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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

BELINDA MITCHELL, on behalf of the State of
California and Aggrieved Employees ,

Plaintiffs,

v.

NTT DATA ENTERPRISE SERVICES, INC.,

Defendant.

Case No.:

21STCV11848

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

BY FAX

**CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles**

MAR 26 2021

Shari R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

1 Plaintiff Belinda Mitchell (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action against Defendant NTT Data Enterprise
5 Services, Inc. (“Defendant” or “NTT”) on behalf of the State of California and all other individuals
6 who have worked for Defendant in California as non-exempt hourly Claims Specialist and have been
7 subject to Defendant’s policies of only compensating employees for the time spent processing claims
8 (the “Aggrieved Employees”). Throughout the relevant time period, Plaintiff and Aggrieved
9 Employees have been denied proper payment for all hours worked, including overtime, and the time
10 spent off the clock working with and communicating with customers to properly process claims.
11 Plaintiff and Aggrieved Employees utilized their personal internet and cell phones throughout the
12 workday and were not reimbursed by Defendant. Defendant regularly failed to provide Plaintiff and
13 Aggrieved Employees with timely, legally-compliant meal and rest breaks because Aggrieved
14 Employees’ meal periods are regularly skipped, interrupted, or subject to interruption at all times.
15 Defendant failed to pay Plaintiff and Aggrieved Employees the required premium pay when their meal
16 and rest breaks were missed, untimely, or interrupted. Furthermore, throughout the relevant time
17 period, Defendant has failed to provide Plaintiff and Aggrieved Employees timely and compliant wage
18 statements and have failed to pay all wages owed after separation of employment to Plaintiff and
19 Aggrieved Employees, pursuant to California law.

20 2. Defendant maintains a longstanding policy and/or practice of failing to properly
21 compensate non-exempt employees for work related tasks performed while “off-the-clock,” including
22 but not limited to answering emails, fixing audit errors, and reviewing the correct procedures for
23 properly processing claims.

24 3. Plaintiff and Aggrieved Employees bring this action to challenge Defendant’s policies
25 and practices of (1) failing to pay Plaintiff and Aggrieved Employees all minimum wages owed; (2)
26 failing to pay Plaintiff and Aggrieved Employees overtime wages; (3) failing to compensate Plaintiff
27 and Aggrieved Employees for all hours worked; (4) failing to authorize and permit Plaintiff and
28 Aggrieved Employees to take meal and rest breaks to which they are entitled by law and failing to

1 make premium payments for those missed meal and rest breaks; (5) failing to reimburse Plaintiff and
2 Aggrieved Employees for necessary business expenditures; (6) failing to provide Plaintiff and
3 Aggrieved Employees accurate, itemized wage statements; and (7) failing to timely pay Plaintiff and
4 Aggrieved Employees full wages upon termination or resignation.

5 4. Plaintiff and Aggrieved Employees seek penalties under the Labor Code Private
6 Attorneys General Act of 2004 (“PAGA”).

7 **JURISDICTION AND VENUE**

8 5. This Court has jurisdiction over Plaintiff’s claims for penalties pursuant to the PAGA.
9 The Court also has jurisdiction over Defendant because it is a corporation authorized to do business
10 in the State of California and because Defendant in fact does business in the State of California.

11 6. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393
12 and/or 395.5. Defendant conducts business in this County, employed Aggrieved Employees in this
13 County, has jobsites in this County, and therefore liability, as well as the cause, or some part of the
14 cause, arose in this County.

15 **PARTIES**

16 7. Plaintiff Belinda Mitchell is an individual over the age of eighteen, and at all times
17 relevant to this Complaint was a resident of Bellflower, California. Plaintiff was employed as a non-
18 exempt “Claims Specialist” employee by Defendant from June 2020 to November 2020. Plaintiff has
19 standing to bring this action as the representative and proxy of the State of California pursuant to
20 PAGA, which is legally and conceptually different from an employee’s own suit for damages and
21 statutory penalties.

22 8. Plaintiff is informed, believes, and thereon alleges that Defendant NTT Data Enterprise
23 Services, Inc. is a global IT service provider with its United States operations headquartered in Plano,
24 Texas and multiple locations throughout the United States including three in the State of California.

25 9. Plaintiff is informed, believes, and thereon alleges that, in California, Defendant has
26 three offices located in Marina Del Rey, Los Angeles, and Palo Alto. Plaintiff is informed, believes,
27 and thereon alleges that Defendant employs Aggrieved Employees, among other hourly employees,
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1 in this County and throughout California.

2 10. Plaintiff is informed, believes, and thereon alleges that Defendant exercised control
3 over Plaintiff and Aggrieved Employees with respect to their employment.

