

WHITEHEAD EMPLOYMENT LAW

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Attorneys for Plaintiff, Alexis Aguilar, an individual on her own behalf and in her representative capacity for all similarly situated Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE - CIVIL COMPLEX CENTER

ALEXIS AGUILAR, an individual on her own behalf, and in her representative capacity on behalf of all other similarly situated Aggrieved Employees,

Plaintiff,

v.

ACSC MANAGEMENT SERVICES, INC.,
a California corporation, and DOES 1
through 25, inclusive,

Defendants.

Case No.: 30-2021-01189301-CU-OE-CXC

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

Assigned for all purposes to: Judge Glenda Sanders

Dept: CX101

Plaintiff Alexis Aguilar, an individual on her own behalf, (“Plaintiff”), and in her representative capacity for all other similarly situated Aggrieved Employees, hereby brings this Complaint (“Complaint”) against ACSC MANAGEMENT SERVICES, INC., a California corporation; and DOES 1 through 25, inclusive, (collectively “Defendants”) and states and alleges as follows:

1 **INTRODUCTION**

2 1. This action is brought pursuant to Labor Code § 2698 *et seq.* (Private Attorneys General
3 Act of 2004) (the “PAGA”) for Defendants’ violations of Labor Code §§ 201-203, 204, 226(a),
4 510, 1174, 1194, and 2802.

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

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

13 4. This complaint challenges Defendants’ systemic illegal employment practices resulting in
14 violations of the Labor Code against Plaintiff and the Aggrieved Employees.

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

20 **THE PARTIES**

21 6. Plaintiff Alexis Aguilar is and was, at all times relevant to this Complaint, an adult
22 individual living and working for Defendants in Orange County, California.

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

27 8. Plaintiff is unaware of the true names or capacities of Defendants sued herein under the
28 fictitious names DOES 1 through 25, inclusive, but prays for leave to amend and serve such

1 fictitiously named Defendants pursuant to California Code of Civil Procedure § 474 once their
2 names and capacities become known.

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

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

10 11. At all times herein mentioned, Defendants, and each of them, ratified each and every act
11 or omission complained of herein. At all times herein mentioned, Defendants, and each of them,
12 aided and abetted the acts and omissions of each and all of the other Defendants in proximately
13 causing the damages herein alleged.

14 12. Plaintiff is informed and believes, and thereon alleges, that each of the Defendants is in
15 some manner intentionally, negligently or otherwise responsible for the acts, omissions,
16 occurrences and transactions alleged herein.

17 **JURISDICTION**

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

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

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

24 **GENERAL ALLEGATIONS**

25 16. Plaintiff alleges that she and similarly situated employees are or were formerly employed
26 by Defendants at locations throughout the State of California during the relevant period.

27 17. Plaintiff Aguilar was employed by Defendants as a regular, hourly exempt, full time
28 employee from approximately September of 2016 to approximately August of 2020 as a processor

1 specialist, whose primary duties included the input of odometer readings on Defendants' clients'
2 vehicles.

3 18. During the relevant statutory period, Defendants required Plaintiff and similarly situated
4 Aggrieved Employees to use their personal cell phones to perform their work-related duties.
5 Utilization of their personal cell phones was an essential and integral, daily part of the
6 performance and execution of job-related duties. Plaintiff and the Aggrieved Employees used
7 or use their personal cell phones to communicate with managers, supervisors, and colleagues,
8 regarding on-shift matters and operational updates and in order to participate in WebX
9 meetings, to which Plaintiff and the Aggrieved Employees called in using their personal cell
10 phones.

11 19. In addition, Plaintiff and the Aggrieved Employees are/were required by the Defendants
12 to download two apps onto their personal cell phones. These apps provided Plaintiff and the
13 Aggrieved Employees with codes that the Aggrieved Employees need / needed to enter into
14 their computers in order to access internet services that are/were provided by the Defendants.

15 20. At no time have Defendants ever reimbursed Plaintiff or the Aggrieved Employees for
16 the expenses they incur/incurred in the daily utilization of their personal cell phones for work-
17 related purposes.

18 21. Due to the Defendants' policies and practices that required Plaintiff and similarly
19 situated employees to remain on stand-by at all times, and their employer-mandated duty to
20 respond to supervisors' or managers' texts or phone calls, even while off the clock, Plaintiff and
21 the Aggrieved Employees are/were working more than eight hours in a single shift and in
22 excess of forty hours per week. Yet such overtime hours worked were neither recorded nor
23 compensated by Defendants.

