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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

TARA MITCHELL-CRUZ, an individual on
her own behalf and in her representative
capacity, on behalf of all others similarly
situated,

Plaintiff,

v.

JC USA, INC. dba JENNY CRAIG USA,
Inc., a Texas corporation; and DOES 1
through 25, inclusive,

Defendants.

Case No. 30-2021-01195688-CU-OE-CXC

[Assigned for all purposes to the Hon. Peter
Wilson; Dept. CX 102]

**FIRST AMENDED COMPLAINT FOR
PENALTIES PURSUANT TO
SECTIONS 2699(a) and (f) OF THE
CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACT**

**AMENDED AS OF RIGHT PURSUANT
TO LABOR CODE § 2699.3(a)(2)(C)**

DEMAND FOR JURY

1 Plaintiff Tara Mitchell-Cruz (“Plaintiff”) hereby files this Complaint against Defendant JC
2 USA, Inc. dba Jenny Craig USA, Inc. (“Jenny Craig” or “Defendant”) and DOES 1 through 25,
3 inclusive.

4 Plaintiff is informed and believes and on the basis of that information and belief, alleges as
5 follows:

6 INTRODUCTION

7
8 1. This is a California Labor Code Private Attorneys General Act (“PAGA”) action brought
9 on behalf of the State of California, seeking civil penalties under the PAGA for Defendant’s violations
10 of Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512, 1174 (d), 1197, 1198, 2802, and the applicable
11 Industrial Welfare Commission (“IWC”) Wage Order, as further detailed herein.

12 2. Defendant is an enterprise that owns and operates branded “Jenny Craig” weight loss
13 centers around the world, including within the State of California. Plaintiff is a former employee of
14 Defendant, who worked as health consultant in Fountain Valley, California.

15 3. Plaintiff is informed and believes and thereon alleges that during the relevant period,
16 Defendant violated the applicable Labor Code sections and the IWC Wage Order in the following ways:
17

- 18 • Defendant failed to provide reimbursements for work-related expenses;
- 19 • Defendant failed to pay earned overtime wages;
- 20 • Defendant failed to pay minimum wages;
- 21 • Defendant failed to authorize, permit, and/or make available meal and rest breaks to
- 22 its employees, and failed to provide premium wages for all missed or non-compliant
- 23 meal and rest breaks;
- 24 • Defendant failed to timely pay earned wages when due;
- 25 • Defendant subjected employees to conditions of labor prohibited by the applicable
- 26 IWC Wage Order;
- 27 • Defendant failed to maintain accurate payroll records of hours worked by employees;
- 28 • Defendant failed to provide accurate wage statements to its employees; and
- Defendant failed to pay all wages due to its employees upon separation or termination of employment.

1 **PARTIES**

2 4. Defendant JC USA, Inc., dba Jenny Craig, Inc. is a Texas corporation, with its California
3 principal place of business located at 5770 Fleet Street, in Carlsbad, California 92008.

4 5. Defendant is an enterprise that owns and operates their branded “Jenny Craig” weight
5 loss centers around the world, including the continental United States, and within the State of
6 California.

7 6. Plaintiff is unaware of the true names and capacities of Defendants sued as DOES 1
8 through 25, inclusive, and therefore Plaintiff sue these Defendants by fictitious names. Plaintiff is
9 informed and believes and thereupon alleges that each of the fictitiously named Defendants is in some
10 manner responsible for the wrongful acts and resulting damages to Plaintiff as alleged in this
11 Complaint. Plaintiff will amend this Complaint to show the true names and capacities of these
12 fictitiously named Defendants after their true names and capacities have been ascertained.

13 7. Plaintiff is further informed and believes that all of the acts and conduct described herein
14 below of each named Defendant and DOES 1 through 25, inclusive, were done in the capacity as
15 managing agents, employees, and/or representatives of each other Defendant, and each such Defendant
16 was acting within the scope of such agency, employment and/or representation in doing the wrongful
17 acts alleged herein below and with permission and consent.

18 8. Plaintiff Tara Mitchell-Cruz was at all relevant times herein a resident of Orange County,
19 California. She was employed by Defendant as a full-time, hourly, non-exempt health consultant at the
20 Jenny Craig weight loss center in Fountain Valley, California. Plaintiff provided consulting services
21 to Defendant’s clients to assist them in achieving weight loss goals, promoted Defendant’s products
22 and services, and completed tasks delegated by her supervisors and managers.

