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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE**

DANIEL PEDRAZA, as an individual on his own behalf and in his representative capacity, on behalf of all others similarly-situated

Plaintiff,

vs.

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA, a California corporation; and DOES 1 through 50, inclusive,

Defendant.

Case No. 30-2020-01144769-CU-OE-CXC

COMPLAINT FOR DAMAGES FOR VIOLATION OF LABOR CODE §2698 Et Seq. (Private Attorneys General Act of 2004)

Assigned for all purposes to: Judge Randall J. Sherman

Dept: CX105

Plaintiff Daniel Pedraza ("Plaintiff Pedraza"), hereby files this Complaint against Defendant, Automobile Club of Southern California ("ACSC" or "Defendant") and DOES 1 through 50, inclusive.

Plaintiff is informed and believes and on the basis of that information and belief, alleges as follows:

INTRODUCTION

1. This action is brought pursuant to Labor Code § 2698 *et seq.* (Private Attorneys General

1 Act of 2004) (the “PAGA”) for Defendant’ violations of Labor Code §§ 200-203, 204, 226(a),
2 510, 512, 1174 (d), 1194 (a) and 2802 for unpaid wages, for missed and/or non-compliant, rest
3 and meal break violations, for unpaid premiums for meal and rest break violations, for to record
4 and maintain records of all hours worked, failure to pay overtime, for failure to reimburse work-
5 related personal cell phone expenses, for failure to issue accurately itemized wage statements and
6 for failure to pay all wages due upon discharge or termination of employment, as further detailed
7 herein.

8 2. This complaint challenges Defendant’ systemic illegal employment practices resulting in
9 violations of the state provisions of the Labor Code against Plaintiff and similarly-situated,
10 current or former employees of Defendant, (“Aggrieved Employees”) during the relevant
11 statutory period.

12 3. Plaintiff is informed and believes and thereon alleges Defendant acted intentionally and
13 with deliberate indifference and conscious disregard to Plaintiff’s rights by failing to pay all
14 wages when due, failing to provide compliant rest and meal break, failing to pay meal period
15 wages and rest break premium, failing to record and maintain accurate records of time work,
16 including time worked while off the clock, failing to pay overtime wages, failing to provide
17 accurate wage statements, and failing to reimburse for expenses incurred in the discharge of work
18 related duties and failure to pay all wages due upon termination of employment.

19 **GENERAL ALLEGATIONS**

20 4. Defendant Automobile Club of Southern California (“ACSC”) is a California corporation,
21 with its principal place of business in Los Angeles, California, located at 2601 S. Figueroa Street,
22 Los Angeles, CA 90007.

23 5. ACSC is the Southern California affiliate of the American Automobile Association
24 (“AAA”) federation of motor clubs. It’s a membership organization that provides its members
25 benefits and services including travel planning, emergency roadside service, and DMV services.

26 6. Plaintiff is unaware of the true names and capacities of Defendants sued as DOES 1
27 through 50, inclusive, and therefore Plaintiff sue these Defendants by fictitious names. Plaintiff is
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1 informed and believes and thereupon alleges that each of the fictitiously named Defendants is in
2 some manner responsible for the wrongful acts and resulting damages to Plaintiff as alleged in
3 this Complaint. Plaintiff will amend this Complaint to show the true names and capacities of
4 these fictitiously named Defendants after their true names and capacities have been ascertained.

5 7. Plaintiff is further informed and believes that all of the acts and conduct described herein
6 below of each named Defendant and DOES 1 through 50, inclusive, were done in the capacity as
7 managing agents, employees, and/or representatives of each other Defendant, and each such
8 Defendant was acting within the scope of such agency, employment and/or representation in
9 doing the wrongful acts alleged herein below and with permission and consent.

10 **THE PLAINTIFF**

11 8. Plaintiff, Daniel Pedraza was at all relevant times herein a resident of Orange County,
12 California. He was employed by Defendant as a driving instructor from November 19, 2018 to the
13 present.
14

15 **JURISDICTION AND VENUE**

16 9. This action is brought pursuant to the PAGA. The civil penalties sought by Plaintiff
17 exceed the minimum jurisdiction limits of the Superior Court and will be established according to
18 proof at trial.

19 10. This Court has jurisdiction of this action pursuant to the California Constitution, Article
20 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those
21 given by statute to other courts. The statutes under which this action of brought do not specify any
22 other basis for jurisdiction.