24 22. Consequently, the paystubs issued by Defendants to Plaintiff and the Aggrieved
25 Employees during the relevant statutory period were inaccurate as the wage statements failed to
26 reflect all hours worked, including overtime hours and the proper corresponding rates of pay as
27 required by Labor Code § 226(a).

28 23. Moreover, Defendants demanded and required that Plaintiff and the Aggrieved

1 Employees remain on standby at all times and to be available to respond to phone calls and text
2 messages from their supervisors, whether during their scheduled working shifts or even after
3 hours, on their own time while off the clock. Such off the clock time and hours worked were
4 never recorded nor compensated by Defendants and no timekeeping mechanism has ever been
5 provided to Plaintiff or the Aggrieved Employees to log or record the time they work/worked
6 while off the clock.

7 24. In further consequent of Defendants' above-described policies and operational practices,
8 when Plaintiff and such similarly situated Aggrieved Employees separated from their
9 employment relationship with Defendants during the statutory period, Defendants failed to pay
10 them all wages they were due immediately upon termination or if such Aggrieved Employees
11 had provided advanced notice of their intention to quit, within 72 hours of their date of
12 separation of employment.

13 25. Plaintiff brings this case as a representative action seeking penalties for the State of
14 California in a representative capacity, as provided by the Private Attorneys General Act
15 ("PAGA") to the extent permitted by law, and as an aggrieved employee who held the position
16 identified herein and who was subjected to Defendants' violations of the Labor Code. A true and
17 correct copy of the January 7, 2021 written notice showing compliance with Labor Code § 2699.3
18 is attached hereto as **Exhibit A** and demonstrates that the named Plaintiff is an aggrieved
19 employee who has standing to bring a representative action on behalf of the State of California
20 and Labor and Workforce Development Agency (the "LWDA") as private attorney generals. No
21 notice of cure by Defendants was provided, and no notice of investigation was received from the
22 LWDA within the statutorily proscribed 65-day period since the mailing of the written notice.
23 Accordingly, Plaintiff files this representative action as specifically permitted and authorized by
24 Labor Code § 2699.3(a)(2)(A).

25 ///

26 ///

FIRST CAUSE OF ACTION
For Violation of the Private Attorneys General Act of 2004
Labor Code §2698, et seq.
(Against All Defendants)

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

27. The PAGA expressly establishes that any provision of the 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 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.

28. Plaintiff, by her former employment with Defendants and Defendants' violations of the Labor Code as alleged herein, is an aggrieved employee with standing to bring an action under the PAGA.

29. Plaintiff, by virtue of **Exhibit 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 Defendants 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.”

30. Plaintiff is informed and believes and thereupon alleges that Defendants have violated and continues to violate the provisions of the Labor Code and applicable Wage Order.

31. Pursuant to Labor Code § 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 § 2699.3.

32. Plaintiff, on her own behalf, and on behalf of the other similarly situated Aggrieved Employees is an “aggrieved employee” because she 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 § 2802 and is therefore, properly suited to represent the interests of a PAGA person.

33. Plaintiff is informed and believes that Defendants have violated and continue to violate provisions of Labor Code §§ 201-203, 204; 226(a), 510, 1174(d), 1194, and 2802. Despite mailing of **Exhibit A** at least 65-days prior to the filing of the filing of this Complaint, the LWDA has not notified Plaintiff that it intends to investigate the alleged Labor Code violations

1 identified in **Exhibit A**, such that, by operation of law Plaintiff is entitled to commence this
2 cause of action as a representative action under the PAGA. *See Labor Code 2699.3(a)(2)(A)*.

3 **Failure to Reimburse Expenses**

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

7 35. As alleged *supra*, Defendants 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. Such use of their personal cell phones included the
11 requirement to download apps onto their cell phones from which they were required to retrieve
12 codes in order to access Defendant-provided access to internet services. In addition, they
13 utilized their personal cell phones to call into and participate in WebX meetings. Defendants
14 do not and have not reimbursed Plaintiff and the Aggrieved Employees for their cell phone
15 expenses during the statutory period.

16 36. As a direct result of Defendants' conduct in not reimbursing Plaintiff and the Aggrieved
17 Employees for personal cell phone expenses necessarily incurred in the discharge of their work-
18 related duties, Defendants have violated Labor Code § 2802.

19 **Failure to Pay Wages**

20 37. Labor Code § 200(a) defines "wages" as "all amounts for labor performed by employees
21 of every description, whether the amount is fixed or ascertained by the standard of time, task,
22 piece, commission basis, or other method of calculation."

