

FILED
Superior Court Of California,
Sacramento
05/11/2022
ggalaviz
By _____, Deputy
Case Number:
34-2022-00319739

1 Paolo Meireles (*pro hac vice* application
forthcoming)

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10 *Counsel for Plaintiff and the Proposed Representative Class*

11
12 **SUPERIOR COURT OF STATE OF CALIFORNIA**

13 **COUNTY OF SACRAMENTO**

14 KAELYN FLEISSNER, on behalf of
15 herself and all those similarly situated,

16 Plaintiff,

17 v.

18 FEDEX OFFICE & PRINT SERVICES,
INC., and DOES 1 THROUGH 50, inclusive,

19 Defendant.

**REPRESENTATIVE ACTION
COMPLAINT;**

**CLAIMS FOR DAMAGES AND
INJUNCTIVE RELIEF;**

(1) Civil Penalties Under the Private
Attorneys General Act of 2004
("PAGA") §§ 2698, *et seq.*

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1 4. Venue is proper in this Court pursuant to California Code of Civil Procedure § 395(a)
2 and § 395.5 because the injuries to the persons complained of herein occurred at least in part in the
3 County of Sacramento and/or because Defendant conducts business within the County of Sacramento.

4 **THE PARTIES**

5 5. Plaintiff Kaelyn Fleissner, at all times relevant hereto, was a resident of the State of
6 California, and currently resides in Mission Viejo, California. Ms. Fleissner was employed by
7 Defendant as a Store Assistant Manager in California, between approximately March 2019 and
8 February 2020.

9 6. Defendant FedEx Office & Print Services, Inc. is a company headquartered and
10 incorporated in Texas. Defendant operates multiple retail stores located in California.

11 7. Plaintiff is informed and believes, and based thereupon alleges, that the conduct, actions,
12 omissions, and manner of failing to provide overtime and minimum wages, failing to provide proper
13 meal and rest breaks, failing to reimburse necessary business expenses, failing to pay all earned wages
14 upon discharge, failing to provide accurate wage statements and maintain requisite payroll records, and
15 failing to timely pay wages during employment and upon termination of employment was willful,
16 known, and intended to violate the laws, and that officers, directors, and managing agents of Defendant,
17 approved, ratified, and directed the conduct in order to inflate profits at the expense of their own
18 employees' earnings and wages. Through these policies and/or practices, Defendant lowered its
19 operating costs by failing to pay its Store Assistant Managers and Center Assistant Managers overtime
20 and minimum wages, failing to pay meal and rest break penalties for their missed breaks, and failing to
21 reimburse them for their necessary business-related expenses.

22 8. Plaintiff is ignorant of the true names or capacities, whether as individuals, partners,
23 corporate entities, or joint venturers, of the Defendants sued herein as Does 1 through 50, inclusive, and
24 for that reason, Defendant is sued under such fictitious names. Plaintiff will seek leave from the Court
25 to amend this Representative Action Complaint when such true names and capacities are discovered.
26 Plaintiff is informed and believes, and thereupon alleges, that each of said Doe Defendants, whether
27 individuals, partners, corporate entities, or joint venturers, were responsible in some manner for the
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1 circumstances alleged herein, and proximately caused Plaintiff and those members of the general public
2 and the Representative Class designated herein, to be subject to the unlawful employment and business
3 practices, wrongs, injuries, and damages complained of herein.

4 **COMMON FACTUAL ALLEGATIONS**

5 **Off-the-Clock Work**

6 9. Defendant's timekeeping policies and practices required PAGA Members in California
7 to work substantial amounts of overtime off-the-clock prior to the start of their shifts to, among other
8 things, pick up supplies from other stores before arriving to work.

9 10. Defendant directed PAGA Members to take their uncompensated meal and rest breaks
10 on premises in order to assist with customers, but did not pay PAGA Members for working through
11 their meal and rest breaks.

12 11. PAGA Members were also expected to respond to text messages and phone calls from
13 supervisors and other employees regarding work-related issues after normal business hours while off
14 the clock.

15 12. These common, company-wide policies and/or practices resulted in PAGA Members
16 having to work off the clock, including but not limited to: (1) picking up supplies from other store
17 locations before arriving to work (2) performing work during uncompensated meal and rest breaks, and
18 (3) responding to work-related calls and texts from home.

19 **Meal and Rest Breaks**

20 13. Defendant had common, company-wide policies and/or practices of failing to relieve
21 Plaintiff and PAGA Members of all duties so that they could take the meal and rest periods to which
22 they were entitled by law.

23 14. As a matter of common, company-wide policy and/or practice, Defendant also failed to
24 ensure that it paid Plaintiff and PAGA Members proper meal and rest break penalties when they did not
25 receive the meal and rest breaks to which they were entitled by law.

1 **Unreimbursed Expenses**

2 15. Defendant required Plaintiff and PAGA Members to incur necessary business-related
3 expenses in the completion of their duties. Such expenses included, among others, charges associated
4 with cell phone and data plans and gas/mileage.

