

Kevin Mahoney (SBN: 235367)
kmahoney@mahoney-law.net
Lilit Tunyan (SBN: 329351)
ltunyan@mahoney-law.net
MAHONEY LAW GROUP, APC
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

Attorneys for Plaintiff BRANDY LEE DEMARCO RODNEY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

BRANDY LEE DEMARCO
RODNEY, on behalf of herself, other
aggrieved employees, and the State of
California,

Plaintiff,

v.

ENTERPRISE NETWORKING
SOLUTIONS, INC.; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 34E2020-00289669

**PRIVATE ATTORNEYS GENERAL ACT
COMPLAINT**

1. Violation of PAGA for Misclassification as Exempt Employees (Lab. Code § 515);
2. Violation of PAGA for Failure to Pay All Wages Including Minimum, Regular, and Overtime Wages (Lab. Code §§ 204, 510, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198);
3. Violation of PAGA for Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512);
4. Violation of PAGA for Failure to Provide Rest Periods (Lab. Code §§ 226.7);
5. Violation of PAGA for Failure to Timely Pay Wages Upon Separation of Employment (Lab. Code §§ 201, 202, 203);
6. Violation of PAGA for Failure to Maintain Accurate Payroll Records (Lab. Code §§ 226, subd. (A), (E), 226.3, 1174, 1174.5); and
7. Violation of PAGA for Failure to Reimburse Business Expenses (Lab. Code § 2802).

FILED/ENDORSED

DEC 03 2020

By: K. Johnson
Deputy Clerk

1 Plaintiff BRANDY LEE DEMARCO RODNEY (“Plaintiff”), individually and on behalf
2 of other aggrieved employees, hereby complains and alleges as follows:

3 **PRELIMINARY STATEMENT**

4 1. Plaintiff brings this representative action pursuant to the Private Attorneys General
5 Act of 2004 (“PAGA”), Labor Code sections 2698 *et seq.*, against Defendant ENTERPRISE
6 NETWORKING SOLUTIONS, INC. (“Defendant”) and DOES 1 through 50 (collectively
7 “Defendants”), on behalf of herself individually and all other current and former aggrieved
8 employees who were employed by Defendant and misclassified as exempt employees in the State
9 of California during the PAGA period. The PAGA period is defined as one year prior to Plaintiff’s
10 notice of labor code violations to the Labor and Workforce Development Agency (“LWDA”) and
11 certified mailing of said notice to Defendants until resolution.

12 2. Defendant is in the business of technical and business process consultancy services
13 throughout California. Defendants employed and/or continue to employ Plaintiff and other
14 aggrieved employees throughout California as exempt employees.

15 3. Defendant has engaged in a systematic pattern of wage and hour violations under
16 the Labor Code arising from Defendant’s misclassification of non-exempt employees as exempt
17 employees, including, but not limited to, failure to pay all wages (including minimum, regular,
18 and overtime compensation); failure to provide meal periods or compensation in lieu thereof;
19 failure to authorize or permit rest breaks or provide compensation in lieu thereof; failure to
20 provide accurate itemized wage statements; failure to pay all wages due upon separation of
21 employment; failure to reimburse business expenses. These violations concern current and past
22 non-exempt employees of Defendant who were misclassified as exempt employees.

23 4. At all relevant times herein, Defendant has consistently maintained and enforced
24 against Plaintiff and the aggrieved employees the unlawful practices and policies set forth herein.

25 **JURISDICTION AND VENUE**

26 5. Venue is proper in Sacramento County, because Defendant maintains its locations
27 and transacts business in this county, the obligations and liability primarily arise in this county,
28 and work was primarily performed by Plaintiff and other aggrieved employees in this county.

6. The California Superior Court has jurisdiction over this matter. The individual claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional amount required for diversity removal. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including, but not limited to, the California Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure, and California Rules of Court.

THE PARTIES

Plaintiff

7. Plaintiff is, and at all times herein mentioned was, a resident of the County of Sacramento and was employed by Defendant within the past year. During the PAGA period, Defendant misclassified Plaintiff as an exempt employee. Plaintiff was hired by Defendant in or around May 2019 as a non-exempt employee to work as a senior business processing consultant, and her duties included customer technical troubleshooting, business development and employee training. In or around October 2019, Plaintiff was converted to exempt employee with no change in duties.

Defendant

8. Plaintiff is informed and believes, and based thereon alleges, that Defendant ENTERPRISE NETWORKING SOLUTIONS, INC. (“ENTERPRISE NETWORKING”) is a California corporation that provides technical and business process consultancy services in California. Defendant ENTERPRISE NETWORKING’s principal place of business is located at 2860 Gold Tailings Court, Rancho Cordova, California 95670. On information and belief, and based thereon, Plaintiff alleges that ENTERPRISE NETWORKING is conducting business in good standing in California, and at all times herein mentioned has regularly conducted business throughout the State of California.

9. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief allege that said Defendants are legally responsible for the

1 occurrences alleged herein, and that the damages of Plaintiff and the aggrieved employees were
2 proximately caused by such Defendants. Plaintiff will amend this complaint to allege the true
3 names and capacities of the DOE Defendants when ascertained.