23 11. This Court has jurisdiction over the violations of the PAGA and Cal. *Lab. Cod.* §§ 200-
24 203, 204, 226(a), 510, 512, 1174 (d), 1194 (a) and 2802 and applicable Wage Order No. 4-2001
25 of the Industrial Wage Commission (“IWC No. 4”).

26 12. This Court has jurisdiction over Defendant and Does 1 – 50, inclusive, because upon
27 information and belief, each party has sufficient minimum contacts in California or otherwise
28 intentionally avails itself of California law so as to render the exercise of jurisdiction over it by

1 the California courts consistent with traditional notions of fair play and substantial justice.

2 13. Venue is proper in this Court because, upon information and belief, the named Defendant
3 transact business and/or have office in this county and the acts and omissions alleged herein took
4 place in this county.

5 **GENERAL ALLEGATIONS**

6 14. Plaintiff realleges and incorporates by reference each and every allegation contained
7 in the preceding paragraphs as though fully set forth herein.

8 15. Plaintiff is a driving instructor who has been employed with Defendant since
9 November 19, 2018. During the relevant statutory period, Plaintiff worked for Defendant
10 as a full time employee at various ACSC locations including Diamond Bar, Tustin and
11 Costa Mesa California locations.

12 16. Throughout his employment with Defendant, Plaintiff and similarly-situated current
13 or former employees of Defendant who work/worked as driving instructors at ACSC
14 locations throughout the State of California (“the Aggrieved Employees”). Driving
15 instructors duties include conduction of behind-the-wheel driving instruction for student
16 drivers, performing audits of adult drivers, keeping records for student drivers (e.g. lesson
17 completions, certificates documenting permit information, etc.)

18 17. Plaintiff and those similarly situated are hourly, non-exempt employees. As a full
19 time non-exempt employee Plaintiff works scheduled shifts of 8 hours a day, five days a
20 week plus overtime. Because of heavy booking schedules and stressful corporate-driven
21 incentives to perform, most of the time Plaintiff worked from approximately 12:45 p.m.
22 until nearly 9:30 p.m. with no rest breaks and often without a timely, compliant, duty free
23 lunch break.

24 18. Plaintiff and the Aggrieved Employees are required to complete twenty-seven (27)
25 driving lessons per week, which leaves them with barely enough time to refuel cars and to
26 complete the required administrative paperwork and documentation. Failure to complete
27 twenty-seven (27) driving lessons per week results in a call from supervisors who remind
28

1 them that if they don't meet the articulated goals set by ACSC, that they won't earn a
2 bonus that year. The pressure to "hit the numbers" is relentless and continuous.

3 19. The goals that are set and the time in which to meet them and complete all of their
4 regular duties is so unrealistic that Plaintiff and the Aggrieved Employees have been
5 constructively *forced* to forfeit their rest breaks completely in order to keep on working to
6 complete tasks and meet goals. In many instances, (as Defendant is well aware) they
7 forego meal breaks as well. At no time did Plaintiff agree to nor did he ever sign a meal
8 break waiver.

9 20. Upon information and belief, Plaintiff also alleges thereon that similarly-situated
10 Aggrieved Employees have likewise never agreed to waive their meal breaks nor did or
11 have they signed a meal break waiver.

12 21. Although Defendant has written meal and rest break policies, in reality due to the
13 aforementioned over-stressed working environments, Plaintiff and the Aggrieved
14 Employees are/were routinely prohibited or impeded from taking their lawful rest breaks.

15 22. By the above-described issues and working conditions, Defendants actively impeded
16 and failed to relieve Plaintiff and the Aggrieved Employees of all duties and relinquish all
17 control, to allow them the opportunity to take a 10 minute rest break for every four hours or
18 major fraction thereof worked, let alone a 30-minute duty free meal break after each five
19 hour work period.

20 23. Although Defendant is aware of the missed rest periods and the fact that Plaintiff
21 and the Aggrieved Employees are/ were foregoing lunch breaks to keep up with the
22 demands of the job, Defendant has failed to pay Plaintiff and the Aggrieved Employees the
23 obligatory premium pay wage equal to one hour of their regular hourly wage for each such
24 missed rest or meal break during each and every pay period during the statutory period.

