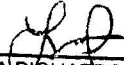


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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

MAY 19 2021

By 
LACHANDRA RICHARDSON, DEPUTY

6 Attorneys for Plaintiff
7 MELISSA SOTO,
8 on behalf of herself and on behalf of all other
9 aggrieved employees

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN BERNARDINO

12 MELISSA SOTO, on behalf of herself and
13 on behalf of all other aggrieved employees,

14 Plaintiff,

15 vs.

16 GCAM, INC., a California Corporation; and
17 DOES 1 through 50, inclusive,

18 Defendants.

Case No.: CIV SB 2114483

Assigned for All Purposes To:
Hon.
Dept.:

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code §
2698 *et seq.*, for violations of Labor Code §§
201-204, 210, 221, 226(a), 226.3, 226.7, 510,
512, 558(a)(1)(2), 1174, 1174.5, 1182.12, 1185,
1194, 1194.2, 1197, 1197.1, 1197.2, 1198,
1199, 2800, 2802, and California Code of
Regulations, Title 8, Section 11040

DEMAND FOR JURY TRIAL
SC 2021-31500

BY FAX

1 Plaintiff MELISSA SOTO (hereinafter “Plaintiff”) on behalf of herself and all other
2 similarly Aggrieved Employees complains of Defendants, and each of them, as follows:

3 **INTRODUCTION**

4 1. This is a Representative Action, pursuant to the Private Attorneys General Act of
5 2004 (“PAGA”), Labor Code § 2698 *et seq.*, on behalf of Plaintiff and similarly situated
6 aggrieved non-exempt employees (“Aggrieved Employees” or “Employees”) who currently
7 work or formerly worked for Defendants GCAM, INC. and DOES 1 through 50 (all defendants
8 being collectively referred to herein as “Defendants”) during the liability period. Plaintiff does
9 not seek to recover anything other than penalties as permitted by California Labor Code § 2698
10 *et seq.* To the extent that statutory violations are mentioned for wage violations, Plaintiff does
11 not seek underlying general and/or special damages for those violations, but simply the civil
12 penalties permitted by California Labor Code § 2698 *et seq.*

13 2. California has enacted the PAGA to permit an individual to bring an action on
14 behalf of herself and on behalf of others for PAGA penalties only, which is the precise and sole
15 nature of this action.

16 3. Accordingly, Plaintiff seeks to obtain all applicable relief for Defendants’
17 violations under PAGA and solely for the relief as permitted by the PAGA for the following:
18 from at least one (1) year prior to the filing of this action and at least one (1) year prior to the
19 date Plaintiff began the process of exhausting the administrative requirements pursuant to Labor
20 Code § 2698 *et seq.* on **August 27, 2020**, and continuing to the present (the “liability period”),
21 Defendants have had a consistent policy of failing to pay all wages due to its California
22 Employees during the course of employment and timely upon separation from employment,
23 failing to provide Employees with meal and rest periods, failing to reimburse necessary business
24 expenses, and failing to issue accurately itemized wage statements to its California employees.
25 Plaintiff alleges that Defendants, and each of them, violated various provisions of the California
26 Labor Code and relevant orders of the Industrial Welfare Commission, and seeks redress for
27 these violations. Nothing in this complaint should be construed as attempting to obtain any relief
28 that would not be available in a PAGA-only action.

THE PARTIES

4. Plaintiff is a resident of California, and during the time period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee based out of Defendants' office in California.

5. Upon information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3) endured similar violations at the hands of Defendants as the other Aggrieved Employees who served in similar and related positions.

6. Plaintiff and the other similarly situated Employees of Defendants consistently worked at Defendants' behest without being paid all wages due. More specifically, Defendants failed to record accurate time worked, failed to pay them at the appropriate rates for all hours worked, and requiring them to work off the clock. Additionally, Defendants failed to reimburse necessary business expenses, and provided Aggrieved Employees with inaccurate wage statements that prevented them from learning of these unlawful practices. Defendants also failed to provide Aggrieved Employees with lawful meal and rest periods, as Employees were not provided with the opportunity to take full uninterrupted and duty-free rest periods and meal breaks as required by the Labor Code.

