

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Yolanda Orozco

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

STEVEN BLAIN

Plaintiff,

vs.

NTT AMERICA, INC., a corporation and
NTT AMERICA SOLUTIONS, INC., a
corporation;

Defendants.

Case No.: **21STCV22561**

COMPLAINT

**1. CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE SECTION 2698,
ET. SEQ.)**

DEMAND FOR JURY TRIAL

NATURE OF ACTION

1
 2 1. This action is brought by Plaintiff Steven Blain (hereinafter, “Blain” or “Plaintiff”)
 3 against NTT America, Inc. and NTT America Solutions, Inc. (hereinafter collectively referred to as
 4 “NTT America”).

5 2. Blain is an aggrieved employee as NTT America willfully failed to pay Blain earned
 6 commissions after a demand was made, willfully failed reimburse business expenses, willfully failed
 7 to indemnify necessary business expenses, and failed to provide payroll and personnel records after
 8 a demand was made.

THE PARTIES

9
 10 3. At all times mentioned herein, Blain was and is an individual over the age of eighteen
 11 and was and is residing in Valencia, California, within Los Angeles County. For more than a year
 12 since the filing of this litigation, Blain was employed by NTT America and worked out of his home
 13 in Valencia, California. Blain was also assigned at times to the Glendale office and the Irvine,
 14 California offices. Blain was, and is, a victim of Defendants’ policies and/or practices complained
 15 of herein, lost money, and has been deprived of the rights guaranteed by Labor Code sections 200-
 16 204, 204.1, 204.2, 206(b), 206.5, 210, 226, 1198, 1198.5, 2802, and 2804.

17 4. Blain is informed and believes, and based on that information and belief, alleges that
 18 NTT America, Inc. is Delaware Corporation that is authorized to do business in California. During
 19 the relevant time period of this litigation, NTT America, Inc. has or had offices in Glendale,
 20 Valencia, Irvine, San Diego, the San Francisco Bay Area, and other parts of California. Employees
 21 throughout California also worked out of their homes.

22 5. Blain is informed and believes, and based on that information and belief, alleges that
 23 NTT America Solutions, Inc. is a New York corporation that is authorized to do business in
 24 California. NTT America, Inc. has or had offices in Glendale, Irvine, San Diego, the San Francisco
 25 Bay Area, and other parts of California. Employees throughout California also worked out of their
 26 homes.

27 6. At all relevant times, each NTT America entity employed more than 5 employees in
 28 California.

7. Blain is informed and believes, and thereon alleges, that each of the Defendants herein, however designated, whether by real or fictitious names, were and are in some manner responsible for the events, happenings, occurrences and instrumentalities upon about which the Complaint is herein made.

8. Blain is further informed and believes, and thereon alleges, that each of the Defendants herein, whether designated by real or fictitious names, are, and at all times relevant hereto, were, the agent, alter ego, servant, employee and hireling of each of the Co-Defendants and in doing the things and acts herein alleged and complained of or in failing to do that which they should have done, were acting within the course and scope of such employment, agency, and hiring with the full knowledge, consent, approval, and ratification of each of the other Co-Defendants.

9. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, alter ego, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Blain alleges that all Defendants were joint employers for all purposes of Blain.

JURISDICTION AND VENUE

10. This Complaint is brought pursuant to California Code of Civil Procedure section 382. The monetary damages and restitutions sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

11. The Court has personal jurisdiction over NTT America because it has or had offices throughout California during the relevant time period and does business in the State of California.

12. Venue is proper in this County in accordance with Section 395(a) of the California Code of Civil Procedure because NTT America has offices in Los Angeles County, Blain worked out of his home office in this county, and the injuries alleged herein occurred in this County.

13. In the alternative, venue is appropriate in this County in accordance with Section 395(a) and Section 395.5 of the California Code of Civil Procedure because NTT America and Plaintiff contracted to perform their obligations in this County, the contract was entered into in this County, and because the liability, obligation and breach occurred within this County.

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1 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

2 14. On April 1, 2021, Plaintiff notified the NTT America Defendants via certified mail,
3 and the California Labor Workforce Development Agency (“LWDA”) via its website, of NTT
4 America’s violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil
5 penalties under the PAGA with respect to violations of the California Labor Code identified herein
6 (“PAGA Notice”). As of the date of this Complaint, NTT America did not respond.

7 **GENERAL ALLEGATIONS**

8 15. On October 30, 2017, Blain was hired by Dimension Data North America, Inc. as a
9 Senior Client Manager, which is a sales related position. Blain was paid a salary plus commission.
10 The commission payments were subject to written compensation plans that were modified on or
11 around each fiscal year.

12 16. On or about October 21, 2019, Dimension Data North America, Inc. filed a name
13 change form with the California Secretary of State to change its name to NTT America Solutions,
14 Inc. As of Blain’s October 4, 2019, paycheck, the name NTT America Solutions, Inc. replaced
15 Dimension Data North America, Inc. as the name of Blain’s employer.

