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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

Case No.: 21CV003476

JULIA DOWNS and JOSE MAGALLANES,
individually, and on behalf of all others similarly
situated,

Plaintiffs,

vs.

GUARANTEED RATE, INC. and DOES 1
through 50, inclusive

Defendants.

**FIRST AMENDED COMPLAINT FOR
PENALTIES FOR VIOLATION OF
LABOR CODE § 2698 *et seq.* (PRIVATE
ATTORNEYS GENERAL ACT OF 2004)**

1 Plaintiffs JULIA DOWNS (“Downs”) and Jose Magallanes (“Magallanes”) (collectively,
2 “Plaintiffs”) hereby submits their Complaint against Defendant Guaranteed Rate, Inc. and DOES
3 1 through 50, inclusive (collectively, “Defendants”), on behalf of themselves and other current
4 and former aggrieved employees of Defendants for penalties as follows:

5 **INTRODUCTION**

6 **1.** This is not a class action. This is a representative action brought individually and on
7 behalf of other current and former aggrieved employees pursuant to California Labor Code
8 §2698 *et seq.* (the Private Attorneys General Act of 2004 (“PAGA”) for Defendants’ violations
9 of the California Labor Code provisions set forth herein).

10 **JURISDICTION AND VENUE**

11 **2.** This action is brought pursuant to PAGA. The civil penalties sought by Plaintiffs
12 exceed the minimal jurisdiction limits of the Superior Court and will be established according to
13 proof at trial. This Court also has jurisdiction over this action pursuant to California
14 Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all
15 causes except those given by statute to other courts. The statutes under which this action is
16 brought do not specify any other basis for jurisdiction.

17 **3.** This Court has jurisdiction over the violations of PAGA and California Labor Code
18 §§ 200, 201, 202, 203, 204, 226, 226.7, 432, 500-508, 510, 515, 558, 1174, 1194, 1197, 1198,
19 1198.5, 2802 and 2698, *et seq.*

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

24 **5.** Venue is proper in this Court because upon information and belief, the named
25 Defendants transact business and/or have offices in this county and the acts and omissions
26 alleged herein took place in this county. Therefore, PAGA claims may be litigated in this
27 county.
28

PARTIES

6. Plaintiffs JULIA DOWNS and JOSE MAGALLANES are individuals over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint a citizen of the State of California, and was in actuality a non-exempt employee employed by Defendants in California; however, Plaintiffs and other current and former aggrieved non-exempt employees herein were misclassified by Defendant as exempt from the provisions of the California Labor Code alleged herein in violation of California Labor Code and the applicable California Industrial Welfare Commission wage order(s). Plaintiffs seek to represent: All current and former aggrieved employees that were assigned to work out of their homes in California and then classified by Defendant as exempt under the outside sales exemption in California during the period from one year prior to September 14, 2021 to the date of judgment. Plaintiffs alleges that she and the other aggrieved employees were in fact “non-exempt” employees that were entitled to all the protections afforded by California law to non-exempt employees.

7. Defendant is a California company and the owner and operator of an industry, business and/or facility licensed to do business and/or actually doing business in the State of California.

8. On information and belief, Defendant, GUARANTEED RATE, INC., is now, and/or at all times mentioned in this Complaint was liable for the allegations to Plaintiffs and the California-based aggrieved employees as fully set forth in this Complaint.

9. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiffs prays for leave to amend this complaint when the true names and capacities are known. Plaintiffs are informed and believes and thereon alleges that each of Defendants designated as a DOE was responsible in some way for the matters alleged herein and proximately caused Plaintiffs and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

10. At all times mentioned herein, Defendants, and each of them, were agents, partners,

joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, representatives, servants, employees, successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly committed with ratification, knowledge, permission, encouragement, authorization and consent of each Defendant designated herein.

11. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to PAGA and California Labor Code §§ 200, 201, 202, 203, 204, 226, 226.7, 432, 500-508, 510, 515, 558, 1174, 1194, 1197, 1198, 1198.5, 2802 and 2698, et seq.

