

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Timothy Dillon

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individually and as a proxy for the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

[UNLIMITED CIVIL]

MARIA CAMACHO, an individual, and as a
proxy for the State of California

Case No.: 21STCV15384

COMPLAINT FOR:

1. Labor Code § 1198.5(k) Penalty
2. Labor Code § 226(f) Penalty
3. Private Attorneys General Act

Plaintiff,

vs.

ACS STAFFING, INC., a corporation; and
DOES 1 through 5, inclusive,

DEMAND FOR JURY TRIAL

Defendants.

Plaintiff, MARIA CAMACHO, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear the subject matter of this complaint. This Court also has jurisdiction over each defendant, as the unlawful business acts alleged herein occurred in California. Plaintiff's claims arise out of and are related to all Defendant's contacts with California.

2. Venue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred. Venue is proper in this Court because all or some of the violations of law and unlawful practices alleged herein occurred and are occurring in the County of Los Angeles.

PARTIES

3. Plaintiff is an individual who, at all relevant times, has resided in the State of California.

4. Defendant ACS STAFFING, INC. ("ACS") is a corporation that conducted, and is conducting, business in the State of California. ACS maintains an office at 9858 Artesia Blvd, Bellflower, CA 90706.

1 5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
2 DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names and capacities.
3 Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when
4 ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named
5 Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's
6 injuries were proximately caused by the conduct of such defendant.

7 6. All of the Defendants, including DOES 1-5, are alleged to be co-conspirators with each
8 other, in that each agreed to participate, and participated in, the furtherance of the objective of civil
9 wrongs as alleged in this Complaint.

10 7. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
11 each defendant was completely dominated and controlled by its, his or her co-Defendants, each was the
12 agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the
13 others.

14 8. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
15 each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-
16 Defendants and was acting within the course and scope of such agency, employment, and/or joint
17 venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain
18 Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant
19 and/or Defendants confirmed and ratified said conduct and omissions.

20 9. Plaintiff is informed and believes and on that basis alleges that at all times relevant
21 herein, the corporate Defendants, and each of them, had the right to control, and controlled, Plaintiff's
22 wages, hours and working conditions, and has the right to control the manner in which Plaintiff
23 performed work duties, including but not limited to supervision of work, engaged Plaintiff, suffered and
24 permitted Plaintiff to work, and they were employers, joint employers, or co-employers of Plaintiff at all
25 relevant times alleged herein.

26 10. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein,
27 the Defendant, and each of them, were an integrated enterprise in that they had an interrelation of
28

operations, centralized control of labor relations, common management, and common ownership or financial control.

GENERAL ALLEGATIONS

11. Plaintiff worked as a non-exempt employee for Defendant from April 21, 2020 to July 10, 2020. On October 2, 2020, Plaintiff requested her personnel records and documents she had signed relating to her employment, pursuant to Labor Code sections 432 and 1198.5. Defendant did not provide the requested records within 30 days.

12. On October 2, 2020, Plaintiff requested her payroll records, pursuant to Labor Code section 226. Defendant did not provide the requested records within 21 days.

13. Throughout Plaintiff's employment, continuing to present, and ongoing, Defendant had a company-wide practice of sending its employees to work at Defendant's clients' worksites in Los Angeles County and throughout the state. Throughout Plaintiff's employment, continuing to present, and ongoing, Defendant had a company-wide practice of willfully not keeping payroll records showing the hours worked daily by and the wages paid to employees employed for not less than three years.

FIRST CAUSE OF ACTION

LABOR CODE § 1198.5(k) PENALTY

(AGAINST ACS AND DOES 1-5)

14. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

15. The employer shall make personnel records available for inspection to the former employee, or his or her representative, at reasonable intervals and at reasonable times, but "not later than 30 calendar days from the date the employer receives a written request." Lab. Code § 1198.5(b).

16. Defendants did not timely provide Plaintiff's personnel records.

17. "If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer." Lab. Code § 1198.5(k).

18. Because Defendant failed to timely provide the personnel records, Plaintiff is entitled to a statutory penalty, and for an award of attorneys' fees pursuant to Lab. Code § 1198.5(l).

SECOND CAUSE OF ACTION
LABOR CODE § 226(f) PENALTY
(AGAINST ACS AND DOES 1-5)

17. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

18. An employer that is required to keep the information required by Labor Code § 226(a) shall afford current and former employees the right to inspect or copy records pertaining to their employment. Lab. Code § 226(b). An employer who receives a written or oral request to inspect or copy records pursuant to Labor Code § 226(b) shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. Lab. Code § 226(c). Defendant violated Labor Code § 226(b)(c) by failing to timely provide Plaintiff with the complete Lab Code § 226(a) records pertaining to Plaintiff's employment.