4 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
5 herein was, at all times relevant to this action, the agent, employee, representing partner, and/or
6 joint venture of the remaining Defendants and was acting within the course and scope of the
7 relationship. Plaintiff is further informed and believes, based thereon alleges, that each of the
8 Defendants herein gave consent to, ratified and authorized the acts alleged herein to the remaining
9 Defendants.

10 11. Plaintiff is further informed and believes, and based thereon alleges, that
11 Defendants herein acted as a joint employer and/or single or integrated enterprise at all relevant
12 times. Defendants acted in all respects pertinent to this action as the agent of the other Defendants,
13 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
14 each Defendant are legally attributable to the other Defendants.

15 **ADMINISTRATIVE PREREQUISITES**

16 12. By this complaint, Plaintiff brings this case as a representative action seeking
17 penalties for herself, the aggrieved employees, and the State of California in a representative
18 capacity, as provided by the PAGA, Labor Code sections 2698 *et seq.* Plaintiff is an aggrieved
19 employee who was employed by Defendants and subject to at least one of the Labor Code
20 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in
21 her notice to the LWDA and Defendants: violation of Labor Code sections 201-203, 204, 226,
22 226.3, 226.8, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and 2802.

23 13. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
24 of action under PAGA only after giving the LWDA and the employer notice of the Labor Code
25 sections alleged to have been violated, and after receiving notice from the LWDA of its intention
26 not to investigate, or after 65 days have passed without notice from the LWDA.

27 14. Prior to filing this complaint, on September 15, 2020, Plaintiff gave written notice
28 of the specific provisions alleged to have been violated, including the facts and theories to support

1 the alleged violations, as required by Labor Code section 2699.3. The written notice was given
2 via certified mail to Defendants, and the LWDA by electronically filing the notice via the
3 Department of Industrial Relations website. Plaintiff was given an LWDA case number of
4 LWDA-CM-806256-20. A true and correct copy of Plaintiff's notice to the LWDA and
5 Defendant(s), dated September 15, 2020, is attached hereto as Exhibit A.

6 15. The LWDA has not provided Plaintiff with any notice that it intends to investigate
7 the violations as alleged in Plaintiff's September 15, 2020 notice, and more than 65 calendar days
8 have elapsed since the postmark date on the notice.

9 **GENERAL ALLEGATIONS**

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

16 17. For all provisions of the Labor Code except those for which a civil penalty is
17 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendants a
18 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the
19 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
20 for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

21 18. Defendant's conduct during the PAGA period with respect to Plaintiff and the
22 aggrieved employees systematically violates numerous Labor Code sections as detailed herein.
23 Plaintiff is informed and believes, and based thereon alleges, that Defendants' policies and
24 practices described herein are common across each of Defendant's locations within the State of
25 California.

26 19. Plaintiff is informed and believes, and based thereon alleges, that at all times
27 herein mentioned, Defendant was advised by skilled lawyers, employees and other professionals
28 who were knowledgeable about California's wage and hour laws, employment and personnel

1 practices, and the requirements of California law.

2 20. Defendant willfully misclassified Plaintiff and the aggrieved employees as
3 “exempt employees” in the State of California even though, at all relevant times during the PAGA
4 period, Plaintiff and aggrieved employees do not qualify as administrative, executive, or
5 professional employees as required under Labor Code section 515, subdivision (a).

6 21. Labor Code section 515, subdivision (a) states that the Industrial Welfare
7 Commission may establish exemptions from the requirement that an overtime rate of
8 compensation be paid pursuant to Sections 510 and 511 for executive, administrative, and
9 professional employee, if the employee is primarily engaged in the duties that meet the test of the
10 exemption, customarily and regularly exercises discretion and independent judgment in
11 performing those duties, and earns a monthly salary equivalent to no less than two times the state
12 minimum wage for full-time employment . Moreover, the employee must be “primarily engaged
13 in the duties that meet the test of the exemption, and Labor Code section 515, subdivision (e)
14 defines “primarily” as “more than half of the employee’s worktime.”

15 22. “A person employed in an executive capacity means any employee: (a) Whose
16 duties and responsibilities involve the management of the enterprise in which he/she is employed
17 or of a customarily recognized department or subdivision thereof; and (b) Who customarily or
18 regularly directs the work of two or more other employees herein; and (c) Who has the authority
19 to hire or fire other employees or whose suggestions and recommendations as to the hiring or
20 firing and as to the advancement and promotion or any other change of status of other employees
21 will be given particular weight. . . .” (Cal. Code of Regs., tit. 8, § 11040, subd. (1)(A)(1).).
22 However, Plaintiff and the aggrieved employees has never had managerial authorities, or directing
23 or hiring or firing other employees. Plaintiff and the aggrieved employees primarily duties include
24 customer technical trouble shooting, business development and employee training.

