

WHITEHEAD EMPLOYMENT LAW

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Assigned for All Purposes

Judge Randall J. Sherman

CX-105

Attorneys for Plaintiff, Christian Gonzales, an individual on his own behalf and in his representative capacity for all similarly situated Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE - CIVIL COMPLEX CENTER

CHRISTIAN GONZALES, an individual on his own behalf, and in his representative capacity on behalf of all other similarly situated Aggrieved Employees,

Plaintiff,

v.

InLog, Inc., a Texas corporation, and DOES 1 through 25, inclusive,

Defendant.

Case No.: 30-2021-01190624-CU-OE-CXC

**COMPLAINT FOR DAMAGES FOR
VIOLATION OF LABOR CODE § 2698 Et
Seq. (Private Attorneys General Act of 2004)**

Plaintiff Christian Gonzales, an individual on his own behalf, ("Plaintiff"), and in his representative capacity for all other similarly situated Aggrieved Employees, hereby brings this Complaint ("Complaint") against INLOG, INC., a Texas corporation; and DOES 1 through 25, inclusive, ("Defendant") and states and alleges as follows:

INTRODUCTION

1. This action is brought pursuant to Labor Code section 2698 *et seq.* (Private Attorneys General Act of 2004) (the "PAGA") for Defendant's violations of Labor Code section 2802.

2. California has enacted the PAGA to permit individuals to bring an action on behalf of themselves and on behalf of others similarly situated “(Aggrieved Employees”) for PAGA penalties only, which is the precise and sole nature of this action.

3. Accordingly, Plaintiff seeks to obtain all applicable relief for Defendant's violations under the PAGA and solely for relief as permitted by PAGA – that is penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be construed as attempting to obtain any relief that would not be available in a PAGA only action.

4. This complaint challenges Defendant's systemic illegal employment practices resulting in violations of the Labor Code against Plaintiff and the Aggrieved Employees.

5. Plaintiff is informed and believes and based thereon alleges that Defendant and DOES 1 through 25, jointly and severally acted intentionally and with deliberate indifference and conscious disregard to Plaintiff's rights by failing to lawfully reimburse him and other similarly situated employees for work-related expenses incurred in the discharge of their duties as further alleged herein.

THE PARTIES

6. Plaintiff Christian Gonzales is and was, at all times relevant to this Complaint, an adult individual living and working for Defendant in Orange County, California.

7. At all times relevant to this Complaint, Defendant, InLog, Inc. is and was a Texas corporation, qualified and doing business and employing persons throughout the United States, including the State of California where it employed Plaintiff and the Aggrieved Employees.

8. Plaintiff is unaware of the true names or capacities of Defendants sued herein under the fictitious names DOES 1 through 25, inclusive, but pray for leave to amend and serve such fictitiously named Defendants pursuant to California Code of Civil Procedure section 474 once their names and capacities become known.

9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 25, inclusive, are the partners, agents, owners, shareholders, managers, principals or employees of Defendant and/or and were acting on behalf of Defendant.

1 10. Plaintiff is informed and believes, and thereon allege, that each and all of the acts and
2 omissions alleged herein was performed by or is attributable to Defendant, each acting as the
3 agent for the other, with legal authority to act on the other's behalf. The acts of any and all
4 Defendants were in accordance with, and represent the policy of, all Defendants.

5 11. At all times herein mentioned, Defendants, and each of them, ratified each and every act
6 or omission complained of herein. At all times herein mentioned, Defendant, and each of them,
7 aided and abetted the acts and omissions of each and all of the other Defendant in proximately
8 causing the damages herein alleged.

9 12. Plaintiff is informed and believes, and thereon allege, that each of the Defendants is in
10 some manner intentionally, negligently or otherwise responsible for the acts, omissions,
11 occurrences and transactions alleged herein.

12 **JURISDICTION**

13 13. This Court has jurisdiction over the violations of the PAGA and Labor Code section 2802.

