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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

SANTIAGO OCHOA, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

AUTOMOBILE CLUB OF SOUTHERN
CALIFORNIA, a California Corporation; and
Does 1 through 50, Inclusive,

Defendants.

Case No. **30-2020-01175232-CU-OE-CXC**

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.*, for violations of Labor
Code § 226(a).

Assigned for All Purposes

Judge Glenda Sanders

CX-101

1 Plaintiff Santiago Ochoa (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant Automobile Club of Southern
8 California (“DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on
9 behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFF does not seek to recover anything other than penalties as permitted by
11 California Labor Code § 2699. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

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

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 THE PARTIES

23 4. Defendant Automobile Club of Southern California is a California corporation
24 and at all relevant times mentioned herein conducted and continues to conduct substantial and
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26 5. DEFENDANT is the Southern California affiliate of the American Automobile
27 Association federation of motor clubs. Today, DEFENDANT is the single largest member of
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1 the AAA federation.

2 6. PLAINTIFF has been employed by DEFENDANT in California as a non-exempt
3 employee entitled to receive accurate and itemized wage statement since June of 1999.
4 PLAINTIFF has been at all times relevant mentioned herein classified by DEFENDANT as a
5 non-exempt employee.

6 7. 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
9 himself and all individuals who were employed by DEFENDANT in California as non-exempt
10 employees and who were paid overtime wages such as "CommOT" and/or "ExtraOT" wages,
11 ("AGGRIEVED EMPLOYEES") during the time period of September 24, 2019 until a date as
12 determined by the Court (the "PAGA PERIOD").

13 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
14 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
15 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
16 violation of California Labor Code §226(a) and the applicable Wage Order. Based upon the
17 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
18 the meaning of Labor Code § 2699, *et seq.*

19 9. The true names and capacities, whether individual, corporate, subsidiary,
20 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
21 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
22 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
23 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
24 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
25 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
26 responsible in some manner for one or more of the events and happenings that proximately
27 caused the injuries and damages hereinafter alleged.

10. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

11. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct gross wages earned. Specifically, whenever overtime wages such as “COMMOT” and/or “EXTRAOT” wages are paid, the corresponding wage statements do not identify the rates of pay and applicable number of hours worked in violation of Labor Code Section 226(a)(9). Aside from the violations listed above, DEFENDANT fails to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT provides PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements which violate Cal. Lab. Code § 226.

12. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).

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JURISDICTION AND VENUE

13. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10.

14. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED EMPLOYEES.

FIRST CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

15. PLAINTIFF incorporates by reference the allegations set forth in the prior paragraphs as though fully set forth at this point.

16. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

17. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General

1 Act, brings this Representative Action on behalf of the State of California with respect to
2 himself and all individuals who were employed by DEFENDANT in California as non-exempt
3 employees and who ere paid overtime wages such as “CommOT” and/or “ExtraOT” wages,
4 (“AGGRIEVED EMPLOYEES”) during the time period of September 24, 2019 until a date as
5 determined by the Court (the "PAGA PERIOD").

6 18. On September 24, 2020, PLAINTIFF gave written notice by electronic mail to
7 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
8 employer of the specific provisions of this code alleged to have been violated as required by
9 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
10 herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint
11 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
12 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
13 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

14 19. The policies, acts and practices heretofore described were and are an unlawful
15 business act or practice because DEFENDANT (a) fails to provide PLAINTIFF and the other
16 AGGRIEVED EMPLOYEES accurate itemized wage statements, in violation of the applicable
17 Labor Code sections listed in Labor Code Sections § 226(a) and the applicable Industrial Wage
18 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
19 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private Attorney
20 General Act of 2004 as the representative of the State of California for the illegal conduct
21 perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the State of California and with respect to all AGGRIEVED
5 EMPLOYEES:

6 A) Recovery of civil penalties as prescribed by the Labor Code Private
7 Attorneys General Act of 2004; and,

8 B) An award of attorneys' fees and cost of suit, as allowable under the
9 law, including, but not limited to, pursuant to Labor Code §2699.

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11 Dated: December 18, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

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15 By: /s/ Norman Blumenthal

16 Norman B. Blumenthal
17 Attorneys for Plaintiff
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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS E-MAIL:

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WRITERS EXT:

1004

September 24, 2020
CA2217

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Automobile Club of Southern California
Certified Mail #70191640000167902267
Gail C. Louis
3333 Fairview Road, A451
Costa Mesa, CA 92626

Re: Notice Of Violations Of California Labor Code Sections §§ 226(a),
California Code of Regulations, Violation of Applicable Industrial Welfare
Commission Wage Order(s), and Pursuant To California Labor Code Section
2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who were employed by Defendant Automobile Club of Southern California in California as non-exempt employees and who were paid overtime wages such as “CommOT” and/or “ExtraOT” wages during the time period of September 24, 2019 until a date as determined by the Court. Our offices represent Plaintiff Santiago Ochoa (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Automobile Club of Southern California. Plaintiff has been employed by Defendant in California as a sales agent since June of 1999 as a non-exempt employee entitled to receiving accurate and itemized wage statements. Defendant, however, unlawfully fails to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Defendant violated Section 226(a)(9) by failing to identify the correct rates of pay and number of hours worked, including but not limited to, for the “COMMOT” and “EXTRAOT” items of pay, which are overtime wage payments. Plaintiff was paid these wages numerous times during the PAGA period, including but not limited to, for the pay periods of 1/01/2020-1/15/2020, 1/16/2020-1/31/2020, 7/01/2020-7/15/2020, and 7/16/2020-7/31/2020. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code § 226(a), California Code of Regulations, Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged

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violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.