23 38. Under Labor Code § 1194, employees must be separately paid an hourly wage for each
24 and every hour worked, including time worked while off the clock.

25 39. Plaintiff was at all times subject to California's laws and regulations protecting
26 employees' entitlement to be paid and presumption to be paid all wages earned for labor
27 performed, including an hourly wage for each and every hour worked.
28

1 40. As set forth above, California law requires employers, such as Defendants to pay a
2 separate hourly wage to all nonexempt employees for each and every hour worked. Labor
3 Code § 1194 provides that employees are entitled to wages and compensation for work
4 performed, at the legal rate, including straight time, overtime, and double time.

5 41. At all relevant times herein, Defendants were required to compensate Plaintiff for all
6 hours worked pursuant to Labor Code § 1194.

7 42. By uniformly impeding Plaintiff and the Aggrieved Employees from recording all the
8 hours they worked, including standby time and time worked while off the clock and by its
9 failure to provide any mechanism for Plaintiff and the Aggrieved Employees to record or log
10 hours performing work while off the clock, Defendants were able to skim wages from Plaintiff
11 and the Aggrieved Employees by not paying them a separate hourly wage for each and every
12 hour worked.

13 43. Through this unlawful and illegal policy and practice, Defendants failed to pay Plaintiff
14 and similarly situated Aggrieved Employees all wages they were owed.

15 **Failure to Timely Pay Wages When Due**

16 44. Pursuant to Labor Code § 204, all wages earned by Plaintiffs and the Aggrieved
17 Employees were and are "due and payable twice during each calendar month, on days
18 designated in advance by the employer as regular paydays." For "[l]abor performed between
19 the 1st and 15th days, inclusive of any calendar month" payment is due no later than the 26th
20 day of the month. "...For labor performed between the 16th and the last day, inclusive, of any
21 calendar month, payment is due no later than the 10th day of the following month..." By
22 failing to pay Plaintiffs and the Aggrieved Employees properly all wages due, including
23 overtime hours that were neither recorded nor compensated, Defendants deprived them of
24 timely payment of all wages earned, when due and owing at these regularly scheduled intervals
25 throughout their employment in violation of Labor Code § 204.

26 **Failure to Pay Overtime Wages**

27 45. At all times relevant herein, Defendants were required to compensate Plaintiff and the
28 Aggrieved Employees minimum wages for all hours worked and overtime wages for all hours

1 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
2 mandates of Labor Code § 510.

3 46. At all times relevant herein, Labor Code § 510 provides, “Any work in excess of eight
4 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight
5 hours worked on the seventh day of work in any one workweek shall be compensated at the rate of
6 no less than one and one-half times the regular rate of pay for an employee. Any work in excess of
7 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for
8 an employee. In addition, any work in excess of eight hours on any seventh day of a workweek
9 shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

10 47. As a pattern and operational practice, Defendants failed to compensate Plaintiff and the
11 Aggrieved Employees for all hours worked, including hours worked while off the clock,
12 resulting in a failure to pay overtime wages earned in violation of Labor Code § 510.

13 **Failure to Maintain Accurate Records and to Provide Complete and Accurate**
14 **Wage Statements**

15 48. At all times relevant herein, Defendants were required to keep *accurate* records regarding
16 hours worked and wages earned by their California employees pursuant to the mandates of
17 Labor Code § 1174(d) and to provide accurately itemized wage statements reflecting all actual
18 hours worked and corresponding accurate rates of pay for all hours worked pursuant to Labor
19 Code § 226(a).

20 49. As a result of Defendants’ failure to record all hours worked, include hours worked
21 while on standby or while off the clock and by failing to provide Plaintiff and the Aggrieved
22 Employees with any timekeeping mechanism to record such off the clock hours worked,
23 Defendants failed in their statutory obligation to keep accurate records regarding Plaintiff and
24 the Aggrieved Employees’ hours worked and their gross wages earned in violation of Labor
25 Code § 1174(d).

26 50. An additional consequence of Defendants’ failure to keep accurate records regarding
27 hours worked and wages earned by Plaintiff and the Aggrieved Employees, the total hours each
28 of them worked, all deductions, net wages earned, and all applicable hourly rates and the number

1 of hours worked at each respective hourly rate were never accurately reflected or itemized on
2 their wage statements throughout the relevant statutory period in violation of Labor Code §
3 226(a).

