

1 MOHAMMED K. GHODS (SBN 144616)
2 JEREMY A. RHYNE (SBN 217378)
3 LEX OPUS
4 2100 N. Broadway, Suite 210
5 Santa Ana, CA 92706
6 Telephone: (714) 558-8580
7 Facsimile: (714) 558-8579
8 irhyne@lexopusfirm.com

9 RUBEN ESCOBEDO (SBN 277866)
10 WORKWORLD LAW CORP.
11 A Professional Corporation
12 731 S. Lincoln Street
13 Santa Maria, CA 93458
14 Telephone: (805) 335-2476
15 Facsimile: (805) 892-6213
16 Email: ruben@workworldlaw.com

17 Attorney for Plaintiff, MICHAEL REAL, as Private
18 Attorney General for the State of California

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF ORANGE

21 MICHAEL REAL, as Private Attorney
22 General for the State of California,

23 Plaintiff,

24 vs.

25 WILINE NETWORKS INC., a corporation;
26 and DOES 1 through 25, inclusive,

27 Defendants.

CASE NO: 30-2020-01152166-CU-OE-CXC

*Assigned for All Purposes to:
Hon. Peter Wilson – Dept. CX102*

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES UNDER PRIVATE
ATTORNEYS GENERAL ACT (PAGA)**

[Unlimited Civil Case – Exceeds \$25,000]

Trial Date: None

Complaint filed: July 21, 2020

28 COMES NOW Plaintiff MICHAEL REAL as Private Attorney General for the State of
California (“Plaintiff”), who asserts claims against WILINE NETWORKS INC., a corporation
 (“WiLine”), and DOES 1 through 25, inclusive (collectively “Defendants” or “Employer”) as
 follows:

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INTRODUCTION

1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of the State of California for approximately 50 similarly situated current and former aggrieved employees employed by WiLine Networks Inc. ("Employer") between April 6, 2019 and the resolution of the action ("Statutory Period"), and the People of the State of California (hereinafter collectively "Employees").

2. PAGA, specifically Section 2699, subdivision (a) of the California Labor Code, permits an aggrieved employee to recover civil penalties set forth within the California Labor Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil penalties for violations of California Labor Code provisions that do not contain their own civil penalties. Employees bring this civil action to recover civil penalties for the violations identified below, including civil penalties pursuant to Section 2699, subdivision (f) as well as those civil penalties specifically set forth within the text of the California Labor Code. Those civil penalties are sought for violations committed against Employees of Employer.

3. Plaintiff has exhausted or will exhaust all applicable administrative remedies. Pursuant to Labor Code Section 2699.3, Plaintiff gave proper notice to the California Labor and Workforce Development Agency and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation. The LWDA has not inspected or investigated the violations. With respect to those violations that were curable under Subdivision (c)(1) (if any), the Employer failed to cure the violations within the time provided under PAGA. Plaintiff and Employees are or will be, therefore, entitled to all civil penalties pursuant to Sections 2699(a), and pursuant to Section 2699(f), in addition to Plaintiff's costs and attorneys' fees.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, §10.

5. Venue is proper in this Court because this action arises from employment in Orange County.

1 **PARTIES**

2 6. For all times relevant herein, MICHAEL REAL was an adult individual residing in
3 Orange County, California. Plaintiff is not suing in his individual capacity; he is proceeding
4 herein solely under the PAGA, on behalf of the State of California for all aggrieved employees,
5 including himself and approximately 50 other aggrieved employees.

6 7. For all times relevant herein, Plaintiff is informed and believes, and on that basis
7 alleges, that Defendant WILINE NETWORKS INC. was and is a New Jersey corporation with its
8 principal place of business in the State of New Jersey.

9 8. Whenever in this Complaint reference is made to any act, deed, or conduct of
10 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
11 through one or more of its agents, employees, or representatives, who was actively engaged in the
12 management, direction, control, or transaction of the business and affairs of Defendants.

13 9. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
14 associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and
15 therefore sues said defendants (the "Doe Defendants") by such fictitious names. Plaintiff will
16 amend this Complaint to insert the true names and capacities of the Doe Defendants at such time
17 as the identities of the Doe Defendants are ascertained.

18 10. Plaintiff is informed and believes, and based thereon alleges, that the Doe
19 Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each
20 other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged
21 directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and
22 accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable
23 to the extent of the liability of Defendants as alleged herein.

24 11. Plaintiff is further informed and believes, and thereon alleges, that at all times
25 herein material, each Defendant was completely dominated and controlled by its co-Defendant(s)
26 and each was the alter ego of the other. Whenever and wherever reference is made in this
27 Complaint to any conduct by Defendants, or any of them, such allegations and references shall
28 also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and

severally. Whenever and wherever reference is made to individuals who are not named as defendants in this Complaint, but were employees and/or agents of Defendants, such individuals at all relevant times acted on behalf of Defendants named in this Complaint within the scope of their respective employment or agency with Defendants.

FIRST COUNT

Failure to Pay Earned Commissions by Employees

(By Plaintiff against All Defendants)

12. Plaintiff incorporates by reference and reallege each and every allegation contained above, as though fully set forth herein.

13. Throughout the Statutory Period, Employees including Mr. Real worked in sales for Employer and earned commission wages pursuant to Employer's Sales Compensation Plan(s). Upon making sales, a portion of Employees' commission was earned upon the sale and the remainder of the commission accrued and became earned upon the occurrence of additional conditions. Earned commission were earned as follows: 25% upon execution of an agreement and acceptance by WiLine; 25% upon service activation; and 50% after 90 days after activation provided the agreement is still active and not in dispute.