25 24. Missed breaks, time worked while off the clock and consequently, overtime hours
26 worked and overtime wages due are never recorded or calculated and thus actual hours
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1 worked and wages due are/were not accurately itemized or reflected on Plaintiff and the
2 Aggrieved Employees' wage statements during the statutory period.

3 25. Furthermore, personal cell phones are/were integral to the performance of Plaintiff
4 and the Aggrieved Employees' daily job duties as driving instructors. Plaintiff and the
5 Aggrieved Employees are/were daily required to utilize their personal cell phones to
6 communicate with customers and colleagues regarding scheduling or other work related
7 matters and for GPS/mapping/and navigation functions.

8 26. Despite requiring Plaintiff and the Aggrieved Employees to use their personal cell
9 phones, to perform their job duties on a daily basis, Defendant never reimbursed Plaintiff
10 or the Aggrieved Employees for the cell phone expenses that were necessarily incurred in
11 the performance and discharge of their job duties.

12 27. As a further consequence of the above-described actions and working conditions,
13 Plaintiff and the Aggrieved Employees are/were not being properly paid all of the wages
14 they were due twice monthly on the pay dates set by Defendants, for each and every pay
15 period, during the statutory period, as none of their pay stubs ever reflected premium pay
16 wages for the missed rest break and meal breaks.

17 28. A substantial number of the Aggrieved Employees' employment with Defendant
18 ended during the statutory period. Upon information and belief, Plaintiff alleges thereon,
19 that at the time of such Aggrieved Employees' separation of employment, they were not
20 paid their full wages due in accord with Labor Code Sections 201-202, either, immediately
21 upon termination or discharge or, for such employees not having a written contract for a
22 definite period of time, and who quit, no later than 72 hours thereafter, as applicable.

23 29. As a result of Defendants' failure to properly compensate Plaintiff and the
24 Aggrieved Employees proper compensation for all hours worked, including overtime pay,
25 for premiums for missed rest periods and meal breaks and for the cell phone expenses they
26 necessarily incurred in the performance of their job duties, Plaintiff and the Aggrieved
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1 Employees have been denied the use and enjoyment of the monies they are owed by
2 Defendant, and have been forced to incur attorney's fees and costs of suit.

3 **FIRST CAUSE OF ACTION**
4 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT OF 2004,**
5 **LABOR CODE § 2698 ET SEQ.**

6 **(Against Defendants and DOES 1 through 50, inclusive)**

7 30. Plaintiff realleges and incorporates by reference paragraphs 1 through 21 as though fully
8 set forth herein.

9 31. PAGA expressly establishes that any provision of the California Labor Code which
10 provides for a civil penalty to be assessed and collected by the Labor and Workforce
11 Development Agency (the "LWDA"), or any of its departments, divisions, commissions, boards,
12 agencies or employees for a violation of the California Labor Code, may be recovered through a
13 civil action brought by an aggrieved employee on behalf of himself or herself, and other current
14 or former employees.

15 32. On April 13, 2020, Plaintiff provided written notice to the LWDA and Defendant of the
16 specific provisions of the Labor Code Plaintiff contend were violated, and the theories supporting
17 their contentions. More than sixty-five days have elapsed since Plaintiff provided notice to the
18 Defendant and the LWDA. To date, Plaintiff has not received a response from the LWDA
19 indicating its intent to investigate Plaintiff's claims.

20 33. Plaintiff and the similarly-situated employees are/ were non-exempt, hourly compensated
21 employees and are "aggrieved employees" as defined by California Labor Code § 2699(c) in that
22 they are all former employees of Defendant, and one or more of the alleged violations was
23 committed against them.

24 **Failure to Pay Wages**

25 34. Labor Code § 200(a) defines "wages" as "all amounts for labor performed by employees
26 of every description, whether the amount is fixed or ascertained by the standard of time, task,
27 piece, commission basis, or other method of calculation."

28 35. Under Labor Code § 1194, employees must be separately paid an hourly wage for each
and every hour worked, including time worked while off the clock.

1 36. Plaintiff was at all times subject to California's laws and regulations protecting
2 employees' entitlement to be paid and presumption to be paid all wages earned for labor
3 performed, including an hourly wage for each and every hour worked.

4 37. As set forth above, California law requires employers, such as Defendant to pay a
5 separate hourly wage to all nonexempt employees for each and every hour worked. Labor Code
6 § 1194 provides that employees are entitled to wages and compensation for work performed, at
7 the legal rate, including straight time, overtime, and double time.