4 **Failure to Pay Wages Due Upon Termination or Separation**

5 51. Labor Code §§ 201 and 202 require employers such as Defendants to pay their
6 employees all wages due within the time specified by law. Where an employer discharges an
7 employee all wages earned are due and payable immediately upon termination.

8 52. Labor Code § 202 provides that if employees not having a written contract for a definite
9 period quits their employment, their wages shall become due and payable no later than 72 hours
10 thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in
11 which case the employee is entitled to their wages at the time of quitting.

12 53. As alleged supra, Plaintiff and a substantial number of the Aggrieved Employees
13 ceased employment with Defendants during the relevant statutory period and at the time of
14 separation of employment, such employees were entitled to be paid all wages each were due
15 for all the hours he / she worked, but to date none of them has received such compensation
16 owed as described hereinabove.

17 54. As a consequence of Defendants' willful conduct in not paying such Aggrieved
18 Employees their full compensation due upon separation of employment for all hours worked,
19 Defendants have violated Labor Code §§ 201, 202, and 203.

20 **Damages**

21 55. Defendants' actions constitute continuing and ongoing unlawful activity prohibited by
22 the Labor Code, as alleged and therefore these acts constitute violations of the PAGA.

23 56. Pursuant to Labor Code § 2699, Plaintiff requests and is entitled to recover from
24 Defendants civil penalties in the amount of a hundred dollars (\$100) for each aggrieved
25 employee per pay period for the initial violation, and two hundred dollars (\$200) for each
26 aggrieved employee per pay period for each subsequent violation; and

27 57. Attorneys' fees and costs pursuant to Labor Code § 2699(g) and any other applicable
28 statute.

1 58. As alleged supra, notice of these violations were provided pursuant to Labor Code
2 §2699.3 asking the LWDA if it intends to investigate the alleged violations. More than 65 days
3 have passed since notice was provided and Plaintiff has not received any notification from the
4 LWDA that it intends to investigate the alleged violations. Therefore, the representative
5 Plaintiff is entitled to prosecute the PAGA claims under Labor Code §2699, et seq.

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

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

14 61. Plaintiff as the personal representatives of the Aggrieved Employees, will and does seek
15 to recover any and all penalties for each and every violation shown to exist or to have occurred
16 during the liability period, in an amount according to proof, as to those penalties that are
17 otherwise only available to public agencies. Said fund recovered will be distributed in
18 accordance with the PAGA, with at least 75% of said PAGA penalty recovery being reimbursed
19 to the State of California and the LWDA.
20

21 **PRAYER FOR RELIEF**

22
23 WHEREFORE, the representative Plaintiff pursuant to PAGA prays for judgment as
24 follows:

25 1. All civil penalties, including attorneys' fees, and costs available under Labor
26 Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201-203, 204, 226(a), 510,
27 1174, 1194, and 2802.
28

1 2. Attorneys' fees and costs pursuant to Labor Code § 2698 *et seq.*, and any other
2 applicable statute;

3 3. For interest at the legal rate; and

4 4. For such other and further relief as the Court may deem just and proper.
5

6 DATED: March 16, 2021

WHITEHEAD EMPLOYMENT LAW

7
8 By:  _____

Jacob N. Whitehead, Esq.

Meghan Higday, Esq.

Attorneys for Plaintiff Alexis Aguilar

And the Aggrieved Employees
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EXHIBIT A
PAGA NOTICE
DATED JANUARY 7, 2021



January 7, 2021

Via Online Filing

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

Via USPS First Class Mail

John F. Boyle, CEO
ACSC Management Services, Inc.
2601 South Figueroa Street, A451
Los Angeles, California 90007

Via Certified Mail

Automobile Club of Southern California
Registered Agent for
ACSC Management Services, Inc.
3333 Fairview Road
Costa Mesa, California 92626

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, Alexis Aguilar ("Plaintiff") has retained Whitehead Employment Law to represent her and other similarly-situated current and former employees (collectively, the "Aggrieved Employees") of ACSC Management Services, Inc., a California corporation (hereinafter "Defendant") regarding claims of violation of the California Labor Code.

Defendant currently or formerly employed Plaintiff and other Aggrieved Employees, who work or have worked as a processor who input odometer readings on client vehicles (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; failure to pay for every hour worked; failure to pay overtime; failure to maintain accurate records of all hours worked; failure to furnish accurately itemized wage statements; failure to timely pay all wages due to Aggrieved Employees who ceased employment with Defendant during the statutory period upon their separation or termination of employment.