25 23. “A person employed in an administrative capacity means any employee: (a)
26 Whose duties and responsibilities involve . . . [t]he performance of office or non-manual work
27 directly related to management policies or general business operations of his/her employer’s
28 customers” (Cal. Code of Regs., tit. 8, § 11040, subd. (1)(A)(2).). “To meet this requirement,

1 an employee must perform work directly related to assisting with the running or servicing of the
2 business, as distinguished, for example, from working on a manufacturing production line or
3 selling a product in a retail or service establishment.” (29 C.F.R. § 541.201(a).). “[A]n employee
4 acting in an administrative capacity directly related to the management policies or business
5 operations of the employer need not directly participate in ‘the formulation of management
6 policies or in the operation of the business’ enterprise as a whole. *United Parcel Serv. Wage &*
7 *Hour Cases* (2010) 190 Cal. App.4th 1001, 1018, quoting 29 C.F.R. § 541.205(c).) “Employees
8 whose work is “directly related” to management policies or to general business operations include
9 those work affects policy or whose responsibility it is to execute or carry it out.” (29 C.F.R. §
10 541.205(c).). Plaintiff’s and the aggrieved employees’ duties have never involved any
11 participation in formulation of management policies or in the operation of the business.

12 24. “In the pertinent federal regulations, the phrase ‘exercise of discretion and
13 independent judgment’ is defined as generally involving ‘the comparison and the evaluation of
14 possible courses of conduct and acting or making a decision after the various possibilities have
15 been considered. The term ... implies that the person has the authority or power to make an
16 independent choice, free from immediate direction or supervision and with respect to matters of
17 significance.’” *United Parcel Serv. Wage & Hour Cases* (2010) 190 Cal. App.4th 1001, 1024,
18 quoting 29 C.F.R. § 541.207(a). Moreover, the exercise of such discretion “must be more than
19 occasional.” *United Parcel Serv. Wage & Hour Cases* 190 Cal.App.4th at p. 1024. Plaintiff’s and
20 the aggrieved employees’ duties have never involved the use of discretion and independent
21 judgment.

22 25. Defendant has misclassified Plaintiff and the aggrieved employees as exempt
23 employees and consequently failed to pay all wages, provide meal and rest breaks or
24 compensation in lieu thereof, reimburse business expenses, provide accurate itemized wage
25 statements, and timely pay to all aggrieved employees during and upon separation of employment.

26 26. At all relevant times, as a result of misclassification Defendant failed to pay
27 Plaintiff and aggrieved employees all wages owed at the legally applicable rate, including
28 minimum, regular and overtime wages. Specifically, Defendant required Plaintiff and the

aggrieved employees to regularly and frequently work about 5-15 (five to ten) hours of unpaid overtime per week, thereby failing to pay any wages, much less at the applicable overtime rate, for hours exceeding eight hours per day. Defendant has not compensated Plaintiff and the aggrieved employees according to the hours actually worked. This pattern and practice of conduct violated Sections 510, 1182.12, 1194, 1194.2, 1197, and 1197.1 of the California Labor Code.

27. During the PAGA period, Plaintiff and the aggrieved employees were entitled to a timely unpaid, duty-free 30-minute meal period for approximately every five hours worked and for a corresponding paid, duty-free 10-minute rest period for approximately every four hours (or every major fraction thereof) worked, or to be paid a “premium wage” in the amount of one hour of pay at the employees’ regular rate of pay for each missed or non-compliant meal or rest period per day. Because Defendant unlawfully treated Plaintiff and the aggrieved employees as “exempt employees” rather than hourly-paid employees, Plaintiff and each of the aggrieved employees during the PAGA period were systematically not provided with meal periods, rest periods, or the one-hour “premium pay” owed in lieu of providing such meal and or rest periods. This conduct violated Labor Code sections 226.7 and 512, subdivision (a), and applicable IWC Wage Orders relating to the provision of meal and rest periods.

28. At no time during the PAGA period did Plaintiff or any of the aggrieved employees qualify or meet the requirements to be exempt from all lawful, compliant meal and rest periods. Thus, Plaintiff and the aggrieved employees were entitled to all protections of the Labor Code offered to hourly non-exempt employees, as well as corresponding regulations and applicable IWC Wage Orders, including payment of premium wages for each meal and rest period for each qualifying work shift, in an amount according to proof.

29. Plaintiff and the aggrieved employees were also required to incur substantial expenses in direct consequence of the discharge of their duties for Defendant without reimbursement. During the PAGA period, Defendant failed to reimburse Plaintiff and other aggrieved employees for all business expenses incurred for Defendant’s benefit. Plaintiff and the aggrieved employees were required, as part of their job duties, to regularly and frequently travel to and from Defendant’s clients’ locations using their personal vehicles. However, Defendant

1 failed to reimburse Plaintiff and the aggrieved employees for mileage driven. Plaintiff and the
2 aggrieved employees were also required to use their personal cell phones and laptops for work,
3 but the stipend intended to cover the use of the devices was not actually paid or was underpaid.

4 30. As a consequence of the wage violations detailed above, Defendant failed to pay
5 all wages and reimbursements due and owing to Plaintiff and the aggrieved employees each pay
6 period pursuant to Labor Code section 204 and upon separation of employment within the time
7 required by Labor Code sections 201, 202, 203, and are liable for statutory penalties pursuant to
8 Labor Code section 203 for the PAGA period.