23 **JURISDICTION AND VENUE**

24 9. This action is brought pursuant to the PAGA. The civil penalties sought by Plaintiff
25 exceed the minimum jurisdiction limits of the Orange County Superior Court and will be established
26 according to proof at trial.

27 10. This Court has jurisdiction of this action pursuant to the California Constitution, Article
28 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given

1 by statute to other courts. The statutes under which this action was brought do not specify any other basis
2 for jurisdiction.

3 11. This Court has jurisdiction pursuant to the PAGA, including for violations of Labor Code
4 §§ 201-203, 204, 226(a), 226.7, 510, 512, 1174 (d), 1198, 2802, and the applicable Industrial Welfare
5 Commission (“IWC”) Wage Order.

6 12. This Court has jurisdiction over Defendant and Does 1 – 25, inclusive, because upon
7 information and belief, each party has sufficient minimum contacts in California or otherwise
8 intentionally avails itself of California law so as to render the exercise of jurisdiction over it by the
9 California courts consistent with traditional notions of fair play and substantial justice.

10 13. Venue is proper in this Court because, upon information and belief, the named Defendant
11 transacts business and/or has offices in this county and the acts and omissions alleged herein took place
12 in this county.

13 GENERAL ALLEGATIONS

14 14. Plaintiff realleges and incorporates by reference each and every allegation contained in
15 the preceding paragraphs as though fully set forth herein.

16 15. Plaintiff was employed by Defendant from approximately March 8, 2020 to October 14,
17 2020. During the relevant statutory period, Plaintiff worked for Defendant as a full-time, hourly, non-
18 exempt employee at the Jenny Craig Weight Loss Center located at 18665 Brookhurst Street, Fountain
19 Valley, California 92708. As a health consultant, Plaintiff’s duties included providing consulting
20 services to Defendant’s clients for their weight loss goals, promoting Defendant’s products and
21 services, and completing tasks delegated by her supervisors and managers.

22 16. Throughout the PAGA liability period, Plaintiff and similarly situated current or former
23 employees of Defendant work/worked at Jenny Craig Weight Loss Centers throughout the State of
24 California (“Aggrieved Employees”).

25 17. As a matter of policy and practice, Defendant regularly required Plaintiff and Aggrieved
26 Employees to perform work outside of scheduled shifts.¹ While off-the-clock, Plaintiff and Aggrieved

27 ¹ Although the Aggrieved Employees group includes **current** employees as well as former employees, and the allegations
28 in this Complaint include **ongoing** violations as well as previous violations, for ease of discussion, the allegations herein
are made in the past tense.

1 Employees routinely received and were expected to respond to work-related phone calls and text
2 messages, including communications related to scheduling and requests to take photos of the weight
3 centers. Plaintiff and Aggrieved Employees were also required and/or were expected to perform work
4 after clocking out, including to finish up paperwork. This time spent working off-the-clock by Plaintiff
5 and Aggrieved Employees went unrecorded and/or uncompensated. Defendant failed to maintain
6 accurate records of all hours that the Plaintiff and the Aggrieved Employees worked. Defendant failed
7 to compensate Plaintiff and Aggrieved Employees their earned wages for this work, including at the
8 correct overtime rates (of 1.5 times the regular rate) or at the base minimum wage rates. Defendant
9 deprived Plaintiff and Aggrieved Employees of timely payment of all wages earned when due and
10 owing at regularly scheduled intervals throughout their employment during the statutory period.

11 18. As a matter of policy and practice, Defendant regularly failed to schedule and compensate
12 Plaintiff and full-time Aggrieved Employees for 40 hours a week despite their employment terms. In
13 so doing, Defendant was able to take advantage of a pool of unpaid and contingent workers who were
14 available if business was active, but could be kept without any financial consequence to Defendant if
15 business was slow, such as during the Covid-19 pandemic.

