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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10 DOUGLASS OLMSTED, on behalf of all  
aggrieved employees of DEFENDANT in the  
11 State of California,

12 Plaintiff,

13 v.

14 MERCURY INSURANCE SERVICES, LLC;  
and DOES 1 through 50, Inclusive,

15 Defendant.  
16  
17  
18

Case No.: 21CV376878

*Unlimited Civil- Amount Demanded Exceeds  
\$25,000.00*

**REPRESENTATIVE ACTION FOR PAGA  
PENALTIES**

[Labor Code § 2698, et. seq.]

Representative Claims Under the Labor Code  
Private Attorneys General Act (PAGA)

19 Plaintiff DOUGLASS OLMSTED, individually and on behalf of all other aggrieved employees of  
20 Defendant MERCURY INSURANCE SERVICES, LLC and DOES 1 THROUGH 50, inclusive,  
21 (collectively “Mercury” or “Defendant”) alleges as follows:

22 **I.**

23 **INTRODUCTION**

24 1. Plaintiff DOUGLASS OLMSTED (“Plaintiff”) brings this representative action pursuant to  
25 the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”) against  
26 Defendant for engaging in a pattern of wage and hour violations under the California Labor Code and the  
27 applicable Industrial Welfare Commission (“IWC”) Wage Order. Plaintiff brings this action on behalf of  
28 all other current and former non-exempt employees of Defendant in the State of California who have

1 suffered at least one of the wage and hour violations as alleged in this Complaint (hereinafter “aggrieved  
2 employees”).

3 2. Defendant’s systematic pattern of wage and hour and IWC Wage Order violations toward  
4 Plaintiff and other aggrieved employees in California includes the failure to reimburse for necessary  
5 business expenses.

6 3. Plaintiff brings this representative action against Defendant on behalf of all aggrieved  
7 employees seeking only the recovery of civil penalties permitted pursuant to the California Labor Code  
8 section 2698, *et seq.*, that are required to be shared with the LWDA. Plaintiff, as part of this Complaint,  
9 expressly disclaims the recovery of any individual/victim specific relief or underpaid wages.

10 4. Plaintiff reserves the right to name additional representatives.

11 **II.**

12 **PARTIES**

13 **A. Plaintiff**

14 5. Plaintiff DOUGLASS OLMSTED is a former employee of Defendant who, at all relevant  
15 times, worked for Defendant in a non-exempt position throughout various counties in California, including  
16 Santa Clara County.

17 6. Plaintiff is a resident of the State of California and currently resides in Contra Costa County.

18 7. At all relevant times, Plaintiff and, on information and belief, other aggrieved employees  
19 were subject to the same policies, practices, and procedures governing their employment and their  
20 payment of wages and hours worked.

21 **B. Defendants**

22 8. Defendant MERCURY INSURANCE SERVICES, LLC is a limited liability company  
23 providing personal automobile, homeowners, renters, business, and other types of insurance.

24 9. Defendant MERCURY INSURANCE SERVICES, LLC. is registered as an LLC under the  
25 laws of the State of California and has its principal place of business in Brea, California.

26 10. Defendant does business throughout the State of California, including Santa Clara County,  
27 and Defendant’s wrongful conduct, as herein alleged, occurred in Santa Clara County and in various  
28 counties throughout the State of California.

11. Plaintiff is informed and believes, and thereon alleges, that each Defendant, whether named or fictitious, is and at all relevant times was authorized to do business and did business in the state of California, and was Plaintiff's and other aggrieved employees' "employer" as defined in and subject to the California Labor Code and the applicable IWC Wage Order.

12. Defendant was Plaintiff's employer or person acting on behalf of Plaintiff's employer, within the meaning of California Labor Code section 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any IWC Wage Order and, as such, is subject to civil penalties as set forth in Labor Code section 558, at all relevant times.

13. Defendant was Plaintiff's employer or person acting on behalf of Plaintiff's employer, within the meaning of Labor Code section 558.1, who violated or caused to be violated at least one of sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code and, as such, is subject to civil penalties, as set forth in section 558.1, at all relevant times.

14. Each fictitiously named Defendant participated in the acts alleged in this Complaint. The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently unknown to Plaintiff. Plaintiff will amend this Complaint, setting forth the true names and capacities of the fictitious Defendants if and when their true names and capacities are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious Defendants participated in the acts alleged in this Complaint.

15. Plaintiff and all other aggrieved employees are, and at all relevant times were, non-exempt employees of each Defendant, including DOES 1 through 50, within the meanings set forth in the California Labor Code and applicable IWC Wage Order.

16. Plaintiff is informed and believes that at all relevant times, each Defendant, whether named or fictitious, was the agent, employee, or other person acting on behalf of every other Defendant and, in participating in the acts alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts of each other Defendant.

17. Plaintiff is informed and believes that at all relevant times, each Defendant, whether named or fictitious, exercised control over Plaintiff's and other aggrieved employees' wages, working hours,

1 and/or working conditions.