8 38. Labor Codes §§ 218, 1194(a) and 1194.2(a) provide that an employee who has not been
9 paid the legal wage may recover the unpaid balance and together with attorney's fees and costs
10 of suit, as well as liquidated damages in an amount equal to the wages unpaid and interest
11 thereon.

12 39. At all relevant times herein, Defendant was required to compensate Plaintiff for all hours
13 worked pursuant to Labor Code § 1194.

14 40. By uniformly impeding Plaintiff and the Aggrieved Employees from recording all the
15 hours they worked, and by its failure to provide any mechanism for its driving instructors to
16 record or log hours performing work-related duties while off the clock, (e.g. routinely
17 responding to phone calls, emails and texts from customers and colleagues) and by having them
18 only record their normally scheduled hours and shifts, Defendant was able to skim wages from
19 Plaintiff and the Aggrieved Employees by not paying them a separate hourly wage for each and
20 every hour worked.

21 41. Through this unlawful and illegal policy and practice, Defendant failed to pay Plaintiff
22 and similarly-situated Aggrieved Employees all wages they were owed.

23 **Failure to Timely Pay Wages When Due**

24 42. Pursuant to Labor Code Section 204, all wages earned by Plaintiffs and the Aggrieved
25 Employees were and are "due and payable twice during each calendar month, on days
26 designated in advance by the employer as regular paydays." For "[l]abor performed between
27 the 1st and 15th days, inclusive of any calendar month" payment is due no later than the 26th
28 day of the month. "...For labor performed between the 16th and the last day, inclusive, of any

1 calendar month, payment is due no later than the 10th day of the following month..." By failing
2 to pay Plaintiffs and the Aggrieved Employees properly Defendants, deprived them of timely
3 payment of all wages earn, when due and owing at these regularly scheduled intervals
4 throughout their employment in violation of Labor Code Section 204.

5 **Failure to Pay Overtime Wages**

6 43. At all times relevant herein, Defendant was required to compensate its non-exempt
7 employees minimum wages for all hours worked and overtime wages for all hours worked in
8 excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the mandate of
9 Labor Code §§ 510, 1194, 1197, and 1198.

10 44. At all times relevant herein, Defendant was required to compensate non-exempt
11 employees at a rate of one and one-half times their respective regular rates of pay for the first
12 eight hours worked on the seventh workday in a workweek, and twice the respective regular rates
13 of pay for any work in excess of eight hours on the seventh workday in a workweek, pursuant to
14 the mandate of Labor Code §§ 510 and 1198.

15 45. As a pattern and practice, Defendant failed to compensate Plaintiff and the Aggrieved
16 Employees for all hours worked, including hours worked while off the clock, resulting in a failure
17 to pay all minimum wages and overtime wages, where applicable.

18 **Failure to Provide Meal Periods and Rest Breaks**

19 46. In accordance with the mandates of Labor Code § 226.7, and 512, Defendant was required
20 to authorize and permit their non-exempt employees to take a 10-minute rest break for every four
21 (4) hours worked or major fraction thereof, and were further required to provide their non-exempt
22 employees with a 30-minute meal period for every five (5) hours worked.

23 47. As a pattern and practice, Defendant failed to provide Plaintiff with legally-mandated
24 meal periods and rest breaks and failed to pay proper premium compensation for this failure.

25 **Failure to Provide Complete and Accurate Wage Statements**

26 48. At all times relevant herein, Defendant was required to keep *accurate* records regarding
27 their California employees pursuant to the mandate of Labor Code §§ 226 and 1174(d).

28 49. As a result of Defendant' various Labor Code violations, Defendant failed to keep

1 accurate records regarding Plaintiff. Defendant failed in their affirmative obligation to keep
2 accurate records regarding Plaintiff's gross wages earned, the total hours each of them worked, all
3 deductions, net wages earned, and all applicable hourly rates and the number of hours worked at
4 each respective hourly rate.

5 **Failure to Reimburse Expenses Incurred in the Discharge of Work Related Duties**

6 50. At all times relevant, California Labor Code section 2802 was in force and effect. Section
7 2802(a) provides: "An employer shall indemnify his or her employee for all necessary
8 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
9 her duties, or of his or her obedience to the directions of the employer, even though unlawful,
10 unless the employee, at the time of obeying the directions, believed them to be unlawful."