7. Defendant GCAM, INC., ("GCAM") is a California Corporation, with its principle executive offices in Fullerton, California and has been listed as the employer on the wage statements issued to Plaintiff during the relevant time period. GCAM list a California address in Fullerton, California with the California Secretary of State and employs Plaintiff and the Aggrieved Employees in California and/or San Bernardino County, including at Defendants' offices and facilities in San Bernardino, California, and/or throughout California and conducts business throughout California.

8. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure § 410.10. This Action is brought as a PAGA representative action on behalf of similarly situated Aggrieved Employees of Defendants pursuant to California Labor Code § 2698 *et seq.* Venue as to Defendants is also proper in this judicial district pursuant to California

1 Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities
2 giving rise to this lawsuit occurred in the County of Los Angeles and Defendants maintain and
3 operate facilities in San Bernardino, California, thus employing Plaintiff and other Aggrieved
4 Employees in Los Angeles County and in California.

5 9. The true names and capacities, whether individual, corporate, associate, or
6 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
7 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code
8 of Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
9 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
10 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
11 this Complaint to reflect the true names and capacities of the Defendants designated herein as
12 Does 1 through 50 when their identities become known.

13 10. Plaintiff is informed and believes and thereon alleges that each Defendant acted
14 in all respects pertinent to this action as the agent of the other Defendants, that Defendants
15 carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the
16 acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants
17 acted in all respects as the employers or joint employers of Employees. Defendants, and each of
18 them, exercised control over the wages, hours or working conditions of Employees, or suffered
19 or permitted Employees to work, or engaged, thereby creating a common law employment
20 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
21 employed the Employee Aggrieved Employees.

22 **FACTUAL BACKGROUND**

23 11. The Aggrieved Employees, including Plaintiff, are non-exempt employees
24 pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who work in
25 non-exempt positions at the direction of Defendants in the State of California. Plaintiff and the
26 Aggrieved Employees were either not paid by Defendants for all hours worked or were not paid
27 at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants
28 failed to pay Plaintiff and the Aggrieved Employees all wages due and owing, including by

1 failing to pay wages at the required rates of pay, requiring them to work off the clock, failing to
2 reimburse necessary business expenses, making unlawful deductions from their pay, failing to
3 provide meal and rest breaks, and failing to furnish accurate wage statements, all in violation of
4 various provisions of the California Labor Code and applicable Wage Orders.

5 12. Additionally, Plaintiff and the Aggrieved Employees were not paid all wages
6 they were owed, including for all work performed and for all overtime hours worked resulting
7 in off the clock work. More specifically, Defendants required Plaintiff and the Aggrieved
8 Employees to off the clock by going through lengthy security and temperature checks each day
9 before clocking in, as part of their duties under Defendants' employ, for which they were never
10 compensated. Defendants did so with the ostensible intent of paying Aggrieved Employees only
11 for the hours they were scheduled to work, rather than the hours they were actually under
12 Defendants' control. Plaintiff contends this policy is not neutral and results, over time, to the
13 detriment of the Aggrieved Employees by systematically under compensating them.

14 13. As a result of the above described requirements to work off the clock, the failure
15 to calculate and pay wages at the correct rates, and the other wage violations they endured at
16 Defendants' hands, Plaintiff and the Aggrieved Employees were not properly paid all wages
17 earned and all wages owed to them by Defendants, including when working more than eight (8)
18 hours in any given day and/or more than forty (40) hours in any given week. As a result of
19 Defendants' unlawful policies and practices, Plaintiff and Aggrieved Employees incurred
20 overtime hours worked for which they were not adequately and completely compensated, in
21 addition to the hours they were required to work off the clock. To the extent applicable,
22 Defendants also failed to pay Plaintiff and the Aggrieved Employees at an overtime rate of 1.5
23 times the regular rate for the first eight hours of the seventh consecutive work day in a week
24 and overtime payments at the rate of 2 times the regular rate for hours worked over eight (8) on
25 the seventh consecutive work day, as required under the Labor Code and applicable IWC Wage
26 Orders.

