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Superior Court of California,

County of Placer

04/01/2021 at 12:00:00 AM

By: Marina C Olivarez Fuentes, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF PLACER**

10 LAMONT ROBINSON, on behalf of the
11 State of California, as a private attorney
12 general,

13 Plaintiff,

14 vs.

15 WORLD PAC, INC., a Corporation and
16 Does 1 through 50, Inclusive;

17 Defendants.

Case No. S-CV-0046456

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

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant WORLD PAC, INC.
8 (“DEFENDANT”) seeking only to recover PAGA civil penalties for himself, 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 himself and on behalf of others for PAGA penalties *only*, which is the precise and
16 sole 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 Worldpac, Inc. (“DEFENDANT”) is a Corporation that at all relevant
24 times mentioned herein conducted and continues to conduct substantial and regular business
25 throughout California.

26 5. DEFENDANT distributes motor vehicle equipment and aftermarket replacement
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1 automotive parts. The Company offers automotive air conditioning, brake system, clutch,
2 cooling system, emissions and fuel, engine, exhaust system, maintenance, suspension, and
3 transmission system.

4 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
5 employee entitled to overtime pay and meal and rest periods from September of 2018 to
6 September of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
7 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
8 received additional compensation from DEFENDANT in the form of non-discretionary
9 incentive wages.

10 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
11 the requirements and exhaust the administrative procedures under the Private Attorney General
12 Act, brings this Representative Action on behalf of the State of California with respect to
13 himself and all individuals who are or previously were employed by DEFENDANT in
14 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
15 the time period of December 11, 2019 until a date as determined by the Court (the "PAGA
16 PERIOD").

17 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
18 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
19 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
20 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
21 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
22 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s) and thereby gives rise
23 to civil penalties as a result of such conduct.¹ Based upon the foregoing, PLAINTIFF and all
24 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §
25 2699, *et seq.*

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

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

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

THE CONDUCT

11. During the PAGA PERIOD, DEFENDANT failed and continues to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately calculate minimum and overtime wages for time worked by PLAINTIFF and other AGGRIEVED EMPLOYEES in order to avoid paying these employees the correct compensation. Further, PLAINTIFF and other AGGRIEVED EMPLOYEES from time to time were not paid wages for all time worked, including overtime wages, such that in the aggregate employees were underpaid wages as a result of DEFENDANT's pattern and practice of

1 unevenly rounding time worked by its employees. As a result, PLAINTIFF and the other
2 AGGRIEVED EMPLOYEES forfeited wages due them for working without compensation at
3 the correct minimum wage and overtime rates. DEFENDANT's policy and practice to not pay
4 the AGGRIEVED EMPLOYEES the correct compensation for all time worked in accordance
5 with applicable law is evidenced by DEFENDANT's business records. This policy and practice
6 of DEFENDANT was intended to purposefully avoid the payment of the correct compensation
7 as required by California law which allowed DEFENDANT to illegally profit and gain an unfair
8 advantage over competitors who complied with the law.

9 12. During the PAGA AGGRIEVED EMPLOYEES, DEFENDANT failed to
10 accurately record and pay PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual
11 amount of time these employees worked. Pursuant to the Industrial Welfare Commission Wage
12 Orders, DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
13 for all time worked, meaning the time during which an employee was subject to the control of
14 an employer, including all the time the employee was permitted or suffered to permit this work.
15 DEFENDANT required these employees to work off the clock without paying them for all the
16 time they were under DEFENDANT's control. Specifically, DEFENDANT required
17 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
18 meal break and also required Plaintiff to clock out of DEFENDANT's timekeeping system at
19 the end of his work shift and then set an alarm and close DEFENDANT's place of business.
20 PLAINTIFF was also from time to time interrupted by work assignments while on his meal
21 period. Indeed there were days where PLAINTIFF did not even receive a partial lunch. As a
22 result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and
23 overtime compensation by working without their time being accurately recorded and without
24 compensation at the applicable minimum wage and overtime rates. To the extent that the time
25 worked off the clock did not qualify for overtime premium payment, DEFENDANT failed to
26 pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
27 1197, and 1197.1.

1 13. State and federal law provides that employees must be paid overtime at one-and-
2 one-half times their “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES
3 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

5 14. The second component of PLAINTIFF’s and other AGGRIEVED EMPLOYEES’
6 compensation was DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF
7 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
8 DEFENDANT, including but not limited to lump sum merit increases, spot bonuses, and safety
9 bonuses. The non-discretionary incentive program provided all employees paid on an hourly
10 basis with incentive compensation when the employees met the various performance goals set
11 by DEFENDANT. However, when calculating the regular rate of pay in order to pay overtime
12 to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to include the
13 incentive compensation as part of the employees’ “regular rate of pay” for purposes of
14 calculating overtime pay. Management and supervisors described the incentive program to
15 potential and new employees as part of the compensation package. As a matter of law, the
16 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
17 be included in the “regular rate of pay.” The failure to do so has resulted in a underpayment of
18 overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
19 DEFENDANT. DEFENDANT also underpaid sick pay wages to PLAINTIFF and other
20 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of
21 pay. Specifically, PLAINTIFF and other non-exempt employees regularly earn non-
22 discretionary remuneration, including but not limited to, incentives and bonuses. Rather than
23 pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and
24 other AGGRIEVED EMPLOYEES at their base rates of pay.

