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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

05/03/2021

Clerk of the Court

BY: JACKIE LAPREVOTTE
Deputy Clerk

CGC-21-591444

10 MICHELLE FARTHING, on behalf of the
11 State of California, as a private attorney
12 general,

13 Plaintiff,

14 vs.

15 MILESTONE TECHNOLOGIES, INC., a
16 California Corporation ; and DOES 1 through
17 50, inclusive,

18 Defendants.
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Case No. _____

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.*, for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B)

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

6 **INTRODUCTION**

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

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

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

22 **THE PARTIES**

23 4. Defendant Milestone Technologies, Inc. (“DEFENDANT”) is a corporation that
24 at all relevant times mentioned herein conducted and continues to conduct substantial business
25 in the state of California.

26 5. DEFENDANT provides information technology services. The Company offers
27 cloud, platform engineering, contact center, and other professional services.
28

1 6. PLAINTIFF has been employed by DEFENDANT in California since July of
2 2020 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on
3 an hourly basis, and entitled to the legally required meal and rest periods and payment of
4 minimum and overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to herself
8 and all individuals who are or previously were employed by DEFENDANT in California and
9 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period
10 of December 18, 2019 until a date as determined by the Court (the "PAGA PERIOD").

11 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
12 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
13 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
14 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
15 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
16 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s) and thereby gives rise
17 to civil penalties as a result of such conduct.¹ Based upon the foregoing, PLAINTIFF and all
18 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §
19 2699, *et seq.*

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

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

1 responsible in some manner for one or more of the events and happenings that proximately
2 caused the injuries and damages hereinafter alleged.

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

11 THE CONDUCT

12
13 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
14 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
15 meaning the time during which an employee is subject to the control of an employer, including
16 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
17 and other AGGRIEVED EMPLOYEES to work without paying them for all the time they are
18 under DEFENDANT's control. Prior to clocking in for a shift, PLAINTIFF and other
19 AGGRIEVED EMPLOYEES are required to put on their work uniforms and protective gear,
20 including but not limited to, a face shield, safety gloves, a facial covering mask, shoe coverings
21 and safety gown. PLAINTIFF and other AGGRIEVED EMPLOYEES are not paid for their
22 work time putting on their work gear because they are not paid until they are ready to work prior
23 to their shift. PLAINTIFF and other AGGRIEVED EMPLOYEES are also required to remove
24 their work gear after their scheduled stop times at the end of their scheduled shifts.
25 DEFENDANT fails to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for this
26 donning and doffing time on the mandatory protective gear. Additionally, DEFENDANT
27 engages in the practice of requiring PLAINTIFF and other AGGRIEVED EMPLOYEES to
28 perform work off the clocking that DEFENDANT, as a condition of employment, requires these

1 employees to wait in line and submit to mandatory temperature checks for COVID-19 screening
2 prior to clocking into DEFENDANT's timekeeping system for the workday. Further,
3 DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be
4 PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted by work
5 assignments while clocked out for what should be PLAINTIFF's off-duty meal break. Also,
6 DEFENDANT, as a matter of established company policy and procedure, administered a
7 uniform practice of rounding the actual time worked and recorded by PLAINTIFF and other
8 AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course
9 of their employment, PLAINTIFF and other AGGRIEVED EMPLOYEES were paid less than
10 they would have been paid had they been paid for actual recorded time rather than "rounded"
11 time. DEFENDANT also underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
12 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
13 and other non-exempt employees regularly earn non-discretionary remuneration, including but
14 not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the
15 regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other AGGRIEVED
16 EMPLOYEES at their base rates of pay. As a result, PLAINTIFF and other AGGRIEVED
17 EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks
18 by working without their time being correctly recorded and without compensation at the
19 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
20 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
21 records.

22 12. State and federal law provides that employees must be paid overtime at one-and-
23 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES
24 are compensated at an hourly rate plus incentive pay that is tied to specific elements of an
25 employee's performance.

26 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
27 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
28 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for

1 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
2 hourly basis with incentive compensation when the employees met the various performance
3 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
4 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
5 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
6 of calculating overtime pay. Management and supervisors described the incentive program to
7 potential and new employees as part of the compensation package. As a matter of law, the
8 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
9 be included in the "regular rate of pay." The failure to do so has resulted in a underpayment of
10 overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
11 DEFENDANT.

12 14. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
13 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and
14 are not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
15 EMPLOYEES are required from time to time to perform work as ordered by DEFENDANT for
16 more than five (5) hours during some shifts without receiving a meal break. Further,
17 DEFENDANT from time to time fails to provide PLAINTIFF and AGGRIEVED
18 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
19 are required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
20 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
21 and in accordance with DEFENDANT's corporate policy and practice.

22 15. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
23 are also required from time to time to work in excess of four (4) hours without being provided
24 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
25 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
26 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
27 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
28 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.

