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THE SUPERIOR COURT
By Shabra Iyamu, Deputy

CASE NUMBER:

RG20077472

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

MICHAEL SCHMIDT, on behalf of the State of
California and Aggrieved Employees,

Plaintiff,

vs.

VISION SERVICE PLAN,

Defendant.

Case No. _____

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

**COMPLAINT FOR PENALTIES PURSUANT TO SECTION 2699(a) and (f) OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT AND DEMAND FOR JURY TRIAL**

Michael Schmidt, et al. v. Vision Service Plan

1 Plaintiff Michael Schmidt ("Plaintiff"), on behalf of the State of California and Aggrieved
2 Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff Michael Schmidt, individually and on behalf the State of California and the
5 Aggrieved Employees, brings this enforcement action against Defendant Vision Service Plan ("VSP"
6 or "Defendant") on behalf of individuals who have worked for Defendant as non-exempt hourly
7 employees and have been subject to Defendant's systematic violations of California labor law with
8 respect to Defendant's current and former non-exempt employees who worked in California (the
9 "Aggrieved Employees"). Throughout the relevant time period, Plaintiff and Aggrieved Employees
10 have been denied proper payment for all hours worked, minimum wages, overtime wages, and
11 compliant meal and rest periods. Furthermore, throughout the relevant time period, Defendant has
12 failed to pay all wages owed after separation of employment to Plaintiff and Aggrieved Employees,
13 and has failed to provide Plaintiff and Aggrieved Employees timely and compliant wage statements,
14 pursuant to California law.

15 2. Defendant maintains a longstanding policy and/or practice of failing to properly
16 compensate non-exempt employees for work performed while "off-the-clock" and for missed meal
17 and rest periods. These policies and practices deny Plaintiff and Aggrieved Employees payment for
18 all hours worked, including overtime, and deny meal and rest periods that comply with California law.

19 3. Plaintiff and Aggrieved Employees bring this action to challenge Defendant's policies
20 and practices of (1) failing to pay Plaintiff and Aggrieved Employees all minimum wages owed; (2)
21 failing to pay Plaintiff and Aggrieved Employees overtime wages; (3) failing to compensate Plaintiff
22 and Aggrieved Employees for all hours worked; (4) failing to authorize and permit Plaintiff and
23 Aggrieved Employees to take meal and rest breaks to which they are entitled by law; (5) failing to
24 provide Plaintiff and Aggrieved Employees accurate, itemized wage statements; and (6) failing to
25 timely pay Plaintiff and Aggrieved Employees full wages upon termination or resignation.

26 4. Plaintiff and Aggrieved Employees seek penalties under the Labor Code Private
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1 Attorneys General Act of 2004 ("PAGA").

2 **JURISDICTION AND VENUE**

3 5. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the PAGA.
4 The Court also has jurisdiction over Defendant because Defendant does business in the State of
5 California, is registered with the California Secretary of State, and has its corporate headquarters in
6 California.

7 6. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393
8 and/or 395.5. Defendant conducts business in this County, employs Aggrieved Employees in this
9 County, has jobsites in this County, and therefore liability arises in this County.

10 **PARTIES**

11 7. Plaintiff Michael Schmidt is an individual over the age of eighteen, and at all times
12 relevant to this Complaint was a resident of the State of California, County of Placer. Plaintiff was
13 employed as a non-exempt Customer Service Representative for Defendant at a Vision Service Plan
14 location in Rancho Cordova, California from Approximately August 2015 to August 2019.

15 8. Plaintiff is informed, believes, and thereon alleges that Defendant Vision Service Plan
16 ("VSP") is a California corporation doing business in the State of California, with its principal place
17 of business located in Rancho Cordova, California 95670. Defendant VSP may be served with process
18 by serving its registered agent, Stuart L. Thompson, 3333 Quality Drive, Rancho Cordova, California
19 95670.

20 9. Plaintiff is informed and believes that each and every one of the acts and omissions
21 alleged herein were performed by, and/or attributable to, Defendant, acting through its agents and/or
22 employees, and/or under the direction and control of each of the other, and that said acts and failures
23 to act were within the course and scope of said agency, employment and/or direction and control.

24 10. Plaintiff is informed, believes, and thereon alleges that Defendant directly controls the
25 operations of its agents, managers, and employees throughout all of its stores in California.

26 11. At all material times, Defendant has done business under the laws of California, has
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1 had places of business in California, including in this County, and has employed Aggrieved Employees
2 in this County and elsewhere in California. Defendant is a “person” as defined in Labor Code § 18,
3 and an “employer” as that term is used in the Labor Code and the IWC Wage Orders regulating wages,
4 hours, and working conditions. Upon information and belief, Defendant employs Aggrieved
5 Employees, because Defendant, directly or indirectly, controls the employment terms, pay practices,
6 timekeeping practices, and daily work of Plaintiff and similarly situated employees.

7 FACTUAL ALLEGATIONS

8 12. Defendant operates a vision care health insurance company throughout the United
9 States and California. Defendant employs thousands of hourly non-exempt workers similarly situated
10 to Plaintiff across its facilities throughout the State of California.