25 15. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
27 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
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1 EMPLOYEES at the correct rate of pay for all overtime worked. This policy and practice of
2 DEFENDANT is intended to purposefully avoid the payment of the correct overtime
3 compensation as required by California law which allowed DEFENDANT to illegally profit and
4 gain an unfair advantage over competitors who complied with the law. To the extent equitable
5 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the
6 PAGA PERIOD should be adjusted accordingly.

7 16. As a result of their rigorous work schedules, PLAINTIFF and other
8 AGGRIEVED EMPLOYEES were from time to time unable to take off duty meal breaks and
9 were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
10 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT
11 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
12 DEFENDANT failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second
13 off-duty meal period from time to time in which these employees were required by
14 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other AGGRIEVED
15 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
16 accordance with DEFENDANT's corporate policy and practice.

17 17. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
18 were from time to time also required to work in excess of four (4) hours without being provided
19 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
20 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
21 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
22 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
23 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
24 AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu thereof. As
25 a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES
26 were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
27 managers. Additionally, the applicable California Wage Order requires employers to provide
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1 employees with off-duty rest periods, which the California Supreme Court defined as time
2 during which an employee is relieved from all work related duties and free from employer
3 control. In so doing, the Court held that the requirement under California law that employers
4 authorize and permit all employees to take rest period means that employers must relieve
5 employees of all duties and relinquish control over how employees spend their time which
6 includes control over the locations where employees may take their rest period. Employers
7 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
8 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
9 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
10 DEFENDANT's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could
11 not leave the work premises during their rest period.

12 18. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
13 employees with an accurate itemized wage statement in writing showing, among other things,
14 gross wages earned and all applicable hourly rates in effect during the pay period and the
15 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
16 failed to provide to PLAINTIFF and the AGGRIEVED EMPLOYEES wage statements that
17 identify the correct gross and net wages earned, the applicable number of hours worked and
18 rates of pay. Aside, from the violations listed above in this paragraph, DEFENDANT failed
19 to issue to PLAINTIFF and other AGGRIEVED EMPLOYEES an itemized wage statement that
20 lists all the requirements under California Labor Code 226 *et seq.*

21 19. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
22 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
23 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
24 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
25 2802, employers are required to indemnify employees for all expenses incurred in the course
26 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
27 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
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1 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
2 directions of the employer, even though unlawful, unless the employee, at the time of obeying
3 the directions, believed them to be unlawful."

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

15 21. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
16 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
17 to accurately calculate and record the correct overtime rate for the overtime worked by
18 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
19 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
20 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
21 calculate and/or pay all required overtime compensation for work performed by the
22 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
23 promulgated thereunder as herein alleged.

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

2 **JURISDICTION AND VENUE**

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

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

10 **FIRST CAUSE OF ACTION**

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

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

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

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

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

26 27. PLAINTIFF, and such persons that may be added from time to time who satisfy
27 the requirements and exhaust the administrative procedures under the Private Attorney General
28

1 Act, brings this Representative Action on behalf of the State of California with respect to
2 himself and all individuals who are or previously were employed by DEFENDANT in
3 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
4 the time period of December 11, 2019 until a date as determined by the Court (the "PAGA
5 PERIOD").

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

13 29. The policies, acts and practices heretofore described were and are an unlawful
14 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
15 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
16 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
17 to pay minimum wages, (e) failed to reimburse for required expenses, and (f) failed to provide
18 wages when due, all in violation of the applicable Labor Code sections listed in Labor Code §§
19 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
20 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and
21 the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of
22 such conduct.² PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
23 Labor Code Private Attorney General Act of 2004 as the representative of the State of
24 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
25 EMPLOYEES.

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

1 **PRAYER FOR RELIEF**

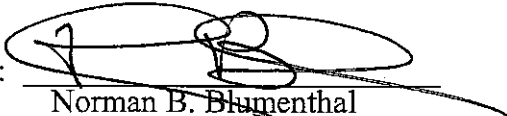
2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
3 severally, as follows:

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

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

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

10 Dated: March 30, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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13 By: 

14 Norman B. Blumenthal

15 Attorneys for Plaintiff
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