16 19. As a matter of policy and practice, Defendant regularly failed to authorize, permit, and/or
17 make available meal and rest breaks to its employees. Plaintiff's and Aggrieved Employees' meal and
18 rest breaks were frequently late, interrupted, on-call, or skipped entirely. Plaintiff and Aggrieved
19 Employees were required to address assist customers during meal and rest breaks. Plaintiff and
20 Aggrieved Employees were required to remain on the premises during meal and rest breaks and
21 answer work-related calls and communications. Defendant failed to provide premium wages for missed
22 meal and rest breaks as required under the law. Defendant deprived Plaintiff and Aggrieved Employees
23 of timely payment of all premium wages earned when due and owing at regularly scheduled intervals
24 throughout their employment during the statutory period.

25 20. As a matter of policy and practice, Defendant failed to reimburse Plaintiff and Aggrieved
26 Employees for the expenses they incurred in the performance of their job duties, or as a result of their
27 obedience to the directions of Defendant. Defendant failed to reimburse Plaintiff and Aggrieved
28 Employees for cell phone expenses and personal wireless internet expenses (utilized, *e.g.*, for work-

1 related communications and employer-mandated Zoom call training sessions) and Jenny Craig meals
2 (that Defendant pressured Plaintiff and Aggrieved Employees to purchase and eat during their meal
3 breaks).

4 21. Defendant failed to furnish Plaintiff and Aggrieved Employees with accurate itemized
5 wage statements throughout the liability period. Plaintiff's and Aggrieved Employees' wage statements
6 did not accurately reflect all hours worked (as the wage statements omitted hours worked off the clock),
7 and all gross and net wages earned (as the wage statements did not accurately reflect earned wages from
8 off-the-clock work and earned premium wages from missed meal and rest breaks).

9 22. Plaintiff and a substantial number of the Aggrieved Employees' employment with
10 Defendant ended during the statutory period. When Plaintiff's employment with Defendant ended on
11 October 14, 2020, she was not paid all outstanding wages she was due (as described above) in
12 accordance with the provisions of Labor Code Sections 201-203.

13 23. Upon information and belief, Plaintiff alleges thereon, that at the time of separation of
14 employment of similarly situated Aggrieved Employees, they were not paid their full wages due in
15 accord with Labor Code Sections 201-203, either, immediately upon termination or discharge or, for
16 such employees not having a written contract for a definite period of time, and who quit, no later than
17 72 hours thereafter, as applicable.

18 24. As a result of Defendant's failure to properly compensate Plaintiff and the Aggrieved
19 Employees proper compensation for all hours worked, including, but not limited to overtime pay for
20 hours worked while off the clock, and for the personal cell phone and internet expenses they necessarily
21 incurred performance of their job duties, Plaintiff and the Aggrieved Employees have been denied the
22 use and enjoyment of the monies they are owed by Defendant, and have been forced to incur attorney's
23 fees and costs of suit.

24 **COUNT I**

25 **California Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698-2699.5**

26 25. Plaintiff realleges and incorporates by reference, all of the foregoing paragraphs, as
27 though fully set forth herein.

28 26. The PAGA expressly establishes that any provision of the California Labor Code which

1 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
2 Agency (the “LWDA”), or any of its departments, divisions, commissions, boards, agencies or
3 employees for a violation of the California Labor Code, may be recovered through a civil action brought
4 by an aggrieved employee on behalf of himself or herself, and other current or former employees. These
5 civil penalties are in addition to any other relief available under the Labor Code, and must be allocated
6 75% to California’s Labor and Workforce Development Agency (“LWDA”) and 25% to the aggrieved
7 employees, pursuant to California Labor Code § 2699.

8 27. On January 6, 2021, Plaintiff provided written notice to the LWDA and Defendant of
9 the specific provisions of the Labor Code Plaintiff contend were violated, and the theories supporting
10 their contentions. A true and correct copy of the January 6, 2021 notice is attached hereto as **Exhibit**
11 **A**. More than sixty-five days have elapsed since Plaintiff provided notice to the Defendant and the
12 LWDA. To date, Plaintiff has not received a response from the LWDA indicating its intent to
13 investigate Plaintiff’s claims.

14 28. On August 3, 2022, Plaintiff provided an amended written notice to the LWDA and
15 Defendant of the specific additional provisions of the Labor Code Plaintiff contend were violated, and
16 the theories supporting their contentions. A true and correct copy of the August 3, 2022 notice is
17 attached hereto as **Exhibit B**. More than sixty-five days have elapsed since Plaintiff provided notice
18 to the Defendant and the LWDA. To date, Plaintiff has not received a response from the LWDA
19 indicating its intent to investigate Plaintiff’s claims.