19. A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in Labor Code § 226(c) entitles the current or former employee to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer. Lab. Code § 226(f).

THIRD CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ACS AND DOES 1-5)

20. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

21. Pursuant to the California Labor Code Private Attorneys General Act ("PAGA"), "Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides for 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 a violation of this code, may, as an alternative, 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 specified in Section

2699.3.” Lab. Code § 2699(a). “For all provisions of [the California Labor Code] except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions.” Lab. Code § 2699(f).

22. This PAGA suit “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) (“[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state.”); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement”). An employee who brings such an action is acting as an agent of state enforcement agencies. *Kim v. Reins Intl. Cal., Inc.*, 9 Cal.5th 73, 81 (2020).

23. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Lab. Code § 22. Under the PAGA, an “aggrieved employee” means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.”

19. This PAGA action is intended to “remediate present violations and deter future ones.” *Williams*, 3 Cal. 5th at 546. The relevant period for the following PAGA allegations in this cause of action is from February 17, 2020, to present and ongoing.

Labor Code Violations §§ 1174, 1197.5

§ 1174(d)

24. Labor Code Section 1174(d) provides that every person employing labor in this state shall keep payroll records showing the hours worked daily by and the wages paid to employees employed for not less than three years. “Person” means any person, association, organization, partnership, business trust, limited liability company, or corporation. Lab. Code § 18.

25. Defendant had a company-wide practice of not keeping payroll records showing the hours worked daily by and the wages paid Plaintiff and her co-workers, aggrieved employees, in violation of Labor Code Section 1174. Labor Code Section 1174 does not provide for its own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a

1 civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for
2 each aggrieved employee per pay period for each subsequent violation.

3 **§ 1197.5(e)**

4 26. “Every employer shall maintain records of the wages and wage rates, job classifications,
5 and other terms and conditions of employment of the persons employed by the employer. All of the
6 records shall be kept on file for a period of three years.” Lab. Code § 1197.5(e).

7 27. Defendant has a company-wide practice of not maintaining records of the job
8 classifications, and other terms and conditions of employment of Plaintiff and all its other employees, in
9 violation of Labor Code section 1197.5(e).

10 28. California Labor Code section 1197.5(d) does not provide for its own self-contained
11 “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a
12 civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for
13 each aggrieved employee per pay period for each subsequent violation.

14 **§ 1174.5**

15 29. Pursuant to Labor Code Section 1174.5, any person employing labor who willfully fails
16 to maintain accurate and complete records required by subdivision (d) of Section 1174 shall be subject
17 to a civil penalty of five hundred dollars (\$500). As discussed above, Defendant violated Labor Code
18 Labor Code Section 1174(d). Defendant willfully failed to maintain records showing the hours worked
19 daily by Plaintiff and the aggrieved employees. Thus, Defendant is subject to civil penalties.

20 ***Exhaustion of Administrative Remedies***

21 30. On January 11, 2021, Plaintiff provided notice to the California Labor and Workforce
22 Development Agency (“LWDA”), pursuant to Labor Code § 2699.3, detailing the specific provisions of
23 the foregoing Labor Code sections that have been violated, including the facts and theories to support
24 the violations. The LWDA file number is LWDA-CM-818432-21. The notice was sent by certified
25 mail on or about January 11, 2021, to ACS STAFFING, INC., a corporation, (7019 0140 0000 7526),
26 (7019 0140 0000 7526 8798). Plaintiff submitted a fee waiver to the LWDA.

27 31. The LWDA has not, within 65 days of Plaintiff’s Notice of violations of the Labor Code,
28 sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff’s

administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699. Defendant has not sent any notice to the LWDA attempting to cure the alleged violations of Labor Code statutes not enumerated in Labor Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699.

PRAYER

WHEREFORE, Plaintiff prays:

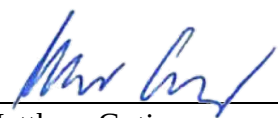
1. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
2. For a \$750 statutory penalty pursuant to Labor Code section 1198.5.
3. For a \$750 statutory penalty pursuant to Labor Code section 226.
4. For reasonable attorneys' fees pursuant to the California Labor Code and Code of Civil Procedure.
5. For costs of suit including expert witness fees.
6. For prejudgment interest.
7. For such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff MARIA CAMACHO hereby demands a trial by jury.

Dated: April 23, 2021

GUTIERREZ DERHAM LAW FIRM LLP

By: 

Matthew Gutierrez
Attorneys for Plaintiff, MARIA CAMACHO,
individually and as a proxy for the State of California