11 13. Plaintiff worked as a non-exempt Customer Service Representative for Defendant from
12 approximately August 2015 until August 2019. On average, Plaintiff was paid at an hourly rate of
13 approximately \$17.62, and regularly worked in excess of eight hours a day and, on average, 40 hours
14 per week. On average, Plaintiff worked more than 8 hours per shift one to three times per week, every
15 week worked.

16 14. Aggrieved Employees were and are employed by Defendant and performed work
17 materially similar to Plaintiff throughout California.

18 15. Aggrieved Employees perform their jobs under Defendant’s supervision and using
19 materials and technology approved and supplied by Defendant.

20 16. Aggrieved Employees are required to follow and abide by common work, time, and
21 pay policies and procedures in the performance of their jobs.

22 17. At the end of each pay period, Aggrieved Employees receive wages from Defendant
23 that are determined by common systems and methods that Defendant selects and controls.

24 18. Defendant pays Aggrieved Employees on an hourly rate basis.

25 19. As a matter of policy and or/practice, Defendant fails to authorize and/or permit
26 Plaintiff and Aggrieved Employees to take compliant meal and rest breaks by requiring them to remain
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1 on duty during their scheduled shifts. Plaintiff is informed, believes, and thereon alleges that this policy
2 and practice applies to all Aggrieved Employees throughout California. Moreover, Defendant fails to
3 pay Plaintiff and Aggrieved Employees premium wages for their missed breaks.

4 20. In addition to working through their meal and rest breaks, Plaintiff and Aggrieved
5 Employees perform work while “off-the-clock” with Defendant’s knowledge, and are denied
6 compensation for the time spent engaged in this off-the-clock work. Nearly every day, Plaintiff was
7 required to begin working 20 minutes before each shift, and before clocking in. Furthermore, Plaintiff
8 would frequently continue working for 20 minutes up to an hour after he had clocked out. Plaintiff is
9 informed, believes, and thereon alleges that these policies and practices apply to all Aggrieved
10 Employees throughout California.

11 21. As a result of this off-the-clock work, Plaintiff and Aggrieved Employees are not
12 adequately compensated for all hours worked at their regular rate or at the applicable overtime rates.
13 Plaintiff frequently worked 20 minutes to over an hour of off-the-clock work on a regular basis as a
14 Customer Service Representative.

15 22. Defendant’s common course of wage-and-hour abuse includes routinely failing to
16 maintain true and accurate records of the hours worked by Aggrieved Employees. In particular,
17 Defendant has failed to record hours that Plaintiff and Aggrieved Employees worked off the clock.

18 23. Defendant’s failure to record all hours worked results in a failure to provide Aggrieved
19 Employees, including Plaintiff, accurate itemized wage statements as required by California law. The
20 wage statements Defendant provides are not accurate because they do not reflect the actual hours
21 worked by Plaintiff and Aggrieved Employees. The wage statements do not contain off-the-clock work
22 or premium pay for missed meal and rest breaks.

23 24. Further, Defendant does not provide Aggrieved Employees, including Plaintiff, whose
24 employment has ended, with full payment of all wages owed at the end of their employment. As these
25 workers are owed for off-the-clock work, unpaid overtimes, and premium pay when their employment
26 ends, and these amounts remain unpaid under Defendant’s policies and practices, Defendant fails to
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1 pay all wages due upon termination. As a consequence, Defendant is subject to waiting time penalties.

2 25. Defendant has employed hundreds of people similarly situated to Plaintiff.

3 26. Defendant's method of paying Plaintiff and Aggrieved Employees is willful, and is not
4 based on a good faith and reasonable belief that their conduct complies with California law.
5 Defendant's conduct causes significant damages to non-exempt hourly employees in an amount to be
6 determined at trial.

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8 **FIRST CAUSE OF ACTION**
Penalties Pursuant to Labor Code § 2699(a)

9 27. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
10 herein.

11 28. Labor Code § 2699(a) provides:

12 Notwithstanding any other provision of law, any provision of this code that
13 provides for a civil penalty to be assessed and collected by the Labor and
14 Workforce Development Agency or any of its departments, divisions,
15 commissions, boards, agencies or employees, for a violation of this 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.

16 29. Labor Code § 226(a) provides:

17 Every employer shall, semimonthly or at the time of each payment of
18 wages, furnish each of his or her employees, either as a detachable part of
19 the check, draft, or voucher paying the employee's wages, or separately
20 when wages are paid by personal check or cash, an accurate itemized
21 statement in writing showing (1) gross wages earned, (2) total hours worked
22 by the employee, except for any employee whose compensation is solely
23 based on a salary and who is exempt from payment of overtime under
24 subdivision (a) of Section 515 or any applicable order of the Industrial
25 Welfare Commission, (3) the number of piece-rate units earned and any
26 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
27 deductions, provided that all deductions made on written orders of the
28 employee may be aggregated and shown as one item, (5) net wages earned,
(6) the inclusive dates of the period for which the employee is paid, (7) the
name of the employee and his or her social security number, (8) the name
and address of the legal entity that is the employer, and (9) all applicable
hourly rates in effect during the pay period and the corresponding number
of hours worked at each hourly rate by the employee.