20 29. Plaintiff alleges that Defendant has violated the following provisions of the California
21 Labor Code and the following provisions of the IWC Wage Orders that are actionable through the
22 California Labor Code and PAGA, as previously alleged herein: Cal. Lab. Code §§ 201-03, 204, 226,
23 226.3, 226.7, 510, 512, 1174(d), 1197, 1197.1, 1198, 2802, and the applicable IWC Wage Order. Each
24 of these violations entitles Plaintiff, as a private attorneys general, to recover the applicable civil
25 penalties.

26 30. California Labor Code § 2699(a), which is part of PAGA, provides in pertinent part:

27 Notwithstanding any other provision of law, any provision of this code that
28 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.

31. California Labor Code § 2699(f), which is part of PAGA, provides in pertinent part:

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

32. Plaintiff is entitled to civil penalties, to be paid by Defendant and allocated as PAGA requires, pursuant to California Labor Code § 2699(a) for Defendant's violations of the California Labor Code and applicable IWC Wage Order for which violations a civil penalty is already specifically provided by law. Furthermore, Plaintiff is entitled to civil penalties, to be paid by Defendant and allocated as PAGA requires, pursuant to California Labor Code § 2699(f) for Defendant's violations of the California Labor Code and IWC Wage Orders for which violations a civil penalty is not already specifically provided.

33. Defendant's actions constitute continuing and ongoing unlawful activity prohibited by the Labor Code, as alleged and therefore these acts constitute violations of the PAGA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. For the Court to declare, adjudge, and decree that Defendant violated the California Labor Code as alleged herein;
2. For an order awarding the State of California and Aggrieved Employees civil penalties provided under the PAGA;
3. For interest as provided by applicable law;
4. For an award of reasonable attorneys' fees;
5. For all costs of suit; and
6. For such other and further relief as this Court deems just and proper.

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Dated: November 8, 2022

Respectfully submitted,

SCHNEIDER WALLACE
COTRELL KONECKY

By: 
Carolyn H. Cottrell
Esther L. Bylsma
SCHNEIDER WALLACE COTTRELL
KONECKY LLP

Jacob N. Whitehead
Gursimrat K. Singh
WHITEHEAD EMPLOYMENT LAW, APC

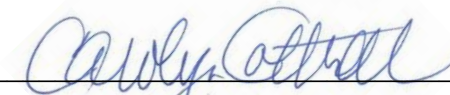
Attorney for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: November 8, 2022

SCHNEIDER WALLACE
COTRELL KONECKY

By: 
Carolyn H. Cottrell
Esther L. Bylsma
SCHNEIDER WALLACE COTTRELL
KONECKY LLP

Jacob N. Whitehead
Gursimrat K. Singh
WHITEHEAD EMPLOYMENT LAW, APC

Attorney for Plaintiff

EXHIBIT *A*



January 6, 2021

Via Online Filing

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

Via Certified Mail

CT Corporation System
Registered Agent for
JC USA, Inc.
DBA Jenny Craig USA, Inc.
818 West Seventh Street, Suite 930
Los Angeles, California 90017

Via USPS First-Class Mail

Lauren T. Beard, Vice President,
General Counsel, and Secretary for
JC USA, Inc.
DBA Jenny Craig USA, Inc.
5770 Fleet Street
Carlsbad, California 92008

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, Tara Mitchell-Cruz ("Plaintiff") has retained Whitehead Employment Law to represent her and other similarly-situated current and former employees (collectively, the "Aggrieved Employees") of JC USA, Inc., a Texas corporation, dba Jenny Craig USA, Inc. (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 health consultant who connected with clients and utilized the Jenny Craig Service Model to help clients in their weight loss goals (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 Labor Code §§ 201- 203, 204, 226, 510, 1174(d), 2802 and Industrial Welfare Commission Order ("IWC") 2.

Plaintiff was formerly employed by Defendant from approximately March 8, 2020 to October 14, 2020 as a full-time, hourly, non-exempt Health Consultant. Plaintiff worked directly with clients to help them achieve their weight loss goals through exercise and diet.

