

02/24/2022 at 11:30:39 AM

Clerk of the Superior Court
By Melissa Valdez, Deputy Clerk

SW EMPLOYMENT LAW GROUP, APC

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Attorneys for Plaintiff, MARISSA PADILLA, 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 SAN DIEGO

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

Plaintiff,

v.

PACIFIC PERSONNEL SERVICES, INC., a California corporation; TRINITY PROPERTY CONSULTANTS, LLC, a California limited liability company; JESSICA BECK, an individual; JOE CLARK, an individual; MICHAEL B. EARL, an individual; and DOES 1 through 25, inclusive,

Defendants.

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

{JURY TRIAL DEMANDED}

37-2022-00007206-CU-OE-CTL

Plaintiff MARISSA PADILLA (“PADILLA” or “Plaintiff”), an individual on her own behalf and in her representative capacity on behalf of all other similarly situated employees (“Aggrieved Employees”), hereby brings this Complaint (“Complaint”) against PACIFIC PERSONNEL SERVICES, INC., a California corporation (“PPS”); TRINITY PROPERTY CONSULTANTS, LLC, a California limited liability company (“TPC”); JESSICA BECK, an

individual (“BECK”); JOE CLARK, an individual (“CLARK”); MICHAEL B. EARL, an individual (“EARL”); and DOES 1 through 25, inclusive, (collectively as “Defendants”) and states and alleges as follows:

INTRODUCTION

1. This action is brought pursuant to Labor Code § 2698 *et seq.* (Private Attorneys General Act of 2004) (the “PAGA”) for Defendants’ violation of Labor Code §§ 2802 and 201-203 for failure to reimburse expenses incurred in the discharge of work-related duties and for failure to pay all wages due upon discharge or termination of employment, as further detailed herein.

2. This complaint challenges Defendants’ systemic illegal employment practices resulting in violations of the state provisions of the Labor Code against Plaintiff and the Aggrieved Employees.

3. Plaintiff is informed and believes and based thereon alleges that Defendants and DOES 1 through 25, jointly and severally acted intentionally and with deliberate indifference and conscious disregard to Plaintiff’s and the Aggrieved Employees’ rights by failing to reimburse them for business-related expenses that they routinely incurred in performing their job duties and failure to pay all wages due upon termination of employment.

THE PARTIES

Plaintiff MARISSA PADILLA

4. Plaintiff, MARISSA PADILLA is and was, at all times relevant to this Complaint, an adult individual who lived in San Diego, California and worked for Defendants in the City of San Diego in the County of San Diego, California. She was employed by Defendants as a full-time, salary community manager from February 21, 2018 until February 8, 2021.

Defendant PACIFIC PERSONNEL SERVICES, INC.

5. At all times relevant to this Complaint, Defendant PPS was a California corporation doing business and employing persons throughout California, where it employed Plaintiff and the Aggrieved Employees.

6. Defendant PPS is an organization that provides on-site property management and

1 maintenance services and maintains its principal executive offices in California at 2082
2 Michelson Drive, 4th Floor, Irvine, California 92612.

3 **Defendant TRINITY PROPERTY CONSULTANTS, LLC**

4 7. At all times relevant to this Complaint, Defendant TPC was a California limited
5 liability company doing business and employing persons throughout California, where it
6 employed Plaintiff and the Aggrieved Employees.

7 8. Defendant TPC is an organization that provides on-site property management and
8 maintenance services and maintains its principal executive offices in California at 2082
9 Michelson Drive, 4th Floor, Irvine, California 92612.

10 **Defendant JESSICA BECK**

11 9. Defendant BECK is and at all times mentioned in this complaint was, an adult
12 female individual who, based on information and belief, owns and manages PPS, the service
13 company where PADILLA was employed.

14 10. Plaintiff is informed and believes and alleges thereon, that BECK is or was a
15 shareholder, director and/or officer of PPS and therefore is liable as a person acting on behalf of
16 an employer pursuant to California Labor Code Section 558.1.

17 **Defendant JOE CLARK**

18 11. Defendant CLARK is and at all times mentioned in this complaint was, an adult
19 male individual who, based on information and belief, owns and manages PPS, the service
20 company where PADILLA was employed.

21 12. Plaintiff is informed and believes and alleges thereon, that CLARK is or was a
22 shareholder, director and/or officer of PPS and therefore is liable as a person acting on behalf of
23 an employer pursuant to California Labor Code Section 558.1.

24 **Defendant MICHAEL B. EARL**

25 13. Defendant EARL is and at all times mentioned in this complaint was, an adult
26 male individual who, based on information and belief, owns and manages PPS and TPC, the
27 service and consultant companies where PADILLA was employed.