4 11. Plaintiff is informed and believes that each and every one of the acts and omissions
5 alleged herein were performed by, and/or attributable to Defendant and that said acts and failures to
6 act were within the course and scope of said agency, employment and/or direction and control.

7 12. At all material times, Defendant has done business under the laws of California, has
8 had places of business in California, including in this county and have employed Aggrieved
9 Employees in this County and elsewhere throughout California. Defendant is a “person[s]” as defined
10 in Labor Code § 18 and is an “employer[s]” as that term is used in the Labor Code and the IWC Wage
11 Orders regulating wages, hours, and working conditions.

12 13. Defendant employed Aggrieved Employees, because Defendant, directly or indirectly,
13 controls the employment terms, pay practices, timekeeping practices, and daily work of Plaintiff, and
14 similarly situated employees.

15 **FACTUAL ALLEGATIONS**

16 14. Defendant is a global IT service provider throughout the United States and California.
17 Defendant employs thousands of hourly non-exempt workers similarly situated to Plaintiff across
18 more than fifty countries and throughout the United States.

19 15. Plaintiff Belinda Mitchell worked for Defendant remotely from her place of residence
20 in Bellflower, California as a non-exempt “Claims Specialist” employee from June 2020 through
21 November 2020. Plaintiff was paid at an hourly rate of approximately \$16. On average, Plaintiff
22 worked 12 hours per day and roughly 60 hours per week.

23 16. Aggrieved Employees were and are employed by Defendant and performed work
24 materially similar to Plaintiff throughout California, including in this County.

25 17. Aggrieved Employees perform their jobs under Defendant’s supervision. They utilized
26 materials and technologies approved by Defendant. However, Defendant did not supply or reimburse
27 Aggrieved Employees with all of the necessary tools and technology to effectively complete daily
28 tasks. For example, Aggrieved Employees utilized their own internet services and personal cell phones

1 to process claims, send and receive emails, and to complete all of the required work-related tasks that
2 are a part of being a Claims Specialist. Defendant does not reimburse Plaintiff and Aggrieved
3 Employees for utilizing their personal internet services or cell phones to complete work-related tasks.

4 18. Aggrieved Employees are required to follow and abide by common work, time, and
5 pay policies and procedures in the performance of their jobs.

6 19. At the end of each pay period, Aggrieved Employees receive wages from Defendant
7 that are determined by common systems and methods that Defendant selects and controls.

8 20. Defendant pays Aggrieved Employees on an hourly rate basis.

9 21. As a matter of policy and/or practice, Defendant routinely compensates Plaintiff and
10 Aggrieved Employees for only the time spent processing claims. Plaintiff and Aggrieved Employees
11 are not compensated for time spent on all work-related activities such as sending emails; answering
12 and making phone calls; fixing audit errors; reviewing the correct procedure for processing claims;
13 and analyzing and reviewing documents. This time spent on routine work-related tasks is
14 compensable, but nevertheless goes unpaid.

15 22. As a result of this off-the-clock work, Plaintiff and Aggrieved Employees are not
16 adequately compensated for all hours worked at their regular rate or at the applicable overtime rates.

17 23. Defendant also requires Plaintiff and Aggrieved Employees to remain on duty during
18 their scheduled shifts including during rest breaks and unpaid meal periods. Defendant does not
19 compensate Plaintiff and Aggrieved Employees for work performed while taking their meal or rest
20 breaks and when meal breaks are not taken, Defendant automatically deducts 30 minutes from Plaintiff
21 and Aggrieved Employees' time. Despite these recurring violations, Defendant does not provide
22 Plaintiff and Aggrieved Employees premium pay for missed breaks and meal periods. Plaintiff is
23 informed, believes, and thereon alleges that this policy and practice applies to all Aggrieved
24 Employees in California.

25 24. Defendant's common course of wage-and-hour abuse includes routinely failing to
26 maintain true and accurate records of the hours worked by Aggrieved Employees. In particular,
27 Defendant has failed to record hours that Plaintiff and Aggrieved Employees worked off the clock.

28 25. Defendant's failure to record all hours worked results in a failure to provide Aggrieved

1 Employees, including Plaintiff, accurate itemized wage statements as required by California law. The
2 wage statements Defendant provides are not accurate because they do not reflect the actual hours
3 worked by Plaintiff and Aggrieved Employees.

4 26. Further, Defendant does not provide Aggrieved Employees, including Plaintiff, whose
5 employment with Defendant has ended, with full payment of all wages owed at the end of their
6 employment. As these workers are owed for off-the-clock work, unpaid overtime, and premium pay
7 when their employment ends. These amounts remain unpaid under Defendant's policies and practices.
8 Defendant failed to pay all wages due upon termination. As a consequence, Defendant is subject to
9 waiting time penalties.

10 27. Defendant has employed thousands of people like Plaintiff in hourly, non-exempt jobs
11 throughout California.