CAUSE OF ACTION

VIOLATION OF PAGA

(AGAINST ALL DEFENDANTS BY PLAINTIFFS)

12. Plaintiffs re-allege and incorporates by reference paragraphs 1 through 14 as though fully set forth herein.

13. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

14. On September 14, 2021, Plaintiff Downs provided an amended written notice to both the LWDA (PAGA No. LWDA-CM-833169-21) and Defendants identifying the specific provisions of the Labor Code she contends were violated, and the theories supporting her contentions. Plaintiffs believe that the sixty-five (65) day notice period expired and the LWDA did not take any action to investigate or prosecute this matter. Therefore, Plaintiffs have exhausted the statutory time period to bring this action. On September 14, 2021, Plaintiff Magallanes also provided a written notice to both the LWDA (PAGA No. LWDA-CM-844574-21) and Defendant identifying the specific provisions of the Labor Code he contends were

1 violated, and the theories supporting his contentions.

2 **15.** Plaintiffs and the other misclassified employees are “aggrieved employees” as
3 defined by California Labor Code § 2699(c) in that they are all current or former employees of
4 Defendants, and one or more of the alleged violations was committed against them.

5 **Failure to Pay Minimum and Overtime Wages**

6 **16.** At all times relevant herein, Defendants were required to compensate their non-
7 exempt employees’ minimum wages for all hours worked and overtime wages for all hours
8 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
9 mandate of Labor Code §§ 510, 1194, 1197, and 1198.

10 **17.** As a pattern and practice, Defendants failed to compensate Plaintiffs and other
11 aggrieved current and former employees for all hours worked, including for work performed off-
12 the-clock, and improperly excluded bonuses and commissions from its calculation of Plaintiffs’
13 and other aggrieved current and former employees’ regular rate of pay for overtime
14 compensation purposes, resulting in a failure to pay all minimum wages and overtime wages,
15 where applicable.

16 **Failure to Provide Meal Periods and Authorize and Permit Rest Breaks**

17 **18.** In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendants were
18 required to authorize and permit their non-exempt employees to take a paid off duty 10-minute
19 rest break for every four (4) hours worked or major fraction thereof, and were further required
20 to provide their non-exempt employees with an off duty 30-minute meal period for every five
21 (5) hours worked.

22 **19.** As a pattern and practice, Defendants failed to provide Plaintiffs and other aggrieved
23 current and former employees with legally-mandated meal periods and failed to authorize and
24 permit legally-mandated rest breaks, and failed to compensate them premium wages. Further,
25 Defendants failed to provide Plaintiffs and other aggrieved current and former employees with
26 the requisite number of meal periods and rest breaks when working shifts exceeding greater than
27 10 hours in length.
28

1 **Failure to Timely Pay Wages During Employment**

2 **20.** At all times relevant herein, Defendants were required to pay their employees within
3 a specified time period pursuant to the mandate of Labor Code § 204.

4 **21.** As a pattern and practice, Defendants regularly failed to timely pay Plaintiffs and
5 other aggrieved current and former employees all wages due and owing them within the required
6 time period.

7 **Failure to Timely Pay Wages Upon Termination**

8 **22.** At all times relevant herein, Defendants were required to pay their employees all
9 wages owed in a timely fashion at the end of employment pursuant to California Labor Code §§
10 201 to 204.

11 **23.** As a result of Defendants' Labor Code violations alleged above, Defendants failed
12 to pay Plaintiffs and the other aggrieved former employees their final wages pursuant to Labor
13 Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to Labor Code § 203.

14 **Failure to Provide Complete and Accurate Wage Statements**

15 **24.** Defendants do not comply with the requirements of Labor Code Section 226(a) which
16 requires that "every employer shall, semimonthly or at the time of each payment of wages, furnish
17 each of his or her employees, either as a detachable part of the check, draft, or voucher paying the
18 employee's wages, or separately when wages are paid by personal check or cash, an accurate
19 itemized statement in writing showing:

20
21 (1) gross wages earned,

22 (2) total hours worked by the employee, except for any employee whose
23 compensation is solely based on a salary and who is exempt from payment of
24 overtime under subdivision (a) of Section 515 or any applicable order of the
Industrial Welfare Commission,

25 (3) the number of piece-rate units earned and any applicable piece rate if the
26 employee is paid on a piece-rate basis,

27 (4) all deductions, provided that all deductions made on written orders of the
28 employee may be aggregated and shown as one item,

1 (5) net wages earned,

2 (6) the inclusive dates of the period for which the employee is paid,

3 (7) the name of the employee (and the last four digits of his or her social security
4 number or an employee identification number other than a social security number
5 *may* be shown on the itemized statement),

6 (8) the name and address of the legal entity that is the employer, and

7 (9) all applicable hourly rates in effect during the pay period and the corresponding
8 number of hours worked at each hourly rate by the employee.