28 14. Plaintiff is informed and believes and alleges thereon, that EARL is or was a

1 shareholder, director and/or officer of PPS and TPC and therefore is liable as a person acting on
2 behalf of an employer pursuant to California Labor Code Section 558.1.

3 15. Plaintiff is unaware of the true names or capacities of Defendants sued herein
4 under the fictitious names DOES 1–25, inclusive, but prays for leave to amend and serve such
5 fictitiously-named Defendants pursuant to California Code of Civil Procedure § 474 once their
6 names and capacities become known.

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

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

14 18. At all times herein mentioned, Defendants, and each of them, ratified each and
15 every act or omission complained of herein. At all times herein mentioned, Defendants, and each
16 of them, aided and abetted the acts and omissions of each and all of the other Defendants in
17 proximately causing the damages herein alleged.

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

21 **JURISDICTION**

22 20. This Court has jurisdiction over the violations of the PAGA and Labor Code §§
23 2802 and 201-203 for unreimbursed expenses incurred in the discharge of work-related duties
24 and failure to timely pay all wages due upon separation or termination of employment.

25 21. This Court has jurisdiction over Defendants because upon information and belief,
26 each party has sufficient minimum contacts in California or otherwise intentionally avails itself
27 of California law so as to render the exercise of jurisdiction over it by the California courts
28 consistent with traditional notions of fair play and substantial justice.

1 22. Venue is proper in this Court because, upon information and belief, the named
2 Defendants transacts business and/or has an office in this county and the acts and omissions
3 alleged herein took place in this county.

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

6 **GENERAL ALLEGATIONS**

7 24. Plaintiff and the Aggrieved Employees currently work or formerly worked for
8 Defendants throughout the State of California during the relevant period. Plaintiff and the
9 Aggrieved Employees worked in both exempt and nonexempt, positions for Defendants,
10 including but not limited to: assistant community managers, community managers, leasing
11 consultants, leasing managers, and facilities managers (the “Covered Positions”). Common sorts
12 of duties necessitating the use of personal cell phones and internet by the Plaintiff and Aggrieved
13 Employees include facility management and provision of retention services to clients or conflict
14 resolution activities.

15 25. Throughout the relevant statutory period, Defendants have required Plaintiff and
16 the Aggrieved Employees to use their personal cell phones daily, in the discharge of their work-
17 related tasks. Plaintiff and the Aggrieved Employees utilized their personal cell phones to access
18 and utilize their work emails, obtain pictures of community property to attach to maintenance
19 work orders, and for daily work-related communications with supervisors, managers, clients, and
20 colleagues. Defendants required Plaintiff and the Aggrieved Employees to download the
21 application Sideline on their personal cell phones to communicate with supervisors and
22 colleagues regarding work-related tasks. In addition, Defendants required Plaintiff and certain of
23 the Aggrieved Employees to utilize their personal cell phones to create posts on social media
24 applications such as Instagram. Having a personal cellphone was mandatory for employment with
25 Defendants as Plaintiff and the Aggrieved Employees were often mobile in the discharge of their
26 work-related tasks and Defendants did not provide devices for work-related communications nor
27 other means of taking pictures of community property.

28 26. Despite Defendants’ requirement that Plaintiff and the Aggrieved Employees use

1 their personal cell phones to perform their job duties, Defendants never reimbursed them for doing
2 so. Defendants' failure to reimburse Plaintiff and the Aggrieved Employees violated Labor Code
3 § 2802.

4 27. Plaintiff alleges that the Defendants' failure to reimburse for these work-related
5 expenses is ongoing, systemic, and uniform.

6 28. Plaintiff and a substantial number of the Aggrieved Employees' employment with
7 Defendants ended during the statutory period. When Plaintiff's employment with Defendant
8 ended on or about February 8, 2021, she was not paid all outstanding wages in accordance with
9 Labor Code § 201 until over 30 days after her employment relationship ended.

10 29. Upon information and belief, Plaintiff alleges thereon, that at the time of
11 separation of employment of similarly situated Aggrieved Employees, they were not paid their
12 full wages in accord with Labor Code §§ 201 and 202, either, immediately upon termination or
13 discharge or, for such employees not having a written contract for a definite period of time, and
14 who quit, no later than 72 hours thereafter, as applicable.

15 30. As a result of Defendants' failure compensate employees their full wages upon the
16 separation of their employment and for the cell phone expenses they have necessarily incurred in
17 the discharge of their work-related duties, Plaintiff and the Aggrieved Employees have been
18 denied the use and enjoyment of monies they are owed by Defendant and have been forced to
19 incur attorney's fees and costs of suit.