9 31. Plaintiff and the aggrieved employees also did not receive accurate itemized wage
10 statements as required by Labor Code section 226. The wage statements that Defendant provided
11 to Plaintiff and the aggrieved employees failed to accurately state all items required by Labor
12 Code section 226, subdivision (a), including, but not limited to: gross wages earned, net wages
13 earned, total hours worked, all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate, all deductions, the inclusive dates of
15 the pay period, the employee's name and the last four digits of his or her Social Security number
16 or employee identification number, and the name and address of the legal entity that is the
17 employer.

18 32. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
19 should have known that Defendant was required to maintain accurate records of the hours worked
20 by Plaintiff and aggrieved employees. In violation of the California Labor Code, Defendant failed
21 to maintain accurate records of hours worked by and wages paid to Plaintiff and aggrieved
22 employees, among other things.

23 33. Plaintiff alleges that Defendant's violations of the wage and hour components of
24 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
25 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
26 their competitors who are required by law to employ those employees as non-exempt employees.
27 Plaintiff is informed and believes that the entire enterprise of the Defendants was to violate the
28 law, to underpay wages and benefits, and to cheat and/or deprive the State of California and the

1 federal government of payroll and other taxes levied for the common good.

2 **FIRST CAUSE OF ACTION**

3 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR**
4 **MISCLASSIFICATION AS EXEMPT EMPLOYEES**

5 **(Lab. Code § 515)**

6 **(Against all Defendants)**

7 34. Labor Code section 515, subdivision (a) states that the Industrial Welfare
8 Commission may establish exemptions from the requirement that an overtime rate of
9 compensation be paid pursuant to Sections 510 and 511 for executive, administrative, and
10 professional employee, if the employee is primarily engaged in the duties that meet the test of the
11 exemption, customarily and regularly exercises discretion and independent judgment in
12 performing those duties, and earns a monthly salary equivalent to no less than two times the state
13 minimum wage for full-time employment . Moreover, the employee must be “primarily engaged
14 in the duties that meet the test of the exemption, and Labor Code section 515, subdivision (e)
15 defines “primarily” as “more than half of the employee’s worktime.”

16 35. “A person employed in an executive capacity means any employee: (a) Whose
17 duties and responsibilities involve the management of the enterprise in which he/she is employed
18 or of a customarily recognized department or subdivision thereof; and (b) Who customarily or
19 regularly directs the work of two or more other employees herein; and (c) Who has the authority
20 to hire or fire other employees or whose suggestions and recommendations as to the hiring or
21 firing and as to the advancement and promotion or any other change of status of other employees
22 will be given particular weight. . . .” (Cal. Code of Regs., tit. 8, § 11040, subd. (1)(A)(1).).
23 However, Plaintiff and the aggrieved employees has never had managerial authorities, or
24 directing or hiring or firing other employees. Plaintiff and the aggrieved employees primarily
25 duties include customer technical trouble shooting, business development and employee
26 training.

27 36. “A person employed in an administrative capacity means any employee: (a)
28 Whose duties and responsibilities involve . . . [t]he performance of office or non-manual work

1 directly related to management policies or general business operations of his/her employer's
2 customers" (Cal. Code of Regs., tit. 8, § 11040, subd. (1)(A)(2).). "To meet this requirement,
3 an employee must perform work directly related to assisting with the running or servicing of the
4 business, as distinguished, for example, from working on a manufacturing production line or
5 selling a product in a retail or service establishment." (29 C.F.R. § 541.201(a).). "[A]n employee
6 acting in an administrative capacity directly related to the management policies or business
7 operations of the employer need not directly participate in 'the formulation of management
8 policies or in the operation of the business' enterprise as a whole. United Parcel Serv. Wage &
9 Hour Cases (2010) 190 Cal. App.4th 1001, 1018, quoting 29 C.F.R. § 541.205(c).) "Employees
10 whose work is "directly related" to management policies or to general business operations include
11 those work affects policy or whose responsibility it is to execute or carry it out." (29 C.F.R. §
12 541.205(c).). Plaintiff's and the aggrieved employees' duties have never involved any
13 participation in formulation of management policies or in the operation of the business.

14 37. "In the pertinent federal regulations, the phrase 'exercise of discretion and
15 independent judgment' is defined as generally involving 'the comparison and the evaluation of
16 possible courses of conduct and acting or making a decision after the various possibilities have
17 been considered. The term ... implies that the person has the authority or power to make an
18 independent choice, free from immediate direction or supervision and with respect to matters of
19 significance.'" United Parcel Serv. Wage & Hour Cases (2010) 190 Cal. App.4th 1001, 1024,
20 quoting 29 C.F.R. § 541.207(a). Moreover, the exercise of such discretion "must be more than
21 occasional." United Parcel Serv. Wage & Hour Cases 190 Cal.App.4th at p. 1024. Plaintiff's and
22 the aggrieved employees' duties have never involved the use of discretion and independent
23 judgment.

24 38. Defendant has misclassified Plaintiff and the aggrieved employees as exempt
25 employees and consequently failed to pay all wages, provide meal and rest breaks or
26 compensation in lieu thereof, reimburse business expenses, provide accurate itemized wage
27 statements, and timely pay to all aggrieved employees during and upon separation of
28 employment.

1 39. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees
2 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
3 will be ascertained according to proof at trial.

4 40. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
5 employees and the State of California for violations of Labor Code section 226.8 during the
6 PAGA period, in a sum as provided by the Labor Code and/or other statutes.