12 28. Defendant's method of paying Plaintiff and Aggrieved Employees is willful and is not
13 based on a good faith and reasonable belief that their conduct complies with California law.
14 Defendant's conduct causes significant damage to non-exempt hourly employees in an amount to be
15 determined at trial.

16 **FIRST CAUSE OF ACTION**
17 **Penalties Pursuant to Labor Code § 2699(a)**
18 **(On Behalf of the State of California and Aggrieved Employees)**

19 29. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
20 herein.

21 30. Labor Code § 2699(a) provides:

22 Notwithstanding any other provision of law, any provision of this code that
23 provides for a civil penalty to be assessed and collected by the Labor and
24 Workforce Development Agency or any of its departments, divisions,
25 commissions, boards, agencies or employees, for a violation of this code,
26 may, as an alternative, be recovered through a civil action brought by an
27 aggrieved employee on behalf of himself or herself and other current or
28 former employees.

31. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of
wages, furnish each of his or her employees, either as a detachable part of
the check, draft, or voucher paying the employee's wages, or separately
when wages are paid by personal check or cash, an accurate itemized
statement in writing showing (1) gross wages earned, (2) total hours worked

by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

32. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

33. Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

34. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law. In enforcing this section, the Labor Commissioner shall take into consideration whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.

Labor Code § 226.7(b) provides:

An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of occupational Safety and Health.

1 35. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
2 Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in
3 compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203. Plaintiff
4 seeks such penalties as an alternative to the penalties available under Labor Code § 203, as prayed for
5 herein.

6 36. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
7 Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage
8 statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226(e).
9 Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code § 226(e),
10 as prayed for herein.

11 37. Plaintiff also seeks civil penalties pursuant to Labor Code § 2802 which requires
12 employers to indemnify employees for all necessary expenditures or losses incurred by the employee
13 in direct consequence of the discharge of his or her duties.

14 38. Plaintiff also seeks civil penalties pursuant to Sections 225.5, 226.3, 226.7, and 256 of
15 the California Labor Code.

16 39. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
17 Workforce Development Agency (“LWDA”) with notice of her intention to file this claim on
18 December 24, 2020. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff
19 therefore satisfied the administrative prerequisite to commence this civil action in compliance with §
20 2699.3(a).

21 40. Plaintiff seeks the aforementioned penalties on behalf of the State and Aggrieved
22 Employees as set forth in Labor Code § 2699(g)(i).

23 41. Defendant is liable to Aggrieved Employees and the State of California for the civil
24 penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys’ fees and costs
25 as set forth below.

26 42. Wherefore, Plaintiff request relief as hereinafter provided.

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SECOND CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f)
(On Behalf of the State of California and Aggrieved Employees)

43. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

44. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

45. To the extent that any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees each pay period in which they were aggrieved, in the amounts established by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendant's violations of Labor Code § 204, 510, 1194, and 2802.

46. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with notice of their intention to file this claim. Sixty-five calendar days have passed without notice from the LWDA on December 24, 2020. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

47. Plaintiff seeks the aforementioned penalties on behalf of the State and Aggrieved Employees as set forth in Labor Code § 2699(g)(i).

48. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

49. Wherefore, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

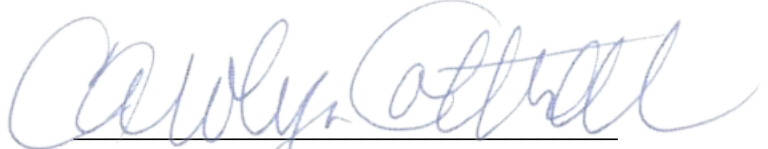
WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees, requests the following relief:

1. For an order awarding civil penalties to the full extent provided for by the PAGA;

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2. For an award of reasonable attorneys' fees as provided by the California Labor Code, including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other applicable law;
3. For all costs of suit; and
4. For such other and further relief as this Court deems just and proper.

Respectfully submitted,



Date: March 26, 2021

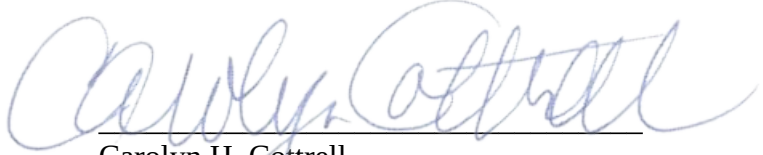
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*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
3 a jury.

4 Respectfully submitted,

5 Date: March 26, 2021

6 

7 Carolyn H. Cottrell
8 SCHNEIDER WALLACE
9 COTTRELL KONECKY LLP
10 *Attorneys for Plaintiff, on behalf of the State of*
11 *California and Aggrieved Employees*
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