20 **CAUSE OF ACTION**

21 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT OF 2004,**

22 **LABOR CODE § 2698 ET SEQ.**

23 **(As to Defendant and DOES 1 through 25, inclusive)**

24 31. Plaintiff realleges and incorporates by reference all preceding paragraphs as
25 though fully set forth herein.

26 32. The Private Attorney Generals Act of 2004 (the "PAGA") expressly establishes
27 that any provision of the California Labor Code which provides for a civil penalty to be assessed
28 and collected by the Labor and Workforce Development Agency (the "LWDA"), or any of its

1 departments, divisions, commissions, boards, agencies or employees for a violation of the
2 California Labor Code, may be recovered through a civil action brought by an aggrieved
3 employee on behalf of himself or herself, and other current or former employees.

4 33. On March 26, 2021, Plaintiff, MARISSA PADILLA, on behalf of herself and all
5 similarly situated Aggrieved Employees, submitted a written Notice to the LWDA setting forth
6 the alleged facts and identifying the specific provisions of Labor Code § 2802 that Plaintiff
7 contends was and is violated by Defendants. A true and correct copy of the March 26, 2021,
8 PAGA Notice is attached hereto as **Exhibit A**. More than 65 days have passed since Plaintiff
9 submitted her PAGA Notice and to date, Plaintiff PADILLA has not received a response from
10 the LWDA indicating its intent to investigate her claims.

11 34. Plaintiff PADILLA is an “aggrieved employee” as defined by California Labor
12 Code § 2699(c) in that she is a former employee of Defendants and was subjected to the alleged
13 violations of Defendants.

14 **Failure to Reimburse for Work-Related Expenses**

15 35. Labor Code § 2802 provides that an employer shall indemnify his or her
16 employees for all necessary expenditures or losses incurred by the employee in direct
17 consequence of the discharge of his or her duties.

18 36. As alleged above, Defendants requires and required the Plaintiff and the
19 Aggrieved Employees to use their personal cell phones to perform their job duties. An employer
20 that knows or has reason to know that an employee has incurred work-related expenses must
21 reimburse the employee, even if the employee does not request reimbursement. However,
22 Defendants have not paid Plaintiff or the Aggrieved Employees any reimbursement for the daily
23 imposition and required use and expenses incurred for their personal cell phones in the
24 performance of their job duties, in violation of Labor Code § 2802.

25 37. Defendants’ wrongful acts as alleged constitute a continuing and ongoing unlawful
26 activity prohibited by the California Labor Code.

27 38. As a result of Defendants’ violation of Labor Code § 2802, Plaintiff and the
28 Aggrieved Employees seek reimbursement for all business-related expenses they have incurred

1 working for Defendants, all applicable PAGA civil penalties, together with interest thereon, as
2 well as their attorneys' fees and costs.

3 39. All unreimbursed expenses and penalties owed by Defendants to Plaintiff and the
4 Aggrieved Employees may be recovered through this PAGA action; no class certification is
5 required for Plaintiff to obtain a recovery on behalf of herself and on behalf of the Aggrieved
6 Employees. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 970-975.)

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

8 40. Labor Code §§ 201 and 202 require employers such as Defendants to pay their
9 employees all wages due within the time specified by law. California Labor Code § 203 provides
10 that if an employer willfully fails to timely pay such wages, the employer must continue to pay
11 the employee's subject wages until the back wages are paid in full or an action is commenced, up
12 to a maximum of 30 calendar days of wages.

13 41. As alleged supra, Plaintiff did not receive her final pay at the time she terminated
14 her employment relationship with Defendants on or about February 8, 2021. She did not receive
15 her final paycheck and all outstanding wages due until over 30 days after her final date of
16 employment. Plaintiff and the Aggrieved Employees who ceased employment with Defendants
17 during the statutory period were entitled to be timely and fully paid all wages each was due upon
18 separation or termination of employment.

19 42. More than 30 days have passed since such Aggrieved Employees have left
20 Defendants' employ.

21 43. As a consequence of Defendants' willful conduct in not paying such Aggrieved
22 Employees their full compensation due upon separation of employment for all hours worked, each
23 is entitled to an amount equal to 30 days' wages under Labor Code § 203, together with interest
24 thereon as well as their attorneys' fees and costs.

25 **Damages**

26 44. Defendants' actions constitute continuing and ongoing unlawful activity
27 prohibited by the California Labor Code, as alleged and therefore these acts constitute violations
28 of the PAGA.