14 14. This Court has jurisdiction over Defendant, because upon information and belief, at all
15 relevant times, Defendant had sufficient minimum contacts in California or otherwise
16 intentionally avails itself of California law so as to render the exercise of jurisdiction over it by
17 the California courts consistent with traditional notions of fair play and substantial justice.

18 15. Venue is proper in this Court because, upon information and belief, the named Defendant
19 transacts business and/or has business locations in this county and the acts and omissions alleged
20 herein took place in this county.

21 16. The civil penalties sought in this action exceed the minimum jurisdiction limits of this
22 Court and will be established according to proof at trial.

23 **GENERAL ALLEGATIONS**

24 17. Plaintiff alleges that he and similarly situated employees are or were formerly employed
25 by Defendant at InLog, Inc. locations (hereinafter "InLog") throughout the State of California
26 during the relevant period.

27 18. Plaintiff Gonzales was employed by Defendant as a regular, hourly exempt, full time
28 employee from approximately July of 2020 to October May 9, 2016 to approximately October 5,

2020 as a warehouse associate, loading and unloading delivery trucks. During his employment, he primarily worked at the InLog Garden Grove, California location.

19. As a warehouse associate, his primary duties including loading and unloading delivery trucks, as well as driving a forklift and performance of administrative duties and tasks in managing and tracking inventory.

20. During the relevant statutory period, Defendant has required Plaintiff and similarly situated Aggrieved Employees to use their personal cell phones to perform their work-related duties. Utilization of their personal cell phones was an essential and integral, daily part of the job. Plaintiff and the Aggrieved Employees used or use their personal cell phones to communicate with managers, supervisors, and colleagues, regarding on-shift matters as well as to access scheduling information. At no time has Defendant ever reimbursed Plaintiff or the Aggrieved Employees for the expenses they incur/incurred in the daily utilization of their personal cell phones for work-related purposes.

21. Plaintiff brings this case as a representative action seeking penalties for the State of California in a representative capacity, as provided by the Private Attorneys General Act (“PAGA”) to the extent permitted by law, and as an aggrieved employee who held the position identified herein and who was subjected to Defendant’s violations of the Labor Code. A true and correct copy of the October 30, 2020 written notice showing compliance with Labor Code § 2699.3 is attached hereto as **Exhibit A** and demonstrates that the named Plaintiff is an aggrieved employee who has standing to bring a representative action on behalf of the State of California and Labor and Workforce Development Agency (the “LWDA”) as private attorney generals. No notice of cure by Defendant was provided and no notice of investigation was received from the LWDA within the statutorily proscribed 65-day period since the mailing of the written notice. Accordingly, Plaintiff files this representative action as specifically permitted and authorized by Labor Code § 2699.3(a)(2)(A).

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FIRST CAUSE OF ACTION
For Violation of the Private Attorneys General Act of 2004
California Labor Code §2698, et seq.
(Against Defendant and Does 1-25, Inclusive)

22. Plaintiff re-alleges and incorporates by reference all of the foregoing paragraphs, as though fully set forth herein.

23. The PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (the "LWDA"), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

24. Plaintiff, by his former employment with Defendant and Defendant's violations of the Labor Code as alleged herein, is an aggrieved employee with standing to bring an action under the PAGA.

25. Plaintiff, by virtue of **Exhibits A** has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws including, without limitation, the penalty provisions identified in Labor Code § 2699.5. Since the LWDA took no steps within the time period required to intervene and because Defendant took no corrective action to remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

"The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233,

234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.”

26. Plaintiff is informed and believes and thereupon alleges that Defendant has violated and continues to violate the provisions of the Labor Code and applicable Wage Order.

27. Pursuant to Labor Code section 2699, any provision of the Labor Code that already provides a civil penalty to be assessed and collected by the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code or does not provide a civil penalty may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees pursuant to the procedures set forth in Labor Code, section 2699.3.