2 18. Plaintiff is further informed and believes that at all relevant times, each Defendant, whether  
3 named or fictitious, acted as the agent for the other Defendants, carried out a joint scheme, business plan,  
4 or policy, and that the acts of each Defendant are legally attributable to the other Defendants.

5 19. Each Defendant, whether named or fictitious, was the alter ego of each of the other  
6 Defendants at all relevant times herein.

7 20. A unity of interest and ownership between each Defendant, whether named or fictitious,  
8 exists such that all Defendants acted as a single employer of Plaintiff and all other aggrieved employees.

9 **III.**

10 **JURISDICTION AND VENUE**

11 21. This Court has subject matter jurisdiction to hear this case because Plaintiff is informed and  
12 believes that the civil penalties and monetary relief sought herein for Defendant's conduct exceeds the  
13 minimum jurisdictional limits of the Superior Court.

14 22. Venue is proper in Santa Clara County pursuant to Code of Civil Procedure sections 395(a)  
15 and 395.5 because Defendant maintains offices in and transacts substantial business in Santa Clara  
16 County, Defendant employed Plaintiff and other aggrieved employees in Santa Clara County, and certain  
17 of the unlawful acts alleged herein arose in Santa Clara County and have a direct effect on Plaintiff and  
18 other aggrieved employees within Santa Clara County.

19 **IV.**

20 **GENERAL ALLEGATIONS**

21 23. Plaintiff DOUGLASS OLMSTED is a former employee of Defendant who worked as a  
22 Property Claims Field Specialist II from approximately September 13, 2017 to approximately October 1,  
23 2019 throughout various counties in California, including Santa Clara County.

24 24. Plaintiff has entered into agreements with Defendant to toll his individual and representative  
25 claims.

26 25. Throughout his time of employment with Defendant, Plaintiff typically worked at least 40  
27 hours per week and was compensated on an hourly basis.

28 26. As a Property Claims Field Specialist II, Plaintiff spent time working from his home office

1 as well as on the road, conducting in-person interviews and investigations of claims made by Defendant's  
2 clients. When he was working out of his home office, Plaintiff used a mixture of personal equipment and  
3 company-provided equipment.

4 27. Defendant had a pattern and practice of failing to reimburse Plaintiff and other aggrieved  
5 employees for all expenses that were necessarily incurred in the discharge of their job duties.

6 28. Plaintiff and other aggrieved employees were assigned by Defendants to work from home.  
7 As a result of working from home, Plaintiff and other aggrieved employees were necessarily required to  
8 use their home internet, electricity, and other utilities in the discharge of their duties. For example, Plaintiff  
9 and other aggrieved employees could not use their company computers without using their home internet  
10 and home electricity.

11 29. As a result, Plaintiff and other aggrieved employees incurred various expenses as a result of  
12 working from home for which they were not reimbursed.

13 30. When working at their homes, Plaintiff and other aggrieved employees regularly used their  
14 home internet for business purposes.

15 31. Defendant had a policy in its handbook providing for the reimbursement of home internet  
16 expenses. However, in spite of Defendant's written policy, Plaintiff was denied reimbursement for a  
17 reasonable percentage of the required use of his home internet. Specifically, Plaintiff requested on multiple  
18 occasions to be reimbursed by Defendants for the expenses stemming the fact that he was required to use  
19 his home internet in the discharge of his duties of employment. However, Defendants failed to provide  
20 him with reimbursement for the required use of his home internet. On information and belief, other  
21 aggrieved employees were required to use their home internet a requirement of their job, yet Defendant  
22 failed to reimburse them for a reasonable percentage of their home internet expenses.

23 32. In addition, as employees who were assigned to work from home, Plaintiff and other  
24 aggrieved employees incurred increased utility, including electricity, among other, costs as a direct result  
25 of being required to work from home.

26 33. Defendants were aware that Plaintiff and other aggrieved employee would necessarily be  
27 required to use their home electricity and other utilities in the discharge of their duties. Defendants,  
28 however, lacked a policy to reimburse employees who regularly incurred increased utility expenses as a

1 result of working from home.

2 34. Plaintiff's and other aggrieved employees' increased utility and internet expenses were  
3 expenses for which Defendants was required to reimburse Plaintiff and other aggrieved employees a  
4 reasonable percentage based on their required business use, because said expenses were necessarily  
5 incurred by Plaintiff and other aggrieved employees in the discharge of their duties of employment.

6 35. Plaintiff and other aggrieved employees of Defendant were therefore denied specific rights  
7 afforded to them under the California Labor Code and applicable IWC Wage Order, including the right to  
8 be indemnified for all necessary expenditures under Labor Code section 2802.

9 **V.**

10 **THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**

11 **REPRESENTATIVE ACTION DESIGNATION**

12 (Labor Code section 2698, *et seq.*)

13 36. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs  
14 above, as though fully set forth herein.