45. Pursuant to California Labor Code §§ 2699 and 2802, Plaintiff requests and is entitled to recover from Defendants damages, civil penalties, interest, attorneys' fees and costs, as well as all statutory penalties against Defendant, including but not limited to:

46. Unreimbursed work-related expenses pursuant to Labor Code § 2802 in an amount determined according to proof at trial;

47. Civil Penalties under California Labor Code § 2699 in the amount of a 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;

48. Any and all additional penalties and sums as provided by the Labor Code and/or other statutes; and

49. Attorneys' fees and costs pursuant to Labor Code §§ 2699, 2802, and any other applicable statute.

50. Accordingly, Plaintiff respectfully requests that the Court award judgment and relief in her favor including civil penalties under California Labor Code §2699 in the amount of 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 during the relevant period, according to proof.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, pursuant to PAGA, prays for judgment as follows:

1. Upon the PAGA Cause of Action, for civil penalties and wages pursuant to statute as set forth in Labor Code § 2698 *et seq.* for Defendants' violations of Labor Code §§ 2802 and 201-203;

- 1 2. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor
2 Code §§ 2699 and 2802, and any other applicable statute;
3 3. For injunctive relief; and
4 4. For such other and further relief the court may deem just and proper.

5
6 **DEMAND FOR JURY TRIAL**

7 PLAINTIFF hereby demands trial of all issues by jury.
8
9

10 DATED: February 14, 2022

SW EMPLOYMENT LAW GROUP, APC

11
12 By: _____


 Jacob N. Whitehead, Esq.

 Maria Burciaga, Esq.

 Attorneys for Plaintiff, MARISSA PADILLA
 and the Aggrieved Employees

EXHIBIT A



March 26, 2021

Via Online Filing

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

Via USPS First-Class Mail

Jessica Beck, CEO
Pacific Personnel Services, Inc.
2082 Michelson Drive, 4th Floor
Irvine, California 92612

Via Certified Mail

Nancy Dubonnet, APC
Registered Agent for
Pacific Personnel Services, Inc.
4685 MacArthur Court, Suite 410
Newport Beach, California 92660

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, Marissa Padilla ("Plaintiff") has retained Whitehead Employment Law to represent her and other similarly-situated current and former employees (collectively, the "Aggrieved Employees") of Pacific Personnel Services, Inc., a California corporation, duly registered with the California Secretary of State to conduct business in California; and Does 1 through 20 (hereinafter "Defendants") regarding claims of violation of the California Labor Code.

Defendants currently or formerly employed Plaintiff and other Aggrieved Employees, who work or have worked as exempt or non-exempt, salary or hourly, full time or part time employees, including but not limited to Assistant Managers and Community Managers (the "Covered Positions"). This notice formally serves to inform Defendants of Plaintiff's intent to file a PAGA complaint against Defendants and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to claims for Defendants' failure to reimburse work-related expenses and failure to pay all wages due upon termination to Plaintiff and Aggrieved Employees.

As further detailed below, Defendants violated the provisions of California Labor Code § 2802 and failed to timely pay all wages due to Aggrieved Employees who ceased employment with Defendants during the statutory period upon their separation or termination of employment.

Plaintiff was formerly employed by Defendants from on or about February 21, 2018 until on or about February 8, 2021 as a full-time, salaried, exempt Community Manager. Plaintiff worked directly with clients and vendors to provide customer service and respond to maintenance calls.

During the relevant statutory period, Plaintiff and the Aggrieved Employees had to daily utilize their personal cell phones for work-related duties and functions. Plaintiff and the Aggrieved Employees used personal cell phones to call and text their supervisors and co-workers regarding work-related matters, including building maintenance to communicate with vendors. Plaintiff and the Aggrieved Employees were required to download the application Sidelined, a text messaging platform, on their personal cell phones for communication with managers and co-workers. On occasion, Plaintiff and Aggrieved Employees worked from home during which time they utilized their personal computers and internet. At no time have Defendants ever reimbursed Plaintiff or the Aggrieved Employees for the expenses they incurred in the utilization of their personal cell phones, laptops, or wireless internet.

During the statutory period, Defendants have unlawfully failed to pay all wages due upon termination to Plaintiff and Aggrieved Employees. To date, Plaintiff has not received her final paycheck for her last two weeks of pay. In addition, Defendants have failed to pay the waiting time penalties to which Plaintiff and Aggrieved Employees are lawfully entitled under Labor Code § 203.

Plaintiff is informed and believes that the said violations are ongoing, systematic and uniform. Plaintiff intends to bring an action against Defendants under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

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.