7 41. Plaintiff, individually and on behalf of the aggrieved employees and the State of
8 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699(g).

9 **SECOND CAUSE OF ACTION**

10 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO**
11 **PAY ALL WAGES INCLUDING MINIMUM, REGULAR, AND OVERTIME WAGES**
12 **(Lab. Code §§ 204, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198)**

13 **(Against all Defendants)**

14 42. Plaintiff realleges and incorporates by reference the allegations in the preceding
15 paragraphs.

16 43. Labor Code section 204 provides that all wages earned during employment are due
17 and payable twice during each calendar month on dates designated in advance by the employer.

18 44. Labor Code 1182.12 provides the applicable minimum wage rate in California.

19 45. Labor Code section 510, subdivision (a), provides that any work in excess of eight
20 (8) hours in any workday and any work in excess of forty (40) hours in a workweek, shall be
21 compensated at a rate of no less than one and one-half times the regular rate of pay for an
22 employee. Any work in excess of twelve (12) hours in a workday shall be compensated at the rate
23 of twice the regular rate of pay for an employee.

24 46. Labor Code sections 1194 and 1194.2 provide the remedies available for an action
25 to recover minimum and overtime wages, 1197 mandates that payment of less than the applicable
26 minimum wage is unlawful, and 1198 provides that an employer's failure to follow the standard
27 conditions of labor fixed by the commissions is unlawful.

28 ///

1 47. Labor Code section 558, subdivision (a) further provides “[a]ny employer or other
2 person acting on behalf of an employer who violates, or causes to be violated, a section of this
3 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
4 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars
5 (\$50.00) for each underpaid employee for each pay period for which the employee was underpaid
6 . . . (2) For each subsequent violation, one hundred dollars (\$100.00) for each underpaid employee
7 for each pay period for which the employee was underpaid.”

8 48. Labor Code section 1197.1 also provides “[a]ny employer or other person acting
9 either individually or as an officer, agent, or employee of another person, who pays or causes to
10 be paid to any employee a wage less than the minimum fixed by an applicable state or local law,
11 or by an order of the commission shall be subject to a civil penalty . . . as follows: (1) For any
12 initial violation that is intentionally committed, one hundred dollars (\$100.00) for each underpaid
13 employee for each pay period for which the employee is underpaid . . . (2) For each subsequent
14 violation for the same specific offense, two hundred fifty dollars (\$250.00) for each underpaid
15 employee for each pay period for which the employee is underpaid regardless of whether the
16 initial violation is intentionally committed.

17 49. At all relevant times, Defendant was employer of Plaintiff and the aggrieved
18 employees, and subject to the Labor Code, IWC Wage Orders, and other applicable statutes, rules,
19 and regulations.

20 50. At all relevant times herein, Plaintiff and aggrieved employees were and are
21 misclassified as exempt employees.

22 51. At all relevant times, Plaintiff and the aggrieved employees regularly worked in
23 excess of eight (8) hours per day and forty (40) hours per week.

24 52. Defendants failed to pay Plaintiff and aggrieved employees for all hours worked,
25 including the applicable minimum, regular, and overtime compensation, and failed to record
26 actual hours worked by, *inter alia*, failing to pay wages to Plaintiff and aggrieved employees and
27 misclassifying them as exempt employees. Specifically, Defendant required Plaintiff and the
28 aggrieved employees to regularly and frequently work about 5-15 (five to ten) hours of unpaid

1 overtime per week, thereby failing to pay any wages, much less at the applicable overtime rate,
2 for hours exceeding eight hours per day. Defendant has not compensated Plaintiff and the
3 aggrieved employees according to the hours actually worked.

4 53. By virtue of Defendants' unlawful actions, Plaintiff and the aggrieved employees
5 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
6 will be ascertained according to proof at trial.

7 54. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
8 employees and the State of California for violations of Labor Code sections 204, 510, 1194, 1197,
9 1198 and pursuant to Labor Code section 1197.1 during the PAGA period, in a sum as provided
10 by the Labor Code and/or other statutes.

11 55. Plaintiff, individually and on behalf of the aggrieved employees and the State of
12 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
13 (g).

14 **THIRD CAUSE OF ACTION**

15 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR**
16 **FAILURE TO PROVIDE MEAL PERIODS**

17 **(Lab. Code §§ 226.7 and 512)**

18 **(Against all Defendants)**

19 56. Plaintiff realleges and incorporates by reference the allegations in the preceding
20 paragraphs.

21 57. Labor Code sections 226.7 and 512 provide that no employer shall employ any
22 person for a work period of more than five (5) hours without providing a meal period of not less
23 than thirty (30) minutes or employ any person for a work period of more than ten (10) hours
24 without a second meal period of not less than thirty (30) minutes.

25 58. Labor Code section 226.7 provides that if an employer fails to provide an
26 employee a meal period in accordance with this section, the employer shall pay the employee one
27 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
28 period is not provided in accordance with this section.