1 30. Labor Code § 512(a) provides:

2 An employer shall not employ an employee for a work period of more than
3 five hours per day without providing the employee with a meal period of
4 not less than 30 minutes, except that if the total work period per day of the
5 employee is no more than six hours, the meal period may be waived by
6 mutual consent of both the employer and employee. An employer shall not
7 employ an employee for a work period of more than 10 hours per day
8 without providing the employee with a second meal period of not less than
9 30 minutes, except that if the total hours worked is no more than 12 hours,
10 the second meal period may be waived by mutual consent of the employer
11 and the employee only if the first meal period was not waived.

12 31. Labor Code § 203 provides, in relevant part:

13 If an employer willfully fails to pay, without abatement or reduction, in
14 accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and
15 205.5, any wages of an employee who is discharged or who quits, the wages
16 of the employee shall continue as a penalty from the due date thereof at the
17 same rate until paid or until an action therefor is commenced; but the wages
18 shall not continue for more than 30 days.

19 32. Labor Code § 226(e)(1) provides:

20 An employee suffering injury as a result of a knowing and intentional failure by
21 an employer to comply with subdivision (a) is entitled to recover the greater of
22 all actual damages or fifty dollars (\$50) for the initial pay period in which a
23 violation occurs and one hundred dollars (\$100) per employee for each violation
24 in a subsequent pay period, not to exceed an aggregate penalty of four thousand
25 dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
26 fees.

27 33. Labor Code § 226.3 provides:

28 Any employer who violates subdivision (a) of Section 226 shall be subject to
29 a civil penalty in the amount of two hundred fifty dollars (\$250) per employee
30 per violation in an initial citation and one thousand dollars (\$1,000) per
31 employee for each violation in a subsequent citation, for which the employer
32 fails to provide the employee a wage deduction statement or fails to keep the
33 records required in subdivision (a) of Section 226. The civil penalties provided
34 for in this section are in addition to any other penalty provided by law. In
35 enforcing this section, the Labor Commissioner shall take into consideration
36 whether the violation was inadvertent, and in his or her discretion, may decide
37 not to penalize an employer for a first violation when that violation was due to
38 a clerical error or inadvertent mistake.

39 34. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
40 Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in

1 compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203. Plaintiff
2 seeks such penalties as an alternative to the penalties available under Labor Code § 203, as prayed for
3 herein.

4 35. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
5 Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage
6 statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226(e).
7 Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code § 226(e),
8 as prayed for herein.

9 36. Plaintiff also seeks civil penalties pursuant to Sections 225.5, 226.3, and 256 of the
10 California Labor Code.

11 37. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
12 Workforce Development Agency ("LWDA") with notice of his intention to file this claim on July 31,
13 2020. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff therefore
14 satisfied the administrative prerequisite to commence this civil action in compliance with § 2699.3(a).

15 38. Plaintiff seeks the aforementioned penalties on behalf of the State, other aggrieved
16 Employees, and himself as set forth in Labor Code § 2699(g)(i).

17 39. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
18 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees
19 and costs as set forth below.

20 40. Wherefore, Plaintiff requests relief as hereinafter provided.

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22 **SECOND CAUSE OF ACTION**
23 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code § 204**
24 **(Failure to Pay for all Hours Worked)**
25 **Penalties Pursuant to Labor Code § 2699(f)**

26 41. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
27 herein.

1 42. Labor Code § 2699(f) provides:

2 For all provisions of this code except those for which a civil penalty is
3 specifically provided, there is established a civil penalty for a violation of
4 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
5 the person employs one or more employees, the civil penalty is one hundred
6 dollars (\$100) for each aggrieved employee per pay period for the initial
7 violation and two hundred dollars (\$200) for each aggrieved employee per
8 pay period for each subsequent violation.

9 43. To the extent than any violation alleged herein does not carry penalties under Labor
10 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
11 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established
12 by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendant's
13 violations of Labor Code § 226.7, 204, 510, 512, and 1194.

14 44. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with
15 notice of her intention to file this claim. Sixty-five calendar days have passed without notice from
16 the LWDA on July 31, 2020. Plaintiff satisfied the administrative prerequisites to commence this
17 civil action in compliance with § 2699.3(a).

18 45. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
19 Employees, and himself as set forth in Labor Code § 2699(g)(i).

20 46. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
21 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees
22 and costs as set forth below.

23 47. Wherefore, Plaintiff requests relief as hereinafter provided.
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1. For an order awarding civil penalties to the full extent provided for by the PAGA;
2. For an award of reasonable attorneys' fees as provided by the California Labor Code, including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other applicable law;
3. For all costs of suit; and
4. For such other and further relief as this Court deems just and proper.

Date: October 20, 2020

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