16 17. On Blain’s paycheck dated January 8, 2021, NTT America, Inc. replaced NTT
17 American Solutions, Inc. as Blain’s employer. Blain is informed and believes that Dimension Data
18 North America, Inc, NTT America Solutions, Inc., and NTT America, Inc. are all the same
19 companies, joint employers, successors in interest, and alter egos in that they all employed him,
20 directed his work, shared in his sales, and employed his supervisors and managers.

21 18. NTT America has a written policy that limits the time an employee who receives
22 commission can bring a commission error to the attention of the company for correction to 90 days
23 following the date of the payment. Based on this policy, NTT America refused to pay Mr. Blain and
24 others their earned commissions when errors were made.

25 19. Specifically, on January 26, 2021, Blain emailed Jackson Cristee, Kimberly Hawk,
26 and Ravi Padmanabhan to informed them of an error related to a prior commission payment. Cristee
27 responded to the email stating that because the error was made on September 4, 2020, no correction
28 would be made because Blain notified the company of the error more than 90 days after it occurred.

1 The error involved approximately \$39,562.94 in unpaid commissions. Mr. Cristee stated the policy
2 applies to “Any Participant.”

3 20. NTT America has a similar company-wide policy regarding reimbursement of
4 business expenses. An employee who fails to submit his or her business expenses within 90 days of
5 incurring the expense cannot receive reimbursement for the expense. This policy is in violation of
6 Labor Code section 2802. Blain has not been able to submit certain business expenses due to this
7 unlawful policy.

8 21. Blain made a request for his personnel file and payroll records. NTT America failed
9 to provide the statements showing how his commissions were calculated or his complete
10 compensation plans.

11 **FIRST CAUSE OF ACTION**

12 **PAGA**

13 **(Against the NTT America Defendants)**

14 22. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 23. Plaintiff as an “aggrieved employee” within the meaning of Labor Code section 2698
16 *et seq* (“PAGA”), acting on behalf of himself and other aggrieved employees, brings this
17 representative action against NTT America to recover the civil penalties due to Plaintiff, other
18 aggrieved employees, and the State of California according to proof, pursuant to Labor Code section
19 2699 (a) and (f) including, but not limited to:

- 20 a. Failing to furnish Plaintiff and other aggrieved employees all wages due and owing
21 in violation of Labor Code section 201-203;
- 22 b. Failing to pay Plaintiff and other aggrieved employees’ their wages semimonthly
23 pursuant to Labor Code section 204;
- 24 c. Failing to pay Plaintiff and other aggrieved employees their commissions on a
25 monthly basis in violation of Labor Code section 204.1;
- 26 d. Failing to pay Plaintiff and other aggrieved employees their undisputed wages in
27 violation of Labor Code section 206;
- 28 e. Requiring Plaintiff and other aggrieved employees to release wages due without the

wages being paid in violation of Labor Code section 206.5;

f. Failing to furnish Plaintiff and other aggrieved employees with a complete copy of records within 21 days of a request in violation of Labor code section 226(c)

g. Failing to reimburse Plaintiff and other aggrieved employees for all necessary business expenses in violation of Labor Code sections 1198, 1198.5, 2802 and 2804;

24. Penalties due to Plaintiff and aggrieved employees include, but are not limited to, (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code section 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) the wages due and owing Plaintiff and other aggrieved employees shall continue as a penalty from the due date thereof at the same rate until paid or until an action thereof is commenced; but the wages shall not continue more than 30 days pursuant to Labor Code section 203; (3) 100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation plus 25% of the amount unlawfully withheld pursuant to pursuant to Labor Code section 210; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Labor Code section 226 pursuant to Labor Code section 226.3 per employee per pay period; (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided; (6) treble damages pursuant to Labor Code section 206; (7) \$750.00 and injunctive relief pursuant to Labor Code 1198.5; and (8) penalties pursuant to Labor Code section 2802.

25. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by NTT America. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under California Labor Code section 2699(g).

PRAYER FOR RELIEF

WHEREFORE, Blain prays for judgment as follows:

1. Civil penalties pursuant to the Labor Code;
2. Treble damages pursuant to the Labor Code;

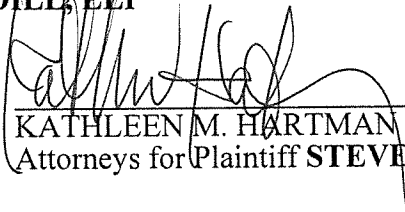
3. Injunctive relief pursuant to the Labor Code;
4. For attorneys' fees and costs pursuant to Code of Civil Procedure Section 1021.5, and
Labor Code sections 218.5, including lodestar, and multipliers, as well as expert fees;
and
5. For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

DATED: June 16, 2021

**CALLAHAN, THOMPSON, SHERMAN &
CAUDILL, LLP**

By


KATHLEEN M. HARTMAN
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