14. WiLine regularly discharged Employees, thereby preventing the 90-day period from accruing, and thereby waiving this condition before becoming obligated to pay the entire commission. However, WiLine refused to pay Employees the remainder of their commissions after their discharge, citing a provision in its policies stating that post-termination accruals of commissions will not be paid. As a result, Employer violated California law.

15. Employer's policies and practices of failing to pay Mr. Real's and Employees' earned commission wages throughout the Statutory Period violated and continues to violate the California Labor Code, including California Labor Code §§ 221-223, 201-202, 204, and 226. Rather than timely paying Employees all wages due within the periods set forth and in accordance with these statutes, throughout the Statutory Period, Employer failed to timely pay Employees all commission wages earned.

16. Employees are entitled to all available remedies, including civil penalties according to proof, costs, and attorneys' fees.

SECOND COUNT

Failure to Pay Wages at Termination

(By Plaintiff against All Defendants)

17. Plaintiff incorporates by reference and reallege each and every allegation contained above, as though fully set forth herein.

18. California Labor Code §§ 201 and 202 require an employer who discharges an employee to pay compensation due and owing to said employee immediately upon discharge and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy two hours' previous notice of his or her intention to quit in which case the employee is entitled to his or her wages on their last day of work. California Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge, as required by California Labor Code §§201 and 202, the employer is liable for waiting time penalties in the form of continued compensation for up to thirty work days.

19. Throughout the Statutory Period, Employer willfully failed and refused, and continues to willfully fail and refuse, to pay Mr. Real and Employees their wages, earned and unpaid, either at the time of discharge, or within seventy-two hours of their voluntarily leaving Employer's employ. In addition, for those commissions that had not yet been earned at the time of termination and were awaiting the completion of conditions precedent (e.g., completion of the 90-day period), Employer failed to pay Employees immediately upon completion of the 90-day period.

20. Employer's willful failure to pay Mr. Real and Employees their wages earned and unpaid at the time of discharge, or within seventy-two hours of their voluntarily leaving Employer' employ, and failure to pay waiting time pay, violated and continues to violate California Labor Code §§ 201, 202, and 203.

21. Employees are entitled to all available remedies, including civil penalties according to proof, costs, and attorneys' fees.

THIRD COUNT

Inaccurate Wage Statements

(By Plaintiff against All Defendants)

22. Plaintiff incorporates by reference and reallege each and every allegation contained above, as though fully set forth herein.

23. California Labor Code §226(a) sets forth reporting requirements for employers when they pay wages: “Every employer shall ... at the time of each payment of wages, furnish each of his or her employees ... an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee ... (5) net wages earned ... 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....”

24. Throughout the Statutory Period, and on Employer's final payment of wages to Employees at or near the time of their discharge or resignation, Employer knowingly and intentionally failed, and continue to fail to furnish Mr. Real and Employees, complete and accurate wage statements upon each payment of wages in violation of California Labor Code §226(a).

25. Employees are entitled to all available remedies, including civil penalties according to proof, costs, and attorneys' fees.

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PRAYER

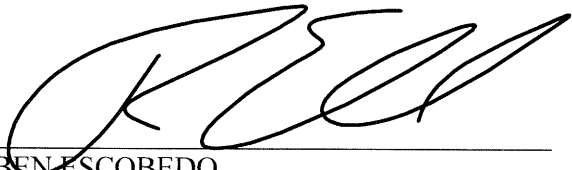
WHEREFORE, Plaintiff and Employees pray for judgment against Defendants, as follows:

1. For civil penalties pursuant to Labor Code sections 2698, *et seq.* in an amount not less than \$250,000;
2. For reasonable costs and attorneys' fees; and
3. For such other and further relief as the Court deems proper.

DATED: August 25, 2020

WORKWORLD LAW CORP.
A Professional Corporation

By: _____


RUBEN ESCOBEDO
Attorneys for Plaintiff, MICHAEL REAL, as
Private Attorney General for the State of
California

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) years and am not a party to the within action. My business address is that of 2100 N. Broadway, Suite 210, Santa Ana, CA 92706.

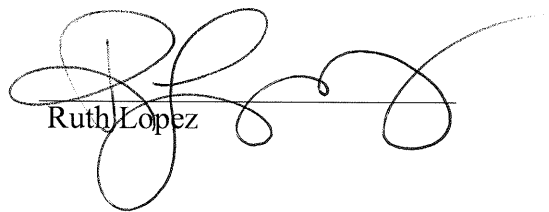
On August 25, 2020, following ordinary business practices, I served a true and correct copy of the foregoing documents entitled, **FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES UNDER PRIVATE ATTORNEYS GENERAL ACT (PAGA)** on interested parties in this action by sending a true and correct copy of each document thereof as follows:

Charles H. Jung
NASSIRI & JUNG LLP
1700 Montgomery Street, Suite 207
San Francisco, CA 94111
Attorneys for Defendant
WILINE NETWORKS INC.

☒ **BY MAIL:** I deposited such envelope in the mail at Santa Ana, California. The envelope was mailed with postage thereon fully paid as follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business.

Executed on August 25, 2020 at Santa Ana, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Ruth Lopez