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 call and text their supervisors daily regarding updates on clients. 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. Due to supervisor requests and notifications primarily being communicated by personal cell phone, a personal cell phone was necessary for employment with Defendant. Defendant also regularly has/had Zoom training sessions that Plaintiff and the Aggrieved Employees would have to use their personal cell phones for. Plaintiff and the Aggrieved Employees also had to use their cell phones to send pictures of the facility to supervisors. Defendant also required Plaintiff and the Aggrieved Employees to use their personal wireless internet for Zoom training during the Plaintiff and the Aggrieved Employees' first month of employment. 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 or personal wireless internet.

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, Plaintiff and Aggrieved Employees daily utilize or utilized their personal cell phones and data and to call, text, zoom meet, and take pictures in the course of work-related duties with no reimbursement from Defendant. Defendant has also required Plaintiff and the Aggrieved Employees to use their personal wireless internet for Zoom training

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.

during the first month of employment without compensation. 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. 2, 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 on October 14, 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 the 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 among other statutes and regulations Labor Code §§ 201- 203, 204, 226, 510, 1174(d), 2802 and IWC No. 2. 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



Jacob N. Whitehead

JNW/mnh

EXHIBIT B



August 3, 2022

ELECTRONICALLY FILED

Attn: PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612
PAGAFilings@dir.ca.gov

Re: Amended Private Attorneys General Act of 2004 Notice

Employee: Tara Mitchell-Cruz

Employer: JC USA, Inc. d/b/a Jenny Craig USA, Inc. and Other Related Entities

Dear PAGA Administrator:

Please be advised that representative plaintiff, Tara Mitchell-Cruz (“Plaintiff”), has retained Whitehead Employment Law and Schneider Wallace Cottrell Konecky LLP to represent her and other similarly-situated current and former employees (collectively, the “Aggrieved Employees”) of JC USA, Inc., a Texas corporation, *d/b/a Jenny Craig USA, Inc.* (hereinafter “Defendant”) regarding claims of violation of the California Labor Code.

Defendant currently or formerly employed Plaintiff and other Aggrieved Employees, who currently work or have worked as non-exempt, hourly employees, including but not limited to health consultants who connected with clients and utilized the Jenny Craig Service Model to help clients in their weight loss goals. 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 timely pay wages when due; failure to pay overtime wages and properly calculate overtime rates; failure to pay minimum wages; failure to authorize, permit, and/or make available meal and rest breaks or pay premiums in lieu thereof; failure to maintain accurate records of all hours worked; failure to furnish accurately itemized wage statements; and failure to timely pay all wages due to Aggrieved Employees who ceased employment with Defendant during the statutory period upon their separation from or termination of employment.

As further detailed below, Defendant violated the provisions of California Labor Code §§ 201- 203, 204, 226, 226.7, 510, 512, 1174(d), 1198, 2802 and the applicable Industrial Welfare Commission Order (“IWC”).



Plaintiff was formerly employed by Defendant from approximately March 8, 2020, to October 14, 2020, as a full-time, hourly, non-exempt Health Consultant. Plaintiff worked directly with clients to help them achieve their weight loss goals through exercise and diet.

During the relevant statutory period, Aggrieved Employees had to utilize their personal cell phones for work related duties and functions. They used personal cell phones to call and text their supervisors daily regarding updates on clients. Aggrieved Employees were expected to be on standby at all times and able to respond to texts and calls from supervisors regardless of if they were on the clock or not. Aggrieved Employees regularly received calls and texts on their days off with schedule adjustments. Due to supervisor requests and notifications primarily being communicated by personal cell phone, a personal cell phone was necessary for employment with Defendant. Defendant also regularly has/had Zoom training sessions that Aggrieved Employees would have to use their personal cell phones for. Aggrieved Employees also had to use their cell phones to send pictures of the facility to supervisors. Defendant also required Aggrieved Employees to use their personal internet connections for Zoom training during the Aggrieved Employees' first month of employment. At no time has Defendant ever reimbursed Plaintiff or Aggrieved Employees for the expenses they incurred in the utilization of their personal cell phones or personal internet connections.

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.

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, Aggrieved Employees¹ daily utilize or utilized their personal cell phones and data and to call, text, zoom meet, and take pictures in the course of work-related duties with no reimbursement from Defendant. Defendant has also required Aggrieved Employees to use their personal internet connections for Zoom training during the first month of employment without compensation. Defendant violated Labor Code § 2802 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 Pay Overtime Wages

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

¹ With respect to this § 2802(a) claim, upon information and belief, the claim may extend to all exempt employees as well as non-exempt, hourly employees.