28. Plaintiff, on his own behalf, and on behalf of the other similarly situated Aggrieved Employees is an “aggrieved employee” because he was employed by the violator (the named Defendant herein and its related Doe affiliates and subsidiaries), during the one-year statutory time period and during such time period, was subjected to one or more violations, including Labor Code sections 2802 and is therefore, properly suited to represent the interests of a PAGA person.

29. Plaintiff is informed and believes that Defendant has violated and continues to violate provisions of the Labor Code 2802. Despite mailing of **Exhibit A** at least 65-days prior to the filing of the filing of this First Amended Complaint, the LWDA has not notified Plaintiff that it intends to investigate the alleged Labor Code violations identified in **Exhibit A**, such that,

1 by operation of law Plaintiff is entitled to commence this cause of action as a representative
2 action under the PAGA. *See Lab. Code 2699.3(a)(2)(A).*

3 **Failure to Reimburse Expenses**

4 30. California Labor Code § 2802 provides that an employer shall indemnify his or her
5 employees for all necessary expenditures or losses incurred by the employee in direct
6 consequence of the discharge of his or her duties.

7 31. As alleged supra, Defendant required or requires as a condition of employment that
8 Plaintiff and the Aggrieved Employees utilize their personal cell phones in the daily and routine
9 discharge of their duties to communicate with managers, supervisors, and their colleagues and
10 in the execution of job functions. Defendant does not and has not reimbursed Plaintiff and the
11 Aggrieved Employees for their cell phone expenses during the statutory period.

12 32. As a direct result of Defendant's conduct in not reimbursing Plaintiff and the Aggrieved
13 Employees for personal cell phone expenses necessarily incurred in the discharge of their work-
14 related duties, Defendant has violated Labor Code Section 2802.

15 **Damages**

16 33. Defendant's actions constitute continuing and ongoing unlawful activity prohibited by
17 the California Labor Code, as alleged and therefore these acts constitute violations of the
18 PAGA.

19 34. Pursuant to California Labor Code § 2699, Plaintiff requests and is entitled to recover
20 from Defendant civil penalties in the amount of a hundred dollars (\$100) for each aggrieved
21 employee per pay period for the initial violation, and two hundred dollars (\$200) for each
22 aggrieved employee per pay period for each subsequent violation; and

23 35. Attorneys' fees and costs pursuant to Labor Code § 2699(g) and any other applicable
24 statute.

25 36. As alleged supra, notice of these violations were provided pursuant to Labor Code
26 §2699.3 asking the LWDA if it intends to investigate the alleged violations. More than 65 days
27 have passed since notice was provided and Plaintiff has not received any notification from the
28

1 LWDA that it intends to investigate the alleged violations. Therefore, the representative
2 Plaintiff is entitled to prosecute the PAGA claims under Labor Code §2699, et seq.

3 37. The proper measure of damages and penalties under the PAGA is as to all Aggrieved
4 Employees, whether a part of this action or not. Further this claim needs no certification to
5 proceed with recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 970-975.

6 38. Accordingly, Plaintiff respectfully requests that the Court award judgment and relief in
7 his favor including civil penalties under California Labor Code §2699 in the amount of one
8 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation,
9 and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each
10 subsequent violation during the relevant period, according to proof.

11 39. Plaintiff as the personal representatives of the Aggrieved Employees, will and does seek
12 to recover any and all penalties for each and every violation shown to exist or to have occurred
13 during the liability period, in an amount according to proof, as to those penalties that are
14 otherwise only available to public agencies. Said fund recovered will be distributed in
15 accordance with the PAGA, with at least 75% of said PAGA penalty recovery being reimbursed
16 to the State of California and the LWDA.

17 **PRAYER FOR RELIEF**

18
19 WHEREFORE, the representative Plaintiff pursuant to PAGA prays for judgment as
20 follows:

21 40. Upon the PAGA Cause of Action, for civil penalties and wages pursuant to statute as
22 set forth in Labor Code §2698 et seq., for Defendant's violations of Labor Code 2802.