27 14. Therefore, from at least one (1) year prior to the filing of this lawsuit and
28 continuing to the present, Defendants had a consistent policy or practice of failing to pay

1 Employees for all hours worked, and failing to pay minimum wages for all time worked, as
2 required by California law. Also, from at least one (1) year prior to the filing of this lawsuit and
3 continuing to the present, Defendants had a consistent policy or practice of failing to pay
4 Employees overtime compensation at correctly calculated premium overtime rates for all hours
5 worked in excess of eight (8) hours a day and/or forty (40) hours a week, and double-time rates
6 for all hours worked in excess of twelve (12) hours a day, in violation of Labor Code § 510 and
7 the corresponding sections of IWC Wage Orders.

8 15. Additionally, Defendants failed to provide all the legally required unpaid, off-
9 duty meal periods and all the legally required paid, off-duty rest periods to Plaintiff and the other
10 Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Defendants
11 did not have a policy or practice which provided or recorded all the legally required unpaid, off-
12 duty meal periods and all the legally required paid, off-duty rest periods to the Plaintiff and the
13 Aggrieved Employees. Plaintiff and Aggrieved Employees were required to perform work as
14 ordered by Defendants for more than five (5) hours during a shift, but were often required to do
15 so without receiving a meal break. In fact, as addressed above, Defendants followed a practice of
16 under-reporting hours worked in an effort to ensure that the timekeeping records for Employees
17 reflected a shift of less than six hours when in fact the Employee worked more than six hours in
18 an effort to avoid the meal period requirements under the Labor Code and applicable IWC Wage
19 Orders through an alleged meal period waiver. As a result, Defendants' failure to provide the
20 Plaintiff and Aggrieved Employees with all the legally required off-duty, unpaid meal periods
21 and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants'
22 business records, or lack thereof. From at least one (1) year prior to the filing of this lawsuit and
23 continuing to the present, Defendants have regularly required Employees to work shifts in
24 excess of five (5) hours without providing them with uninterrupted meal periods of not less than
25 thirty (30) minutes, and shifts in excess of ten (10) hours without providing them with second
26 meal periods of not less than thirty minutes; nor did Defendants pay Employees "premium pay,"
27 i.e. one hour of wages at each Employee's effective hourly rate of pay, for each meal period that
28 Defendants failed to provide or deficiently provided.

1 16. Therefore, for at least one (1) year prior to the filing of this action and through to
2 the present, Plaintiff and the Aggrieved Employees were unable to take off-duty breaks or were
3 otherwise not provided with the opportunity to take required breaks due to Defendants' policies
4 and practices. On the occasions when Plaintiff and the Aggrieved Employees were provided
5 with a meal period, it was often untimely or interrupted, or was impermissibly shortened, and
6 Employees were not provided with one (1) hour's wages in lieu thereof. Meal period violations
7 thus occurred in one or more of the following manners:

- 8 (a) Aggrieved Employees were not provided full thirty-minute duty free meal
9 periods for work days in excess of five (5) hours and were not
10 compensated one (1) hour's wages in lieu thereof, all in violation of,
11 among others, Labor Code §§ 226.7, 512, and the applicable Industrial
12 Welfare Commission Wage Order(s);
- 13 (b) Aggrieved Employees were not provided second full thirty-minute duty
14 free meal periods for work days in excess of ten (10) hours;
- 15 (c) Aggrieved Employees were required to work through at least part of their
16 daily meal period(s);
- 17 (d) Meal periods were provided after five (5) hours of continuous work during
18 a shift; and
- 19 (e) Aggrieved Employees were restricted in their ability to take a full thirty-
20 minute meal period.

21 17. Plaintiff and the Defendants' Aggrieved Employees were also not authorized and
22 permitted to take lawful rest periods, were systematically required by Defendants to work
23 through or during breaks, and were not provided with one (1) hour's wages in lieu thereof. They
24 were required to remain on-duty during breaks or portions of their breaks, thus making them
25 either untimely or shortened and on-duty, and they were also prevented from leaving the
26 premises during rest breaks under Defendants' policies. Rest period violations therefore arose
27 in one or more of the following manners:

28 ///

- 1 (a) Aggrieved Employees were required to work without being provided a
2 minimum ten (10) minute rest period for every four (4) hours or major
3 fraction thereof worked and were not compensated one (1) hour of pay at
4 their regular rate of compensation for each workday that a rest period was
5 not provided;
- 6 (b) Aggrieved Employees were not authorized and permitted to take timely
7 rest periods for every four hours worked, or major fraction thereof; and
- 8 (c) Aggrieved Employees were required to remain on-duty during rest periods
9 or otherwise had their rest periods interrupted by work demands.