1 59. At all times relevant hereto, Plaintiff and aggrieved employees have regularly
2 worked shifts of more than five (5) hours and/or 10 hours in a workday. Plaintiff alleges
3 Defendants failed to provide legally compliant meal periods, in addition to impeding and/or not
4 relieving employees from all work duties during meal periods thereby preventing employees from
5 taking legally compliant meal periods. Specifically, Due to this inadequate staffing and
6 Employer's policy and practices which prioritized work tasks over meal period compliance,
7 Plaintiff and the aggrieved employees regularly and frequently received untimely or interrupted
8 meal periods or received them not at all, due the lack of adequate relief coverage. Despite failing
9 to provide compliant meal periods, Defendant failed to pay one additional hour of pay at Plaintiff
10 and aggrieved employees' regular rate of pay for each workday that a meal period violation
11 occurred.

12 60. By and through their actions, Defendant has intentionally and improperly denied
13 compliant meal periods or compensation in lieu thereof to Plaintiff and the aggrieved employees
14 in violation of Labor Code sections 226.7 and 512 and/or other statutes.

15 61. Defendant's Labor Code violations have caused Plaintiff and the aggrieved
16 employees to suffer, and continue to suffer, damages in amounts which are presently unknown,
17 but will be ascertained according to proof at trial.

18 62. Plaintiff, individually and on behalf of the aggrieved employees and the state of
19 California request recovery of civil penalties for violations of Labor Code sections 226.7 and 512
20 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

21 63. Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code section 2699,
22 subdivision (g).

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

69. Defendant's Labor Code violations have caused Plaintiff and the aggrieved employees to suffer, and continue to suffer, damages, in amounts which are presently unknown, but will be ascertained according to proof at trial.

70. Plaintiff, individually and on behalf of the aggrieved employees and the State of California request recovery of civil penalties for violations of Labor Code section 226.7 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

71. Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g).

FIFTH CAUSE OF ACTION

**VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO
TIMELY PAY WAGES DUE UPON SEPARATION OF EMPLOYMENT**

(Lab. Code §§ 201, 202, 203)

(Against all Defendants)

72. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs.

73. Labor Code section 201 provides that an employer is required to pay an employee whose employment is terminated by the employer all wages earned and unpaid immediately upon termination.

74. Labor Code section 202 requires an employer pay to an employee who quits his or her employment, all wages earned and unpaid no later than 72 hours thereafter.

75. Labor Code section 203 provides that an employer who fails to pay all wages earned and due an employee who is discharged or who quits within the timeframe set forth in sections 201 and 202, the wages of the employee shall continue as a penalty from the due date at the same rate of pay until paid, but not more than 30 days. In other words, the employer owes the employee his or her daily rate of pay at their regular rate of pay for each day the full amount of unpaid wages is not paid, for a penalty of up to 30 days' wages.

76. In violation of the Labor Code and IWC Wage Orders, Defendants failed to timely pay all wages due to Plaintiff and the aggrieved employees upon separation of employment.

Specifically, Defendant failed to pay Plaintiff and the aggrieved employees all minimum, regular, and overtime wages owed immediately upon termination or within 72 hours of resignation as a result of their misclassification, failure to reimburse business expenses, among other things.

77. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees have suffered, and will continue to suffer, damages in amounts which are presently unknown, but will be ascertained according to proof at trial.

78. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved employees and the State of California for violations of Labor Code sections 201, 202, and 203 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

79. Plaintiff, individually and on behalf of the aggrieved employees and the State of California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g).

SIXTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS

(Lab. Code §§ 226, subd. (a), (e), 226.3, 1174, 1174.5)

(Against all Defendants)

80. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs.

81. Labor Code section 226, subdivision (a), requires employers to furnish each employee with a statement that accurately reflects, *inter alia*, gross wages earned, total hours worked, net wages earned, name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Labor Code section 226, subdivision (e), provides that if an employer knowingly and intentionally fails to provide a statement itemizing the foregoing information, and the employee suffers an injury as a result of the employer's failure to comply with subdivision (a), then the employee is entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for each subsequent violation, up to four thousand dollars (\$4,000.00).

1 82. Labor Code 226.3 provides that any employer who violates subdivision (a) of
2 Labor Code section 226 shall be subject to a civil penalty in the amount of two hundred fifty
3 dollars (\$250.00) per employee per initial violation and one thousand dollars (\$1,000.00) per
4 employee for each subsequent violation, for which the employer fails to provide the employee a
5 wage deduction statement or fails to keep the records required in subdivision (a) of Labor Code
6 section 226. The civil penalties provided for in this section are in addition to any other penalty
7 provided by law.

8 83. An employee is deemed to suffer injury if the employer fails to provide an accurate
9 wage statement containing all of the required information set forth in Labor Code section 226,
10 subdivision (a). (Lab. Code § 226, subd. (e)(2).)

11 84. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
12 location in California or at the plant or establishment at which the employees are employed,
13 payroll records showing the hours worked daily and the wages paid to each employee.

14 85. Labor Code section 1174.5 imposes a civil penalty of \$500.00 for an employer's
15 failure to maintain accurate and complete records. This civil penalty is in addition to the civil
16 penalty of \$100.00 per initial violation and \$200.00 per subsequent violation per pay period, per
17 aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation
18 of section 1174, subdivision (d).

19 86. The IWC Wage Orders require that every employer shall keep accurate
20 information with respect to each employee, including, but not limited to, time records showing
21 the total daily hours worked by each employee, the total hours worked in each payroll period, and
22 applicable rates of pay.