23 41. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code
24 §2699.3 and any other applicable statute; and

25 42. For such other and further relief the Court may deem just and proper.
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1 DATED: March 11, 2021

2 **WHITEHEAD EMPLOYMENT LAW**

3 By: 
4 JACOB N. WHITEHEAD, ESQ.
5 MEGHAN HIGDAY, ESQ.
6 Attorneys for Plaintiff Christian Gonzales
7 And the Aggrieved Employees
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EXHIBIT A
PRIVATE ATTORNEYS GENERAL
ACT DATED OCTOBER 30, 2020



October 30, 2020

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

First Class Mail

Mr. Jeff T. Griffis, CEO
In Log, Inc.
6765 Westminster Blvd., C424
Westminster, CA 92683

Via Certified Mail

United States Corporation Agents, Inc.
Registered Agent for
InLog, Inc.
100 W. Broadway, Suite 100
Glendale, California 91210

Re: Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that representative plaintiff, Christian Gonzales ("Plaintiff") has retained Whitehead Employment Law to represent him and other similarly-situated current and former employees (collectively, the "Aggrieved Employees") of InLog, Inc., a Texas corporation operating in California (hereinafter "Defendant") regarding claims of violations of the California Labor Code, Industrial Welfare Commission Wage Orders, and other applicable employment laws.

Defendant currently or formerly employed Plaintiff and other Aggrieved Employees, who work or have worked as warehouse associate or other similarly situated employees (the "Covered Positions"). This notice formally serves to inform Defendant of Plaintiff's intent to file a PAGA complaint against Defendant and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to claims for Defendant's failure to reimburse job-related expenses.

As further detailed below, Defendant violated the provisions of California's Labor Code Section 2802.

Plaintiff was formerly employed by Defendant from on or around July of 2020 to on or around October of 2020 as a warehouse associate. Plaintiff loaded and unloaded trucks, did administrative and inventory tasks, and operated a forklift.

During the relevant statutory period, Plaintiff and the Aggrieved Employees had to utilize their personal cell phones in order to perform their work-related duties. Plaintiff and the

Aggrieved Employees used their personal cell phones to daily communicate with co-workers and supervisors regarding a variety of matters including but not limited to scheduling, requesting time off, and communicating with supervisors. A personal cell phone was a necessary part of the job for Plaintiff and the Aggrieved Employees for communications sent by supervisors, notifications regarding on-shift matters by co-workers, and scheduled shift information from supervisors. At no time has Defendant ever reimbursed Plaintiff or the Aggrieved Employees for the expenses they incurred in the utilization of their personal cell phones for work related duties.

Plaintiff is informed and believes that the said violations are ongoing, systematic and uniform. Plaintiff intends to bring an action against Defendant under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

Failure To Reimburse Work Related Expenses

Labor Code § 2802(a) provides, “*An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.*”

As described above, Plaintiff and the Aggrieved Employees daily utilize or utilized their personal cell phones/data/text in the course of work-related duties with no reimbursement from Defendant. Defendant violated Labor Code § 2802 and the Plaintiff and the Aggrieved Employees seek reimbursement of these work-related expenses incurred, as well as their attorney’s fees, penalties and interest thereon as permitted by § 2802.

Conclusion

In sum, as has been factually alleged, Defendant violated among other statutes and regulations Labor Code § 2802. Plaintiff on his own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory penalties,

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency (“LWDA”). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of § 232, subdivision (c) of § 232.5, § s 233, 234, 351, 353, and 403, subdivision (b) of § 404, § s 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of § 1174, § s 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of § 1198.3, § s 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of § 1695.5, § s 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, § s 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of § 2673.1, § s 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of § 2929, and § s 3073.4, 6310, 6311, and 6399.7.

interest as provided by California law and attorneys' fees and civil penalties as provided for under Labor Code 2699.

Plaintiff requests the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA's provisions. Alternatively, Plaintiff requests the agency inform him if it does not intend to investigate these violations so that he may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW

A handwritten signature in blue ink, appearing to read 'J. Whitehead', is written over the printed name.

Jacob N. Whitehead

JNW/mnh