10 18. From at least one (1) year prior to the filing of this lawsuit and continuing to the
11 present, Defendants have consistently violated Labor Code § 221 by unlawfully collecting or
12 deducting the Employees' earned wages, including by the above described off the clock work
13 and rounding. By not compensating Employees for all hours worked, Defendant unlawfully
14 deducted wages earned by and owed to Plaintiff and the Aggrieved Employees, in violation of
15 Labor Code § 221.

16 19. Additionally, from at least one (1) year prior to the filing of this lawsuit and
17 continuing to the present, Defendants required Plaintiff, and upon information and belief other
18 similarly situated Employees, to incur business expenses in the course of performing their
19 required job duties for Defendants. Specifically, from time to time Employees were required to
20 use their cell phones in performing their daily job duties and were not reimbursed for cell phone
21 usage for business purposes. These expenses incurred by Plaintiff and the Aggrieved Employees
22 were necessary and required of them in performing their assigned job duties, but Defendants
23 failed to reimburse Plaintiff and the Aggrieved Employees for all such necessary expenditures,
24 thus entitling them to reimbursement according to proof as required under Labor Code § 2802
25 and the applicable provisions of the IWC Wage Orders.

26 20. As a result of these illegal policies and practices, Defendants engaged in and
27 enforced the following additional unlawful practices and policies against Plaintiff and the
28 Aggrieved Employees she seeks to represent:

- a. failing to pay all wages owed to Aggrieved Employees who either were discharged, laid off, or resigned in accordance with the requirements of Labor Code §§ 201, 202, 203;
- b. failing to pay all wages owed to the Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204;
- c. failing to pay Aggrieved Employees all wages owed, including all meal and rest period premium wages; and
- d. failing to maintain accurate records of Aggrieved Employees' earned wages and meal periods in violation of Labor Code §§ 226 and 1174(d) and Section 7 of the applicable IWC Wage Orders.

21. From at least one (1) year prior to filing this lawsuit and continuing to the present, Defendants have thus also had a consistent policy of failing to pay all wages owed to Plaintiff and other similarly situated Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.

22. In light of the foregoing, Plaintiff and the Aggrieved Employees bring this action for civil penalties pursuant to the PAGA for violations of Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 510, 512, 558(a)(1)(2), 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1199, 2800, 2802, and pursuant to the applicable IWC Wage Order provisions and California Code of Regulations, Title 8, section 11000 *et seq.*

PAGA NOTICE AND ALLEGATIONS

23. Plaintiff brings this PAGA representative action on behalf of herself and all others similarly situated Aggrieved Employees employed by Defendants during the liability period pursuant to Labor Code § 2698 *et seq.* Plaintiff and Employees are aggrieved employees as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either were or are employed by the alleged violators, Defendants. Upon information and belief, at all times during the liability period, Plaintiff and the Aggrieved Employees were employees subject to the protections of the California Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Orders, including IWC Wage Order

No. 4-2001 regulating the wages, hours and working conditions in the Professional, Technical, Clerical, Mechanical, and Similar Occupations (“Wage Order No. 4”).

24. In failing to pay Aggrieved Employees minimum wages and overtime, not providing proper meal and rest periods, failing to reimburse necessary business expenses, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all addressed herein, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC Wage Orders.

25. As such, Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5, which includes the penalty provisions, without limitation, based *inter alia* on the following California Labor Code sections: 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 510, 512, 558(a)(1)(2), 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1199, 2800, 2802, 2698, and 2699 *et seq.*

26. More specifically, after complying with the notice procedures of Labor Code § 2699.3, Plaintiff asserts as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees a PAGA claim for violations of the underlying claims addressed herein and seeking penalties as specified by the applicable corresponding provisions, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1194.2, 1197, 1197.1, and 1198, and Sections 2(K), 3(A) and 4 of the applicable IWC Wage Order(s);

(b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit

1 them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu
2 thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A) and 12(B) of
3 the applicable IWC Wage Order(s);

4 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to
5 provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements
6 and failure to maintain employment records for Plaintiff and Aggrieved Employees under
7 Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable
8 IWC Wage Order(s);

9 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including
10 at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201,
11 203, 204, 1197.5, 2926, and 2927; and

12 (e) All Alleged Violations of the IWC Wage Orders: For any above addressed
13 violation of the applicable provisions of the IWC Wage Orders constituting violations of
14 Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and
15 applicable under Labor Code § 2699(f)(2) and for attorneys' fees and costs pursuant to
16 Labor Code § 2699(g)(1).