9 Defendants fail to provide accurate and complete information, as specified in items specific herein
10 above as set forth in section 226(a).

11 **25.** California Labor Code Section 226(e) provides: "An employee suffering injury as a
12 result of a knowing and intentional failure by an employer to comply with subdivision (a) shall
13 be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
14 period in which a violation occurs and one hundred dollars (\$100) per employee for each
15 violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
16 (\$4,000), and shall be entitled to an award of costs and reasonable attorney's fees." Plaintiffs
17 and the other aggrieved employees suffered injuries as defined and set forth in California Labor
18 Code Section 226(e) because, in addition to Defendants' failure to provide accurate and complete
19 information, as specified as set forth herein above (as set forth in section 226(a)), Plaintiffs and
20 the other aggrieved employees could not "promptly and easily determine" from the wage
21 statements alone the correct hourly rate in effect during the pay period (i.e., without reference to
22 other documents or information), nor was the overtime rate or the hours worked provided in the
23 statements accurate.

24 **26.** During the applicable time period, Defendants failed to provide Plaintiffs and the other
25 aggrieved employees with timely and accurate wage and hour statements showing gross wages
26 earned, net wages earned, overtime pay, and all applicable hourly rates in effect during each pay
27 period with the corresponding number of hours worked at each hourly rate by that individual.
28

1 **27.** As alleged herein, Plaintiffs and the other aggrieved employees are/were not exempt
2 from the requirements of California's labor laws and regulations. Plaintiffs and the aggrieved
3 employees were and will be injured by Defendants' failure to comply with the aforementioned
4 requirements for time records and wage statements.

5 **28.** At all times relevant herein, Defendants were required to both provide and keep
6 accurate records regarding their California employees pursuant to the mandate of Labor Code §§
7 226 and 1174.

8 **29.** As a result of Defendants' various Labor Code violations, Defendants failed to keep
9 accurate records regarding Plaintiffs and other aggrieved current and former employees. For
10 example, Defendants failed in their affirmative obligation to keep accurate records regarding
11 Plaintiffs and other aggrieved current and former employees' gross wages earned, total hours
12 worked, all deductions, net wages earned, and all applicable hourly rates and the number of hours
13 worked at each hourly rate.

14 **Failure to Reimburse Business Expenses**

15 **30.** At all times relevant herein, Defendants were required to reimburse its employees
16 for any and all necessary expenditures or losses incurred by the employees in direct
17 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code §§
18 2800 and 2802. Plaintiffs and the aggrieved employees incurred expenditures and losses in direct
19 consequences of the discharge of his or her duties pursuant to the mandate of Labor Code §§
20 2800 and 2802.

21 **31.** As a pattern and practice, Defendants failed to pay Plaintiffs and other aggrieved
22 current and former employees all business expenses incurred and owing them within the required
23 time period, including for the purchase of supplies, and the use of their home office space,
24 utilities, personal cellular phones and internet connections to perform their job duties.

25 **Penalties**

26 **32.** Pursuant to California Labor Code § 2699, Plaintiffs, individually, and on behalf of
27 other current and former aggrieved employees, requests and is entitled to recover from
28 Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, as well

as all statutory penalties against Defendants, and each of them, including but not limited to:

33. 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;

34. Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

35. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code 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;

36. Penalties under Labor Code § 1197.1 in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

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

38. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, 2802, and 2699, and any other applicable statute.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on her own behalf and as representative of other aggrieved current and former employees pursuant to PAGA, prays for judgment as follows:

1. For civil penalties pursuant to statute as set forth in Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 200, 201, 202, 203, 204, 226, 226.7, 432, 500-508, 510, 515, 558, 1174, 1194, 1197, 1198, 1198.5, 2802 and 2698, *et seq.*
2. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code §§ 210, 1194, 2802 and 2699, and any other applicable statute; and

3. For such other and further relief the court may deem just and proper.

Dated: June 5, 2025

RIGHETTI GLUGOSKI, P.C.

By: /s/ John Glugoski
John Glugoski
Attorneys for Plaintiff
JULIA DOWNS

Dated: June 5, 2025

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