11 51. As alleged above, Defendant required Plaintiff and the Aggrieved Employees to incur
12 business-related expenses in direct consequence of the discharge of their duties and obedience to
13 Defendant's directions by using their personal cell phones to communicate with customers and
14 colleagues and in conducting other work related functions and communications.

15 52. As alleged above, Defendant has never reimbursed Plaintiff and the Aggrieved
16 Employees for the business-related expenses they incurred in direct consequence of the discharge
17 of their duties and obedience to Defendants' mandates, policies and instructions.

18 53. Defendant's wrongful acts as alleged above constitute a continuing and ongoing unlawful
19 activity prohibited by the California Labor Code.

20 54. Plaintiff and the Aggrieved Employees seek reimbursement for all business-related
21 expenses they incurred in the performance of their job duties for Defendant, all applicable PAGA
22 civil penalties, together with interest thereon, as well as their attorneys' fees and costs.

23 55. All unreimbursed expenses and penalties owed by Defendant to Plaintiff and the
24 Aggrieved Employees may be recovered through this PAGA action; no class certification is
25 required for Plaintiff to obtain a recovery on behalf of himself and on behalf of the Aggrieved
26 Employees. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 970-975.)

27 **Failure to Pay Wages Due Upon Termination or Separation**

28 56. Labor Code §§ 201 and 202 require employers such as Defendant to pay their employees

1 all wages due within the time specified by law. California Labor Code § 203 provides that if an
2 employer willfully fails to timely pay such wages, the employer must continue to pay the
3 employee's subject wages until the back wages are paid in full or an action is commenced, up to
4 a maximum of 30 calendar days of wages.

5 57. As alleged supra, a certain number of the Aggrieved Employees have ceased
6 employment with Defendant and at the the time of separation of employment, were entitled to
7 be paid all wages each was due for all the hours he / she worked, but to date none of them has
8 received such compensation.

9 58. More than 30 days have passed since such Aggrieved Employees have left Defendant's
10 employ.

11 59. As a consequence of Defendant's willful conduct in not paying such Aggrieved
12 Employees their full compensation due upon separation of employment for all hours worked,
13 each is each entitled to an amount equal to 30 days' wages under Labor Code § 203, together
14 with interest thereon as well as their attorneys' fees and costs.

15 **DAMAGES**

16 60. Pursuant to California Labor Code § 2699, Plaintiff request and are entitled to recover
17 from Defendant unpaid wages, civil penalties, interest, attorneys' fees and costs pursuant, as well
18 as all statutory penalties against Defendant, and each of them, including but not limited to:

19 61. Civil Penalties under California Labor Code § 2699 in the amount of a hundred dollars
20 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
21 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

22 62. Penalties under California Labor Code § 1199 in the amount of fifty dollars (\$50) for each
23 aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for
24 each aggrieved employee per pay period for each subsequent violation;

25 63. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for each
26 aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250)
27 for each aggrieved employee per pay period for each subsequent violation;

28 64. An amount sufficient to recover unpaid wages under Labor Code § 558;

- 1 65. An amount sufficient to recover unpaid wages under Labor Code § 1197.1;
2 66. Any and all additional penalties and sums as provided by the Labor Code and/or other
3 statutes; and
4 67. Attorneys' fees and costs pursuant to Labor Code §§ 1194, 2699, and any other applicable
5 statute.

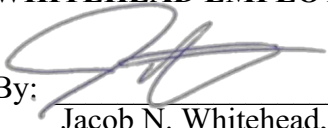
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff pursuant to PAGA, pray for judgment as follows:

- 8 1. Upon the Cause of Action, for civil penalties and wages pursuant to statute as set forth in
9 Labor Code § 2698 *et seq.*, for Defendant's violations of Labor Code §§ 201-204, 226(a), 226.3,
10 226.7, 510, 512(a), 558, 1174(d), 1194, 1198.5 and 2802 and applicable IWC No. 5-2001.
11 2. Upon the Cause of Action, for attorneys' fees and costs pursuant to Labor Code §§ 1194,
12 2699, and any other applicable statute; and
13 3. For such other and further relief the court may deem just and proper.

14 Dated: June 24, 2020

WHITEHEAD EMPLOYMENT LAW

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16 By: 

17 Jacob N. Whitehead, Esq.
18 Attorney for Plaintiff and Aggrieved Employees
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