17 27. The penalties shall be allocated under Labor Code § 2699(i) as follows: 75% to
18 the Labor and Workforce Development Agency (LWDA) and 25% to the affected employees.

19 28. As also addressed above, Plaintiffs on behalf of the Aggrieved Employees also
20 seeks the penalties and remedies set forth in Labor Code § 558(a)(1)(2), which states:

21 (a) Any employer or other person acting on behalf of an employer
22 who violates, or causes to be violated, a section of this chapter or any
23 provision regulating hours and days of work in any order of the Industrial
24 Welfare Commission shall be subject to a civil penalty as follows: (1) For
25 any initial violation, fifty dollars (\$50) for each underpaid employee for
26 each pay period for which the employee was underpaid in addition to an
27 amount sufficient to recover underpaid wages. (2) For each subsequent
28 violation, one hundred dollars (\$100) for each underpaid employee for
29 each pay period for which the employee was underpaid in addition to an
30 amount sufficient to recover underpaid wages...

31 (b) If upon inspection or investigation the Labor Commissioner
32 determines that a person had paid or caused to be paid a wage for
33 overtime work in violation of any provision of this chapter, or any

1 provision regulating hours and days of work in any order of the Industrial
2 Welfare Commission, the Labor Commissioner may issue a citation. The
3 procedures for issuing, contesting, and enforcing judgments for citations
or civil penalties issued by the Labor Commissioner for a violation of this
chapter shall be the same as those set out in Section 1197.1.

4 (c) The civil penalties provided for in this section are in addition to
5 any other civil or criminal penalty provided by law.

6 29. Plaintiff has exhausted her administrative remedy by sending a certified letter to
7 the LWDA and Defendants postmarked on **August 27, 2020** addressing in detail the specific
8 provisions of the Labor Code Defendants have violated and addressing the facts and legal
9 theories to support the alleged violations. The LWDA has not provided notice of its intent to
10 investigate the alleged violations within 65 calendar days of the postmark date of the letter. As a
11 result, as a matter of law, Plaintiff is entitled to file this Complaint for full compliance and
12 exhaustion of the notice requirements under the PAGA and seeks civil penalty assessments
13 against Defendants as a Representative of the State of California as hereinafter alleged and in
14 accordance with the law, in addition to costs and reasonable attorneys' fees as provided by the
15 PAGA statute. A true and correct copy of the **August 27, 2020** Notice to the LWDA and the
16 Defendants is attached hereto **Exhibit A** and is expressly incorporated into this Complaint as if
17 set forth in full. Plaintiff alleges that the notice period provided by statute has expired and
18 amendment is proper pursuant to Labor Code § 2699.3(a)(2)(C).

19 30. This action has been brought and may properly be maintained as a representative
20 action under the provisions of Labor Code § 2698 *et seq.* seeking civil penalties based, *inter*
21 *alia*, on the following claims addressed in detail herein:

- 22 a. Defendants failed to pay Employees minimum wages and wages for all hours
23 worked;
- 24 b. Defendants failed to pay Employees overtime as required under Labor Code § 510;
- 25 c. Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage
26 Orders, by failing to provide Employees with requisite meal periods or premium
27 pay in lieu thereof;
- 28 d. Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders,

- 1 by failing to authorize and permit Employees to take requisite rest breaks or
2 provide premium pay in lieu thereof;
- 3 e. Defendants violated Labor Code § 226(a) by providing Employees with inaccurate
4 wage statements;
- 5 f. Defendants violated Labor Code § 221 by making unauthorized deductions from
6 wages;
- 7 g. Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and
8 compensation due and owing at the time of termination of employment;
- 9 h. Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by
10 failing to maintain accurate records of Aggrieved Employees' earned wages and
11 work periods;
- 12 i. Defendants violated Labor Code § 1194 by failing to compensate all Employees
13 during the relevant time period for all hours worked, whether regular or overtime;
- 14 j. Defendants violated Labor Code § 204 by failing to pay Employees all wages
15 earned at least twice monthly; and
- 16 k. Defendants failed to reimburse necessary business expenses incurred by Employees
17 in connection with performing their job duties under Labor Code § 2802.