1 PLAINTIFF and other AGGRIEVED EMPLOYEES are also not provided with one hour wages
2 in lieu thereof. Additionally, the applicable California Wage Order requires employers to
3 provide employees with off-duty rest periods, which the California Supreme Court defined as
4 time during which an employee is relieved from all work related duties and free from employer
5 control. In so doing, the Court held that the requirement under California law that employers
6 authorize and permit all employees to take rest period means that employers must relieve
7 employees of all duties and relinquish control over how employees spend their time which
8 includes control over the locations where employees may take their rest period. Employers
9 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
10 five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and other AGGRIEVED
11 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which
12 states PLAINTIFF and other AGGRIEVED EMPLOYEES cannot leave the work premises
13 during their rest period.

14 16. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
15 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
16 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
17 is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
18 meaning the time during which an employee was subject to the control of an employer,
19 including all the time the employee was permitted or suffered to permit this work.
20 DEFENDANT requires these employees to work off the clock without paying them for all the
21 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
22 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES are under compensated for
23 all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit time
24 worked by working without their time being accurately recorded and without compensation at
25 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
26 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
27 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
28 1197.1.

1 17. From time to time, DEFENDANT also fails to provide PLAINTIFF and the other
2 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
3 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
4 provides that every employer shall furnish each of his or her employees with an accurate
5 itemized wage statement in writing showing, among other things, gross wages earned and all
6 applicable hourly rates in effect during the pay period and the corresponding amount of time
7 worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing to
8 identify the correct rates of pay and number of hours worked, including for the “Retro” and
9 “Penalty Pay” items of pay, which are wage payments. Aside, from the violations listed above
10 in this paragraph, DEFENDANT fails to issue to PLAINTIFF an itemized wage statement that
11 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT
12 from time to time provides PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage
13 statements which violated Cal. Lab. Code § 226.

14 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
15 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
16 wages are paid not more than seven calendar days following the close of the payroll period.
17 Cal. Lab. Code § 210 provides:

18 [I]n addition to, and entirely independent and apart from, any other penalty provided in
19 this article, every person who fails to pay the wages of each employee as provided in
20 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
21 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
22 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
23 for each failure to pay each employee, plus 25 percent of the amount unlawfully
24 withheld.

25 19. DEFENDANT from time to time fails to pay PLAINTIFF and the AGGRIEVED
26 EMPLOYEES within seven (7) days of the close of the payroll period, including but not limited
27 to for the “retro” regular wage payment, in accordance with Cal. Lab. Code § 204(d).

28 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
discharging their duties on behalf of DEFENDANT. Under California Labor Code Section

1 2802, employers are required to indemnify employees for all expenses incurred in the course
2 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
3 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
4 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
5 directions of the employer, even though unlawful, unless the employee, at the time of obeying
6 the directions, believed them to be unlawful."

7 21. In the course of their employment PLAINTIFF and other AGGRIEVED
8 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
9 cellular phones as a result of and in furtherance of their job duties as employees for
10 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
11 associated with the use of their personal cellular phones for DEFENDANT's benefit.
12 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required by
13 DEFENDANT to use their personal cellular phones to for work related issues. As a result, in
14 the course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
15 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
16 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit
17 of DEFENDANT.

18 22. All of the conduct and violations alleged herein occurred during the
19 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
20 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
21 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
22 2018 AJDAR 12157 (Certified for Publication 12/19/18).

23 **JURISDICTION AND VENUE**

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

26 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
28

1 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
2 in this County and/or conducts substantial business in this County, and (ii) committed the
3 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
4 EMPLOYEES.

5 **FIRST CAUSE OF ACTION**

6 **For Violation of the Private Attorneys General Act**

7 **[Cal. Lab. Code §§ 2698, *et seq.*]**

8 **(By PLAINTIFF and Against All Defendants)**

9 25. PLAINTIFF incorporates by reference, as though fully set forth herein, the prior
10 paragraphs of this Complaint.

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

21 27. PLAINTIFF, and such persons that may be added from time to time who satisfy
22 the requirements and exhaust the administrative procedures under the Private Attorney General
23 Act, brings this Representative Action on behalf of the State of California with respect to herself
24 and all individuals who are or previously were employed by DEFENDANT in California and
25 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period
26 of December 18, 2019 until a date as determined by the Court (the "PAGA PERIOD").

27 28. On December 18, 2020, PLAINTIFF gave written notice by electronic mail to the
28 Labor and Workforce Development Agency (the "Agency") and by certified mail to the

1 employer of the specific provisions of this code alleged to have been violated as required by
2 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
3 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
4 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
5 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

6 29. The policies, acts and practices heretofore described were and are an unlawful
7 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
8 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
9 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
10 to pay minimum wages, (e) failed to reimburse for required expenses, and (f) failed to provide
11 wages when due, all in violation of the applicable Labor Code sections listed in Labor Code §§
12 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
13 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and
14 the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of
15 such conduct.² PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
16 Labor Code Private Attorney General Act of 2004 as the representative of the State of
17 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
18 EMPLOYEES.

19 20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
22 severally, as follows:

- 23 1. On behalf of the State of California and with respect to all AGGRIEVED
24 EMPLOYEES:

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

27 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

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

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4 Dated: May 3, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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6
7 By: /s/ Norman Blumenthal
 Norman B. Blumenthal

8 Attorneys for Plaintiff
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