of a PAGA action. *Baumann v. Chase Inv. Services Corp.*, 747 F.3d 1117 (9th Cir. Mar. 13, 2014). Further, in a PAGA action, the court does not inquire into the named plaintiff’s and class counsel’s ability to fairly and adequately represent unnamed employees. *Id.*

Based on the foregoing, Plaintiff requests an immediate notification from the LWDA, so he may pursue civil penalties on behalf of the State of California. In the meantime, Plaintiff demands that Defendant immediately change its above-referenced wage practices and become compliant with Labor Code sections by reimbursing employees who work remotely.

Sincerely,


Matthew Gutierrez, Esq.



MG:sc

cc:

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