18
19 **FIRST CAUSE OF ACTION**
20 **For Violation of the Private Attorneys General Act**
21 **[Cal. Lab. Code §§, et. seq.]**
(Against All Defendants)

22 31. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
23 in full herein.

24 32. PAGA is a mechanism by which the State of California itself can enforce state
25 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
26 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
27 fundamentally a law enforcement action designed to protect the public and not to benefit
28 private parties. The purpose of the PAGA is not to recover damages or restitution, but to create

1 a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
2 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
3 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
4 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
5 subject to arbitration.

6 33. PLAINTIFF, and such persons that may be added from time to time who satisfy
7 the requirements and exhaust the administrative procedures under the Private Attorney General
8 Act, brings this Representative Action on behalf of the State of California with respect to herself
9 and all individuals who are or previously were employed by GCAM, Inc. in California and
10 classified as non-exempt employees during the time period of August 27, 2019 until a date as
11 determined by the Court (the "PAGA PERIOD")

12 34. Pursuant to Labor Code § 2699, Plaintiff seeks all applicable PAGA civil
13 penalties and remedies for each Aggrieved Employee for each pay period in the applicable
14 statute of limitations in which the Aggrieved Employee was not paid for all hours worked for
15 each pay period, plus reasonable attorneys' fees and costs.

16 35. The Private Attorneys General Act of 2004 ("PAGA") provides that:

17 ... an aggrieved employee may recover the civil penalty described in subdivision
18 (I) in a civil action pursuant to the procedures specified in Section 2699.3 filed on
19 behalf of himself or herself and other current or former employees against whom
20 one or more of the alleged violations was committed. Any employee who prevails
21 in any action shall be entitled to an award of reasonable attorney's fees and costs.
Nothing in this part shall operate to limit an employee's right to pursue or recover
other remedies available under state or federal law, either separately or
concurrently with an action taken under this part.

22 California Labor Code § 2699(g)(1).

23 36. Plaintiff is an "aggrieved employee" under the PAGA, as she was employed by
24 Defendants during the applicable statutory period and suffered one or more of the California
25 Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of
26 herself and all other current and former aggrieved non-exempt employees, as defined above,
27 the civil penalties provided by the PAGA, plus reasonable attorneys' fees and costs.

28 37. Plaintiff, by virtue of the Notice correspondence dated **August 27, 2020**,

1 attached hereto as **Exhibit A**, has satisfied all prerequisites to serve as a representative of the
2 general public to enforce California's labor laws, including without limitation, the penalty
3 provisions identified in California Labor Code § 2699.5. Because the LWDA took no steps
4 within the applicable time period required to intervene, and because Defendants took no
5 corrective actions to remedy the allegations set forth above, Plaintiff, as a representative of the
6 people of the State of California, will seek, and hereby does seek, any and all civil penalties
7 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
8 Standards Enforcement ("DLSE").

9 38. Any civil penalties recovered herein will be distributed in accordance with the
10 PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California
11 and the LWDA, where applicable. See Labor Code § 2699(i).

12 39. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because Defendants (1) failed to pay minimum wages, (2) failed to pay
14 wages and overtime, (3) failed to provide meal periods, (4) failed to provide rest periods, (5)
15 unlawfully collected or received wages, (6) failed to reimburse for necessary business
16 expenditures, (7) failed to issue accurate and itemized wage statements, (8) failed to issue
17 semimonthly payments, (9) failed to keep records, and (10) failed to timely pay wages when
18 employment ends, all in violation of the applicable Labor Code sections listed in Labor Code
19 Sections §§201-204, 210, 221, 226(a), 226.3, 226.7, 510, 512, 558(a)(1)(2)¹, 1174, 1174.5,
20 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1199, 2800, 2802, and California
21 Code of Regulations, Title 8, Section 11040 and the applicable Industrial Wage Order(s), and
22 thereby gives rise to civil penalties as a result of such conduct. Plaintiff hereby seeks recovery
23 of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as
24 the representative of the State of California for the illegal conduct perpetrated on Plaintiff and
25 the other Aggrieved Employees.

26 ///

27
28 ¹ Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).