23 87. Plaintiff is informed and believes that Defendant willfully and intentionally failed
24 to make and/or keep records which accurately reflect the hours worked by Plaintiff and aggrieved
25 employees. Specifically, Plaintiff believes that Defendant's records fail to include, *inter alia*:
26 actual hours worked, total hours worked, number of hours worked at each hourly rate, gross wages
27 earned, net wages earned, all applicable hourly rates in effect during the pay period and the
28 corresponding number of hours worked at each hourly rate, all deductions, the inclusive dates of

1 the pay period, the employee's name and the last four digits of his or her Social Security number
2 (or employee identification number), and the name and address of the legal entity that is the
3 employer.

4 88. In addition, the omission of time worked make it difficult for employees to
5 determine whether they were paid all wages due without complicated calculations and/or
6 reconstruction of records required to be maintained by the employer.

7 89. Plaintiff is informed and believes, and based thereon alleges, that Defendant
8 willfully failed to maintain accurate payroll records for Plaintiff and the aggrieved employees by
9 failing to accurately reflect the hours worked by and wages paid to Plaintiff and the aggrieved
10 employees.

11 90. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees
12 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
13 will be ascertained according to proof at trial.

14 91. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
15 employees and the State of California for violations of Labor Code sections 226, 1174, and
16 pursuant to Labor Code sections 226.3 and 1174.5 during the PAGA period, in a sum as provided
17 by the Labor Code and/or other statutes.

18 92. Plaintiff, individually and on behalf of the aggrieved employees and the State of
19 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
20 (g).

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Against all Defendants)

95. Defendant failed to reimburse Plaintiff and other aggrieved employees necessary business expenses in violation of Labor Code section 2802. Plaintiff and the aggrieved employees were required, as part of their job duties, to regularly and frequently travel to and from Defendant's clients' locations using their personal vehicles. However, Defendant failed to reimburse Plaintiff and the aggrieved employees for mileage driven. Plaintiff and the aggrieved employees were also required to use their personal cell phones and laptops for work, but the stipend intended to cover the use of the devices was not actually paid or was underpaid.

96. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees have suffered, and will continue to suffer, damages in amounts which are presently unknown, but will be ascertained according to proof at trial.

97. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved employees and the State of California for violations of Labor Code sections 221, 450, and 2802 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

98. Plaintiff, individually and on behalf of the aggrieved employees and the State of California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g).

/ / /

/ / /

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 3 1. For civil penalties pursuant to the PAGA in an amount according to proof;
4 2. For reasonable attorney's fees and costs, pursuant to the PAGA; and
5 3. For such other and further relief as this Court may deem just and proper.
6

7 Dated: December 2, 2020

MAHONEY LAW GROUP, APC

8
9 

10 By:

11 _____
12 Kevin Mahoney, Esq.
13 Lilit Tunyan, Esq.
14 Attorneys for Plaintiff BRANDY LEE
15 DEMARCO RODNEY
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A



Kevin Mahoney, Esq.
562.590.5550 phone
562.590.8400 facsimile
kmahoney@mahoney-law.net

November 24, 2020

VIA ELECTRONIC FILING

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

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

VIA U.S. CERTIFIED MAIL# 7019 0700 0001 7488 7469

Return Receipt Requested

Enterprise Networking Solutions Inc.

2860 Gold Tailings Court

Rancho Cordova, CA 95670

VIA U.S. CERTIFIED MAIL# 7019 0700 0001 7488 7452

Return Receipt Requested

Enterprise Networking Solutions Inc.-Agent for service of process

Attn: Paul L Smitham

9981 Silver Meadow Way

Sacramento, CA 95829

Re: Brandy Demarco v. Enterprise Networking Solutions Inc.

**AMENDED NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 et seq.**

To: California Labor and Workforce Development Agency, Enterprise Networking Solutions Inc.

From: Brandy Demarco on behalf of herself and aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. Brandy Demarco (hereinafter "Plaintiff" or "Ms. Demarco"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA") on behalf of herself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Enterprise Networking Solutions Inc. (hereinafter referred to as “Employer”) is a technical and business process consultancy services provider to a State of California agency. Ms. Demarco alleges Employer violated various sections of the Labor Code, including §§ 201, 202, 203, 204, 226, 226.7, 226.8, 510, 512, 515, 1174, 1194, 1197, 2750.3 2802 by (1) misclassifying Ms. Demarco and other aggrieved employees as exempt employees; (2) failing to provide Ms. Demarco and all other aggrieved employees legally required wages for all hours worked including, but not limited to, overtime, minimum and regular wages, and meal and rest period premium pay; (3) failing to provide legally mandated meal and rest periods; (4) failing to provide legally compliant wage statements; (5) failing to timely pay all owed wages at the time of separation from employment and waiting penalties thereto; (6) failure to reimburse work-related expenses.