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 in the course of work-related duties with no reimbursement from Defendants. Defendants have also required Plaintiff and the Aggrieved Employees to use their personal laptop and internet while working from home. Defendants violated Labor Code § 2802 and 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 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 and certain of the Aggrieved Employees’ employment relationships with Defendants terminated, Defendants failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Defendants have failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Defendants have failed to pay the Plaintiff and Aggrieved Employees all of their earned wages, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Conclusion

In sum, as has been factually alleged, Defendants violated Labor Code §§ 201-203 and 2802, among other statutes and regulations. 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

California Labor & Workforce
Development Agency
March 26, 2021
Page 4 of 4

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/eem



July 26, 2021

Via Online Filing

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

Via Certified Mail

Nancy Dubonnet, APC
Registered Agent for
Pacific Personnel Services, Inc.
4685 MacArthur Court, Suite 410
Newport Beach, California 92660

Via Certified Mail

Nancy Dubonnet, APC
Registered Agency for
Trinity Property Consultants, LLC
4685 MacArthur Court, Suite 410
Newport Beach, California 92660

Via USPS First-Class Mail

Jessica Beck, CEO
Pacific Personnel Services, Inc.
2082 Michelson Drive, 4th Floor
Irvine, California 92612

Via USPS First-Class Mail

Michael B. Earl, Manager
Trinity Property Consultants, LLC
2082 Michelson Drive, 4th Floor
Irvine, California 92612

Re: First Amended Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the "PAGA"); LWDA-CM-827121-21

Dear Sir(s) and/or Madam:

Please be advised that representative plaintiff, Marissa Padilla ("Plaintiff") has retained Whitehead Employment Law to represent her and other similarly-situated current and former employees (collectively, the "Aggrieved Employees") of Pacific Personnel Services, Inc., a California corporation, Trinity Property Consultants, LLC, a California limited liability company, and Does 1 through 20 (hereinafter "Defendants") regarding claims of violation of the California Labor Code.

Defendants currently or formerly employed Plaintiff and other Aggrieved Employees, who work or have worked as exempt or non-exempt, salary or hourly, full time or part time employees, including but not limited to Assistant Managers and Community Managers (the "Covered Positions"). This notice formally serves to inform Defendants of Plaintiff's intent to file a PAGA complaint against Defendants and bring causes of action for violations of the PAGA

and for injunctive relief including, but not limited to claims for Defendants' failure to reimburse work-related expenses and failure to pay all wages due upon termination to Plaintiff and Aggrieved Employees.

As further detailed below, Defendants violated the provisions of California Labor Code §§ 2802 and 201-203.

Plaintiff was formerly employed by Defendants from on or about February 21, 2018, until on or about February 8, 2021, as a full-time, salaried, exempt Community Manager. Plaintiff worked directly with clients and vendors to provide customer service and respond to maintenance calls.

During the relevant statutory period, Plaintiff and the Aggrieved Employees had to daily utilize their personal cell phones for work-related duties and functions. Plaintiff and the Aggrieved Employees used personal cell phones to call and text their supervisors and co-workers regarding work-related matters. They further utilized their personal cell phones to communicate with vendors and clients regarding building maintenance. Plaintiff and the Aggrieved Employees were required to download the application Sideline, a text messaging platform, on their personal cell phones for communication with managers and co-workers. On occasion, Plaintiff and Aggrieved Employees worked from home during which time they utilized their personal computers and internet. At no time have Defendants ever reimbursed Plaintiff or the Aggrieved Employees for the expenses they incurred in the utilization of their personal cell phones, laptops, or wireless internet.

During the statutory period, Defendants have unlawfully failed to pay all wages due upon termination to Plaintiff and Aggrieved Employees. When Plaintiff's employment relationship with Defendants ended, she did not receive her final paycheck until over 30 days after her separation. In addition, Defendants have failed to pay the waiting time penalties to which Plaintiff and Aggrieved Employees are lawfully entitled under Labor Code § 203.

Plaintiff is informed and believes that the said violations are ongoing, systematic and uniform. Plaintiff intends to bring an action against Defendants under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

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 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, paragraphs (1) to (5), inclusive, (7), and (9) of 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, Sections 1735, 1771, 1774, 1776, 1777.5, 1811,

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 in the course of work-related duties with no reimbursement from Defendants. Defendants have also required Plaintiff and the Aggrieved Employees to use their personal laptop and internet while working from home. Defendants violated Labor Code § 2802 and 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 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 and certain of the Aggrieved Employees’ employment relationships with Defendants terminated, Defendants failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Defendants have failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Defendants have failed to pay the Plaintiff and Aggrieved Employees all of their earned wages, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Conclusion

In sum, as has been factually alleged, Defendants violated Labor Code §§ 201-203 and 2802, among other statutes and regulations. Plaintiff on her own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory

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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/eem