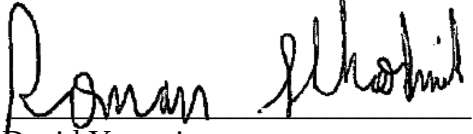
RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. On behalf of the State of California and with respect to all Aggrieved Employees:
 - a. Recovery of civil penalties as prescribed by the California Labor Code Private Attorneys General Act of 2004;
 - b. An award of attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant Labor Code §2699.

DATED: May 18, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

By 

David Yeremian

Roman Shkodnik

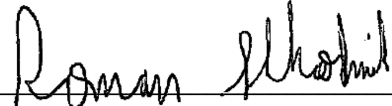
Attorneys for Plaintiff MELISSA SOTO
and all similarly aggrieved employees

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

DATED: May 18, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

By 

David Yeremian

Roman Shkodnik

Attorneys for Plaintiff MELISSA SOTO
and all similarly aggrieved employees

EXHIBIT A

**DAVID YEREMIAN
& ASSOCIATES INC**

535 N BRAND BLVD STE 705
GLENDALE CA 91203

818 230 8380
818 230 0308 FAX

DAVID@YEREMIANLAW.COM

August 27, 2020

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128>

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA CERTIFIED MAIL TO:

GCAM, Inc.

Yonghoon Kim, Agent for Service
1561 E. Orangethorpe Ave., Ste. 205
Fullerton, CA 92831
Certified Mail Tracking Number: 7019 2970 0000 5058 2632

**Re: Labor Code § 2699 Penalties
PAGA Notice Letter to LWDA
Soto v. GCAM, Inc.**

Gentlepersons:

This office represents Plaintiff Melissa Soto (“Plaintiff”) and other aggrieved employees (collectively “Aggrieved Employees”) for the violation of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802; provisions of the applicable Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

Plaintiff wishes to bring a representative action on behalf of herself and the State of California against Defendant GCAM, Inc., and DOES 1 through 50 inclusive (defendants being referred to herein collectively as “Defendants”).

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we Defendants engaged in with respect to our client and all of their California employees.

Relevant Facts

Plaintiff and the other similarly situated Aggrieved Employees were employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer

or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Specifically, Defendant would automatically deduct 30 minutes of wages from Aggrieved Employees for alleged meal periods which Aggrieved Employees were continuously denied. Accordingly, Aggrieved Employees were required to work during their meal periods without pay. Thus, Aggrieved Employees were required to work hours without wages. Defendants had a common policy and practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were required to work off-the-clock hours by going through lengthy security and temperature checks each day before clocking in, as part of their duties under Defendants' employ, for which they were never compensated.

Defendants also had a common policy and practice of failing to pay Aggrieved Employees proper overtime. As discussed above, Aggrieved Employees were required to work hours without pay, by going through lengthy security and temperature checks. These uncompensated hours caused Aggrieved Employees to work in excess of eight (8) hours on a given day and/or forty (40) hours in a given week, entitling Aggrieved Employees to overtime wages, which they were never paid.

Defendants had a common policy and/or practice of denying Aggrieved Employees proper meal periods. Specifically, employees were required to work through their meal periods which they were consistently denied as they had to assist customers during their meal periods. Moreover, as discussed above, Defendants had a common policy and/or practice of automatically deducting 30 minutes of wages for alleged meal periods, which Aggrieved Employees were consistently denied. Also, what meal periods Aggrieved Employees did take, were consistently less than 30 minutes, and taken well after their fifth consecutive hour of work, all in violation of Labor Code and applicable Wage Orders. Similarly, Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders.

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Aggrieved Employees were required to work through their periods which they were continuously denied. Moreover, Aggrieved Employees were not paid for whatever rest breaks they were provided.

Defendants also had a common policy and/or practice of unlawfully collecting or receiving wages from Aggrieved Employees. As discussed above, Defendants would automatically deduct 30 minutes of vested wages from Aggrieved Employees for alleged meal periods which they were denied. Moreover, Defendants also had a common policy and/or practice of understating the hours worked by Aggrieved Employees.

Defendants had a common policy and practice of failing to reimburse Aggrieved Employees for necessary business expenditures incurred in execution of their duties under Defendants' employ. Defendants have failed to reimburse Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, cell phone usage which were

necessary to perform their duties under Defendants' employ which was used throughout the course of Plaintiff and Aggrieved Employees' duties under Defendants' employ.