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, Aggrieved Employees often worked off the clock, responding to supervisors almost daily, which meant they were working more than eight-hour shifts but were not paid overtime wages. 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. Aggrieved Employees are/were not paid proper overtime compensation for their work at 1.5 times the regular rate of pay.

Labor Code § 510 (a) has been violated 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 Pay Minimum Wages

Labor Code § 1198 provides “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees.” IWC Order 2-2001 requires that employers pay each employee minimum wages as set forth in Section 4 of the order.

As indicated above, Aggrieved Employees often worked off the clock, responding to supervisors almost daily, which meant they were working time for which they were not paid minimum wages.

Labor Code § 1198 has been violated and Aggrieved Employees are entitled to recover unpaid minimum wages for all hours worked, plus penalties and interest, as well as their attorney’s fees.

Failure to Authorize, Permit, and/or Make Available Meal and Rest Breaks

Labor Code §§ 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee’s regular rate for each meal or rest period that is not provided.

As indicated above, Defendant failed to provide compliant meal and rest breaks to Aggrieved Employees and did not provide premium pay for failure to provide compliant meal and rest breaks. Due to Defendant’s policies, practices, and procedures, Aggrieved Employees were frequently forced to non-compliant meal and rest breaks that were late, interrupted, on-call, or skipped entirely. Aggrieved Employees were not provided with compliant and timely meal and rest breaks for various reasons, including but not limited to that: (i) Defendant did not authorize, permit, and/or make available timely meal and breaks to Aggrieved Employees; and (ii) Aggrieved Employees were often too busy with work during the day to have time to take bona fide meal and rest breaks. Aggrieved Employees were required to remain on the premises during meal and rest breaks and answer work-



related calls and communications. Aggrieved Employees were regularly not provided with duty-free, uninterrupted, and timely thirty-minute meal and rest periods.

Labor Code §§ 226.7 and 512 have been violated and Aggrieved Employees are entitled to recover unpaid premium wages for non-compliant meal and rest periods, plus interest, as well as their attorney's fees.

Failure to Timely Pay Wages When Due

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."

By failing to pay Aggrieved Employees properly, Defendant deprived them of timely payment of all wages earned, when due and owing at these regularly scheduled intervals throughout their employment during the statutory period in violation of Labor Code § 204.

Failure to Compensate Employees For Every Hour Worked

Under Labor Code § 1198, "The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage Orders, including *inter alia*, Wage Orders 2-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay.

During the relevant time period, Defendant failed to pay aggrieved employees half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay for workdays in which aggrieved employees reported to work and were furnished less than half the usual or scheduled day's work. During the relevant time period, Defendant failed to pay aggrieved employees for two (2) hours at the employee's regular rate of pay on days in which aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

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, 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. 2, 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, 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 Aggrieved Employees pay stubs.

In failing to account and compensate with accuracy, all of the hours worked by 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 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 on October 14, 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 all wages due and owing to Aggrieved Employees who have separated from Defendant's employment during the statutory period. Consequently, 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 among other statutes and regulations Labor Code §§ 201- 203, 204, 226, 226.7, 510, 512, 1174(d), 1198, 2802 and IWC No. 2. 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,


CAROLYN H. COTTRELL
Attorney at Law



Attn: PAGA Administrator
Labor and Workforce Development Agency
August 3, 2022
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CC via certified mail:

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PROOF OF SERVICE

I, Silvia G. Carter, declare the following:

I am over the age of eighteen years and not a party to the within entitled action. I am employed at Schneider Wallace Cottrell Konecky LLP located at 2000 Powell Street, Suite 1400, Emeryville, California 94608.

On November 8, 2022, I served the following document(s) described as: **FIRST AMENDED COMPLAINT FOR PENALTIES PURSUANT TO SECTIONS 2699(A) AND (F) OF THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT** on the following interested party(s):

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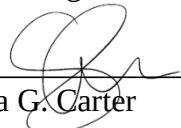
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☒ **BY ELECTRONIC SERVICE** by electronically mailing a true and correct copy in PDF format through SWCK's electronic mail system to the email address(s) set forth above from my email: sgcarter@schneiderwallace.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 8, 2022, at Los Angeles, California.



Silvia G. Carter