15 37. The first cause of action alleged herein is appropriately suited for a Labor Code Private  
16 Attorneys General Act of 2004 ("PAGA") action because:

- 17 a. Pursuant to California Labor Code section 2699(a), any provision of the Labor Code  
18 that provides for a civil penalty to be assessed and collected by the Labor and Workforce  
19 Development Agency or any of its departments, divisions, commissions, boards,  
20 agencies, or employees, for a violation of the California Labor Code, may, as an  
21 alternative, be recovered through a civil action brought by an aggrieved employee on  
22 behalf of himself or herself and all other current or former employees pursuant to the  
23 procedures specified in section 2699;
- 24 b. This action involves allegations of violations of provisions of the California Labor Code  
25 that provide or do not provide for a civil penalty to be assessed and collected by the  
26 LWDA or any departments, divisions, commissions, boards, agencies or employees;
- 27 c. Plaintiff is an "aggrieved employee" because he was employed by the alleged violators  
28 and had one or more of the alleged violations committed against him;

- d. On May 05, 2020, Plaintiff satisfied the procedural requirements of section 2699.3 by serving the LWDA electronically and Defendant via Certified Mail with his notice for wage and hour violations and penalties, including the facts and theories to support each violation. A true and correct copy of Plaintiff's notice and proof of service is attached as **Exhibit A**.
- e. More than 65 days have passed since Plaintiff served notice via Certified Mail to the LWDA and his employer. Therefore, Plaintiff satisfied all the administrative requirements to pursue civil penalties against Defendant pursuant to Labor Code section 2698, et seq.
- f. Plaintiff filed this action pursuant to Labor Code section 2699(a) and (f), on behalf of himself and all other aggrieved employees of Defendant to recover civil penalties;
- g. Plaintiff seeks to recover all applicable civil penalties under PAGA on behalf of himself and all other aggrieved employees of Defendant in California.

**VI.**

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**REPRESENTATIVE CLAIMS UNDER THE CALIFORNIA LABOR CODE**

**PRIVATE ATTORNEYS GENERAL ACT (PAGA)**

(Labor Code section 2698, et seq.)

(Alleged by Plaintiff On Behalf of All Aggrieved Employees of Defendant Against All Defendants)

38. Plaintiff hereby incorporates by reference all preceding paragraphs set forth above as though fully set forth herein.

39. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

40. Defendant employed Plaintiff, and Plaintiff had one or more of the alleged violations

1 committed against him. Therefore, Plaintiff is an “aggrieved employee” under PAGA because the alleged  
2 violator employed him, and he had one or more of the alleged violations committed against him. As such,  
3 Plaintiff is properly suited to represent the interests of other aggrieved employees in a PAGA  
4 Representative action.

5 41. This cause of action involves allegations of violations of Labor Code section 2802 which,  
6 pursuant to Labor Code section 2699.5, provides for a civil penalty to be assessed and collected by the  
7 LWDA or recovered through a civil action brought by an aggrieved employee on behalf of himself or  
8 herself and other current or former employees pursuant to the procedures specified in Labor Code section  
9 2699.3.

10 42. Plaintiff seeks civil penalties pursuant to the PAGA for violations of the following Labor  
11 Code provisions:

- 12 a. Failure to indemnify for all necessary expenditures or losses incurred by the employee  
13 in direct consequence of the discharge of his duties, or of his obedience to the directions  
14 of the employer, in violation of Labor Code section 2802 and the “Uniforms and  
15 Equipment” section of the applicable IWC Wage Order.

16 43. Plaintiff seeks to recover civil penalties required to be shared with the LWDA on behalf of  
17 himself and all other aggrieved employees for Defendant’s violations of the Labor Code, including but  
18 not limited to violations of Labor Code section 2802.

19 44. For all provisions of the Labor Code for which a civil penalty is not specifically provided,  
20 Labor Code section 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each  
21 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200.00) for each  
22 aggrieved employee per pay period for each subsequent violation.

23 45. Defendant violated Labor Code section 2802 by failing to indemnify Plaintiff and, on  
24 information and belief, other aggrieved employees who predominantly worked out of a home office for  
25 all necessary expenses incurred in the discharge of their duties of employment, including for internet  
26 access. Under Labor Code section 2699(f) Defendant is subject to a civil penalty of \$100 for each  
27 aggrieved employee per pay period for the initial violation of this section, and \$200 for each aggrieved  
28 employee per pay period for each subsequent violation.

46. For bringing this action, Plaintiff is additionally entitled to attorney's fees and costs incurred herein.

47. Plaintiff seeks to recover civil penalties on behalf of himself and other aggrieved employees for Defendant's violations of the Labor Code, including but not limited to Defendant's violations of Labor Code section 2802 pursuant to Labor Code section 2698, *et seq.* The exact amount of the applicable penalties is in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- a. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to Labor Code sections 2699, *et seq.*;
- b. For civil penalties to the extent permitted by law pursuant to the Labor Code under the PAGA. Plaintiff is seeking only such penalties required to be shared with the LWDA. Plaintiff expressly disclaims the recovery of any individual/victim specific relief or underpaid wages;
- c. For civil penalties for each initial and subsequent violation for each underpaid employee for each pay period for which the employee was underpaid, to the extent that these civil penalties must be shared with the LWDA; and
- d. For such other relief as the Court deems just and proper.

Dated: January 29, 2021

GRAHAMHOLLIS APC

By:   
\_\_\_\_\_  
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DOUGLASS OLMSTED