As a result, Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226, and Defendants failed to pay Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation.

Furthermore, Defendants also failed to pay Aggrieved Employees. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis, and maintain proper employment records in accordance with California law.

Accordingly, Aggrieved Employees complain of the following violations:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Specifically, Defendant would automatically deduct 30 minutes of wages from Aggrieved Employees for alleged meal periods which Aggrieved Employees were continuously denied. Accordingly, Aggrieved Employees were required to work during their meal periods without pay. Moreover, as discussed above, Aggrieved Employees were required to work off-the-clock hours by going through lengthy security and temperature checks each day, as part of their duties under Defendants' employ, for which they were never compensated. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover penalties. Plaintiff and the Aggrieved Employees are entitled to recover the unpaid minimum wages, liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions.

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. As discussed above, Aggrieved Employees were required to work hours without pay, by going through lengthy security and temperature checks they took for which they were never paid wages. These uncompensated hours caused Aggrieved Employees to work in excess of eight (8) hours on a given day and/or forty (40) hours in a given week, entitling Aggrieved Employees to

overtime wages, which they were never paid, in violation of Labor Code § 510 and applicable Wage Orders.

In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, and 1194 (and the relevant orders of the Industrial Welfare Commission). Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Meal-Period Liability Under Labor Code § 226.7

Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours and ten (10) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes for the first (5) hours and for the tenth hour as required under Labor Code §§ 226.7, 512, and applicable Wage Orders. Specifically, employees were required to work through their meal periods which they were consistently denied. Moreover, as discussed above, Defendants had a common policy and/or practice of automatically deducting 30 minutes of wages for alleged meal periods, which Aggrieved Employees were consistently denied. Also, what meal periods Aggrieved Employees did take, were consistently less than 30 minutes, and taken well after their fifth consecutive hour of work, all in violation of Labor Code and applicable Wage Orders. Similarly, Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7, Employees in the Class are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Rest-Break Liability Under Labor Code § 226.7

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten (10) minutes for every work period of four (4) or more consecutive hours, as required under Labor Code § 226.7. Specifically, Aggrieved Employees were required to work through their periods which they were continuously denied. Moreover, Aggrieved Employees were not paid for whatever rest breaks they were provided. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Therefore, pursuant to Labor Code § 226.7, Employees in the Class are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Unlawfully Collecting or Receiving Wages in Violation of Labor Code § 221

Labor Code § 221 provides, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” As discussed above, Defendants unlawfully received and/or collected wages from Employees by implementing a policy of automatically deducting 30 minutes worth of vested wages, from Employees, for alleged meal periods which they were consistently denied, as well as by understating the hours worked by Aggrieved Employees. In light of the forgoing, Plaintiffs and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants have consistently required Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants’ employ. Specifically, Defendants have failed to reimburse Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, cell phone which were necessary to perform their duties under Defendants’ employ which was used throughout the course of Plaintiff and Aggrieved Employees’ duties under Defendants’ employ in violation of Labor Code § 2802. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee’s wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees failed to accurately account for all hours worked as described above, unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, discussed above. In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e), Plaintiff and Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys’ fees.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e), Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys’ fees.

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Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the extent that Labor Code § 226.3 applies, Plaintiff also seeks such penalties on behalf of herself and the other Aggrieved Employees.

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Failure to Keep Records In Accordance With Labor Code § 1174

Section 1174 requires employers to keep records showing payroll records and the hours worked daily by and the wages paid to employees. Failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.*

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants’ employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages fur and owed to Aggrieved Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Unfair Competition Under Business and Professions Code § 17200, *et seq.*

Consequently, Defendants’ conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

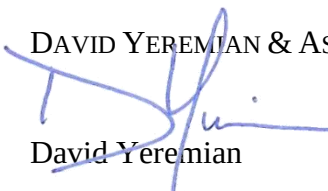
We are constrained to move forward with the filing of this complaint, alleging the causes of action discussed herein, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

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Wherefore we request that you advise us, by certified mail within thirty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Aggrieved Employees should include them as a § 2699 claim in an amended complaint.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Cc: Above listed Defendants by Certified Mail