Employer is in the business of technical and business process consultancy services. Though Ms. Demarco and other aggrieved employees were classified by Employer as exempt employees, but their duties didn’t suggest they were primarily engaged in the duties that meet the test of the exemption. Ms. Demarco was hired by Employer in April 2019 as a non-exempt employee. However, later in October 2019 she was converted to exempt employee with no change in duties. Ms. Demarco’s and other aggrieved employees’ duties do not qualify for any of “white collar duties”, i.e. administrative, executive, or professional employee as required under Labor Code section 515, subdivision (a).

“A person employed in an executive capacity means any employee: (a) Whose duties and responsibilities involve the management of the enterprise in which he/she is employed or of a customarily recognized department or subdivision thereof; and (b) Who customarily or regularly directs the work of two or more other employees herein; and (c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight. . . .” (Cal. Code of Regs., tit. 8, § 11040, subd. (1)(A)(1).) However, Ms. Demarco is a high school graduate without a college degree. Ms. Demarco does not supervise others as her primarily duties are customer technical trouble shooting, business development and employee training.

Ms. Demarco’s and other aggrieved employees also didn’t involve the use of discretion and independent judgment. “In the pertinent federal regulations, the phrase ‘exercise of discretion and independent judgment’ is defined as generally involving ‘the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term ... implies that the person has the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance.’” *United Parcel Serv. Wage & Hour Cases* (2010) 190 Cal. App.4th 1001, 1024, quoting 29 C.F.R. § 541.207(a).) Moreover, the exercise of such discretion “must be more than occasional.” *United Parcel Serv. Wage & Hour Cases* 190 Cal.App.4th at p. 1024. Here,

Employer willfully misclassified Ms. Demarco and other aggrieved employees such that Employer has violated Labor Code section several sections defined below and is liable for the statutory penalties thereto.

As a direct result of the above misclassification, Employer failed to pay to Ms. Demarco and other aggrieved employees all wages owed at the legally applicable rate, including minimum, regular and overtime wages. Specifically, Employer required Ms. Demarco and similarly aggrieved employees to regularly and frequently work about 5-15 (five to ten) hours of unpaid overtime per week, thereby failing to pay any wages, much less at the applicable overtime rate, for hours exceeding eight hours per day. Employer have not compensated Ms. Demarco and similarly aggrieved employees according to the hours actually worked. Failure to timely and fully pay owed wages is actionable under PAGA.

Further, because Employer misclassified Ms. Demarco and similarly aggrieved employees as exempt employees, Employer did not provide Ms. Demarco and other aggrieved employees with legally compliant meal and rest periods. In order to curtail labor costs, Employer understaffed work shifts in relation to reasonably foreseeable workload. Due to this inadequate staffing and Employer's policy and practices which prioritized work tasks over meal period compliance, Ms. Demarco and similarly aggrieved employees regularly and frequently received untimely or interrupted meal periods or received them not at all, due the lack of adequate relief coverage.

With respect to rest periods, Employer, as a consequence of misclassifying Ms. Demarco and similarly aggrieved employees as exempt employees, often times failed to offer uninterrupted rest periods during the relevant period.

Even though Ms. Demarco and similarly aggrieved employees were prevented from taking legally compliant meal and rest periods, Employer failed to provide them with premium pay for the applicable missed, untimely or interrupted meal or rest period. Employer's conduct, which is in violation of Labor Code sections 226.7, 512, as well as 8 CCR §11140, subdivisions 11 and 12, is actionable under PAGA.

Ms. Demarco and similarly aggrieved employees were required, as part of their job duties, to regularly and frequently travel to and from Employer's clients' locations using their personal vehicles. Since Plaintiff worked remotely from home, she was also required to use internet and use home as office space. However, Employer failed to reimburse Ms. Demarco and similarly aggrieved employees for mileage driven as well as for internet use and use of home as office space.

Ms. Demarco and similarly aggrieved employees were also required to use their personal cell phones and laptops for work, but the stipend intended to cover the use of the devices was not actually paid or was underpaid. This failure to fully reimburse expenses is in violation of Labor Code section 2802, which, in turn, is actionable under PAGA.

In conjunction with Employers' failure to pay all wages owed as described herein, Employers further failed to keep accurate payroll records and failed to provide Ms. Demarco and other aggrieved employees with complete and accurate wage statements showing the true number of hours worked and accurate overtime/premium wages earned per pay period. The only time-keeping performed by Employer was logging time worked on a given project, as opposed to beginning and end of the work shift. This conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

As a further result of Employers' failure to pay all wages owed as described herein, Employer also violated Labor Code sections 201, 202, and 203, due to its uniform policy, practice and procedure of failing to pay all wages earned to former employees, such as Ms. Demarco and similarly aggrieved employees, at the time of separation from employment. Employers' failure to timely pay all final wages and subsequent waiting penalties is actionable under PAGA.

Ms. Demarco will bring her lawsuit on behalf of herself and all other aggrieved employees who were employed by Employer. Please advise if the LWDA has any objection to my client including PAGA claims in her complaint. We look forward to your response, and please feel free to contact our office if you have any questions, comments or concerns.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Ms. Demarco becomes aware of additional compensation owed or losses incurred by her or by any other aggrieved employee of Employer, Ms. Demarco expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Kevin Mahoney
249 E. Ocean Blvd., Suite 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: kmahoney@mahoney-law.net

Sincerely,



Kevin Mahoney, Esq.
MAHONEY LAW GROUP, APC