As further detailed below, Defendant violated the provisions of California's Labor Code §§ 201- 203, 204, 226, 510, 1174(d), 2802, and Industrial Welfare Commission Order ("IWC") 4.

Plaintiff was formerly employed by Defendant from approximately September of 2016 to approximately August of 2020 as a full-time, hourly, non-exempt Processor Specialist. Plaintiff worked directly with client's vehicles to read their speedometer and help them receive their premium.

During the relevant statutory period, Plaintiff and the Aggrieved Employees had to utilize their personal cell phones for work related duties and function. They used personal cell phones to receive calls and texts from their supervisors daily regarding updates on operations. Plaintiff and the Aggrieved Employees were expected to be on standby at all times and able to respond to texts and calls from supervisor regardless of if they were on the clock or not. Plaintiff and the Aggrieved Employees regularly received calls and texts on their days off with schedule adjustments or scheduled meetings with a call in number provided by Defendant. Due to Defendant not providing a work phone, a personal cell phone was necessary for employment with Defendant. Defendant also regularly has/had WebX meetings which required Plaintiff and the Aggrieved Employees to call in with their personal cell phones. Plaintiff and the Aggrieved Employees also had to use their cell phones to download two apps that they are/were required to use. These apps would provide a code which Defendant required to be entered into their computer to allow access to Internet, which is provided by Defendant. 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.

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, the Plaintiff and Aggrieved Employees daily utilize or utilized their personal cell phones and data and to call, text, call into meetings, and use apps in the course of

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.

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.

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states *"All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays."*

Plaintiff and the Aggrieved Employees are/were required to be on standby at all times and routinely has/had to answer texts and calls from supervisors during off hours. Labor Code § 204 has been violated and Plaintiff and the Aggrieved Employees are entitled to recover payment for all hours worked, including time worked off the clock, with penalties and interest thereon, as well as their attorney's fees and costs.

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, *"Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."*

As indicated above, the Plaintiff and the Aggrieved Employees often worked off the clock, responding to supervisors almost daily, which meant they were working more than an eight-hour shifts but were not paid overtime wages. Plaintiff and the Aggrieved Employees are/were working more than eight hours in a day and more than forty hours in a week throughout the relevant statutory period.

Labor Code § 510 (a) has been violated Plaintiff and the Aggrieved Employees are entitled to recover unpaid overtime for all hours worked, plus penalties and interest, as well as their attorney's fees.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *"Every person employing labor in this state shall:... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."*

As indicated above, the Plaintiff and the Aggrieved Employees were often required to work off-the-clock at Defendant's insistence. During the statutory period, these off the clock hours worked are/were not tracked or recorded by the Defendant in violation of Lab. Cod. § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendant's unlawful business and compensation practices under the Labor Code and IWC No. 4, Plaintiff and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires Defendant to *"furnish each of [its] 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 itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, 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."*

As indicated above, Plaintiff and the Aggrieved Employees often worked off the clock, due to Defendant's unlawful direction to be on standby and respond to any communications even while not on shift. Hours worked off the clock were not recorded and do not appear on Plaintiff and Aggrieved Employees pay stubs.

In failing to account and compensate with accuracy, all of the hours worked by the Plaintiff and the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Defendant violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Plaintiff and the Aggrieved Employees' respective (1) gross wages earned, (2) total hours worked, (3) net wages earned, and (4) all applicable hourly rates and the corresponding number of hour worked at each applicable hourly rate.

Based on the foregoing, Defendant has violated Labor Code § 226.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, 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 therefore is commenced, but the wages shall not continue for more than 30 days.

During the statutory period, when former Plaintiff was terminated in approximately August of 2020, and certain of the other Aggrieved Employees' employment relationships with Defendant terminated, Defendant failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Defendant has failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Defendant has failed to pay Plaintiff and such Aggrieved Employees, who have separated from Defendant's employment during the statutory period. Consequently, Plaintiff and

such Aggrieved Employees are entitled to recover waiting time penalties pursuant to the provisions of Labor Code §203, as well as accrued interest as permitted by California law.

Conclusion

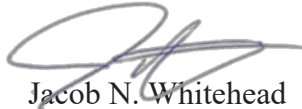
In sum, as has been factually alleged, Defendant violated Labor Code §§ 201- 203, 204, 226, 510, 1174(d), 2802 and IWC No. 4. Plaintiff on her own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory penalties, interest as provided by California 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 her if it does not intend to investigate these violations so that she 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