5 16. Defendant did not reimburse PAGA Members for all of their cell phone use and
6 gas/mileage, which were all reasonable and necessary business-related expenses.

7 **Plaintiff Kaelyn Fleissner**

8 17. Plaintiff Fleissner was employed by Defendant as a Store Assistant Manager in
9 California, between approximately March 2019 and February 2020.

10 18. While Plaintiff Fleissner was working for Defendant, she incurred several necessary
11 business-related expenses. These expenses included using her personal cell phone for work-related
12 communications and gas/mileage from driving to other store locations to pick up supplies.

13 19. Plaintiff Fleissner was not reimbursed for all of these necessary business-related
14 expenses.

15 20. Pursuant to Defendant's policies, patterns, and/or practices, Plaintiff Fleissner regularly
16 had to work off the clock, including but not limited to: (1) picking up supplies from other store
17 locations before arriving to work; (2) performing work during uncompensated meal and rest breaks;
18 and (3) responding to work-related calls and texts from home.

19 **FIRST CAUSE OF ACTION**

20 **Violation of the Private Attorneys General Act ("PAGA"), Cal. Labor Code §§ 2698, *et seq.***
(On Behalf of the State of California, Plaintiff Fleissner, and the Representative Class)

21 21. Plaintiff Fleissner re-alleges each paragraph of this Complaint as though fully set forth
22 herein.

23 22. The Private Attorneys General Act ("PAGA"), Cal. Lab. Code §§ 2698, *et seq.*,
24 authorizes Plaintiff Fleissner to recover civil penalties that otherwise would have been "assessed and
25 collected by the Labor and Workforce Development Agency" for violations of the California Labor
26 Code through a "civil action brought by an aggrieved employee on behalf of himself or herself and
27 other current or former employees." Cal. Lab. Code § 2699(a).
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1 23. Plaintiff Fleissner is an "aggrieved employee" under PAGA, as she was employed by
2 Defendant during the applicable statutory period and suffered each of the wage and hour violations
3 alleged herein. As such, Plaintiff Fleissner seeks to recover, on behalf of herself and all other current
4 and former aggrieved PAGA Members, the civil penalties provided by PAGA, plus reasonable
5 attorneys' fees and costs.

6 24. "PAGA Member(s)" means all individuals employed by FedEx Office as a non-exempt
7 Store Assistant Manager or Center Assistant Manager in a FedEx Office retail store location in
8 California between January 26, 2020 and December 1, 2021.

9 25. Plaintiff Fleissner seeks to recover the PAGA civil penalties through a representative
10 action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
11 Cal.4th 969. Therefore, class certification of the PAGA claims is not required, but Plaintiff Fleissner
12 may choose to seek certification of the PAGA claims.

13 26. Plaintiff Fleissner has satisfied the requirements for bringing a civil action under PAGA,
14 as set forth in California Labor Code § 2699.3.

15 27. On February 10, 2021, Plaintiff Fleissner sent a notice to the California Labor and
16 Workforce Development Agency ("LWDA") indicating her intent to seek penalties under PAGA due to
17 Defendant's failure to reimburse business expenses, failure to provide overtime and minimum wages,
18 failure to provide meal and rest breaks, failure to provide accurate wage statements, and failure to
19 provide all earned wages timely and upon discharge. To date, Plaintiff Fleissner has not received any
20 response from the LWDA.

21 28. Defendant has failed to pay Plaintiff and the proposed Representative Class for all
22 regular and overtime hours worked in violation of California Labor Code §§ 510, 1194, 1197, 1197.1,
23 and Industrial Welfare Commission ("IWC") Order No. 4-2001; failed to provide compliant meal and
24 rest periods in violation of California Labor Code §§ 218.5, 226.7, 512, 1198, and IWC Order No. 4-
25 2001; failed to provide reimbursement for all necessary business expenses in violation of California
26 Labor Code § 2802; failed to provide accurate wage statements in violation of California Labor Code §
27 226(a); failed to maintain requisite payroll records in violation of California Labor Code § 1174(d);
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1 failed to pay them all earned wages timely and upon discharge in violation of California Labor Code §§
2 201-204 and 210; and violated California's Private Attorneys General Act ("PAGA"), California Labor
3 Code §§ 2698, *et seq.*

4 29. Under PAGA, Plaintiff Fleissner and the State of California are entitled to recover the
5 maximum civil penalties permitted by law for the violations of the California Labor Code and IWC
6 Order No. 4-2001 alleged herein.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of herself and all similarly situated persons, prays for relief
9 as follows:

- 10 A. Designation of Plaintiff as Representative of the Representative Class;
11 B. An award of civil penalties pursuant to PAGA;
12 C. Pre-judgment and post-judgment interest, as provided by law;
13 D. Attorneys' fees and costs of action incurred herein, including any expert fees; and
14 E. Such other injunctive and equitable relief as the Court may deem just and proper.

15 Dated: May 11, 2022

Respectfully submitted,

16
17 By: 
18 Jennifer Liu

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27 *Counsel for Plaintiff and the Proposed*
28 *Representative Class*