

July 22, 2021

Clerk of the Superior Court
By O'Lopez, Deputy Clerk

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individually and as a proxy for the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

[UNLIMITED CIVIL—COMPLEX]

JEFFREY WOERTINK, an individual, and as a
proxy for the State of California,

Plaintiff,

vs.

AMBRY GENETICS CORPORATION, a
corporation; and DOES 1 through 5, inclusive,

Defendants.

Case No.: 30-2021-01212424-CU-OE-CXC

COMPLAINT FOR:

1. Private Attorneys General Act

DEMAND FOR JURY TRIAL

Hon. William D. Cluster
Dept. CX-104

Plaintiff, JEFFREY WOERTINK, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear the subject matter of this complaint. This Court also has jurisdiction over each defendant, as the unlawful business acts alleged herein occurred in California. Plaintiff's claims arise out of and are related to all Defendant's contacts with California.

2. Venue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred. Venue is proper in this Court because all or some of the violations of law and unlawful practices alleged herein occurred and are occurring in the County of Orange.

PARTIES

3. Plaintiff is an individual who, at all relevant times, has resided in the State of California.

1 4. Defendant AMBRY GENETICS CORPORATION (“AMBRY”) is a corporation that
2 conducted, and is conducting, business in the State of California. AMBRY registered the address 1
3 Enterprise, Aliso Viejo, CA 92656 with the California Secretary of State as its principal place of
4 business in California.

5 5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
6 DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names and capacities.
7 Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when
8 ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named
9 Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff’s
10 injuries were proximately caused by the conduct of such defendant.

11 6. All of the Defendants, including DOES 1-5, are alleged to be co-conspirators with each
12 other, in that each agreed to participate, and participated in, the furtherance of the objective of civil
13 wrongs as alleged in this Complaint.

14 7. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
15 each defendant was completely dominated and controlled by its, his or her co-Defendants, each was the
16 agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the
17 others.

18 8. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
19 each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-
20 Defendants and was acting within the course and scope of such agency, employment, and/or joint
21 venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain
22 Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant
23 and/or Defendants confirmed and ratified said conduct and omissions.

24 9. Plaintiff is informed and believes and on that basis alleges that at all times relevant
25 herein, the corporate Defendants, and each of them, had the right to control, and controlled, Plaintiff’s
26 wages, hours and working conditions, and has the right to control the manner in which Plaintiff
27 performed work duties, including but not limited to supervision of work, engaged Plaintiff, suffered and
28

permitted Plaintiff to work, and they were employers, joint employers, or co-employers of Plaintiff at all relevant times alleged herein.

10. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the Defendant, and each of them, were an integrated enterprise in that they had an interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control.

GENERAL ALLEGATIONS

11. Defendant employed Plaintiff from at least about March 25, 2016, to his last date of work on May 19, 2020.

12. In the last few months of 2019, Plaintiff's supervisor, Marcus Hajjar, demanded that Plaintiff fraudulently backdate/create times and hour logs for the company's generator during an audit from a national certification agency that would be a violation of laws, rules, or regulations. Plaintiff refused to do the illegal activities and reported the misconduct.

13. On or about January 9, 2020, Plaintiff emailed Monica Mullen in HR stating he could no longer work under Marcus Hajjar.

14. On or about January 10, 2020, Marcus Hajjar had a secret camera installed to record Plaintiff at work.

15. On or about January 11, 2020, Plaintiff had a meeting with Catherine Suh (head of HR) and Michael LU (VP) about the hidden cameras.

16. On or about January 13, 2020, Marcus Hajjar began private counseling with Plaintiff out of the blue for no valid reason. Marcus Hajjar made work difficult for Plaintiff. Soon after, two of Plaintiff's co-workers told Plaintiff that Marcus Hajjar was looking for a reason to fire Plaintiff.

17. On or about January 28, 2020, Marcus Hajjar emailed Plaintiff instructing Plaintiff to backdate information to defraud third parties.

18. Marcus Hajjar double billed Ambry for any new purchases paid to his department budget.

19. On or about February 15, 2020, Plaintiff had a meeting with Brian Caufield (Operations Manager). Plaintiff told Brian Caufield that Marcus Hajjar was committing fraud against the company.

20. On or about May 19, 2020, Marcus Hajjar asked security to physically assault Plaintiff.

21. On or about May 19, 2020, Plaintiff arrived at his workstation and Defendant terminated his employment in retaliation for his protected activities.

22. As a company-wide practice, from at least May 18, 2020, to present, many of Defendant's employees worked remotely. Defendant regularly required those employees to use their personal internet data at home to work remotely. Defendant failed to pay or reimburse them for any portion of those internet data expenses.

FIRST CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST AMBRY AND DOES 1-5)

23. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

24. Pursuant to the California Labor Code Private Attorneys General Act ("PAGA"), "Notwithstanding any other provision of law, any provision of [the California Labor Code] that 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." Lab. Code § 2699(a). "For all provisions of [the California Labor Code] except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions." Lab. Code § 2699(f).

25. This PAGA suit "is fundamentally a law enforcement action." *Arias v. Super. Ct.*, 46 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) ("[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state."); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) ("a PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement"). An employee who brings such an action is acting as an agent of state enforcement agencies. *Kim v. Reins Intl. Cal., Inc.*, 9 Cal.5th 73, 81 (2020).

20. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Lab. Code § 22. Under the PAGA, an “aggrieved employee” means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.”

26. This PAGA action is intended to “remediate present violations and deter future ones.” *Williams*, 3 Cal. 5th at 546. The relevant period for the following PAGA allegations in this cause of action is from May 18, 2020, to present and ongoing.

Labor Code Violations §§ 1102.5 and 2802

§ 1102.5

27. “An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.” Lab. Code § 1102.5(b).

28. “An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.” Lab. Code § 1102.5(c).

29. Plaintiff refused to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. As explained above, Plaintiff disclosed information to a person with authority over him or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, about his reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. Defendant retaliated

1 in response. This was a violation of Labor Code section 1102.5 (b) and (c). Thus, Defendant is liable
2 for a civil penalty not exceeding ten thousand dollars (\$10,000). Lab. Code § 1102.5(f).

3 30. On information and belief, Defendant has also retaliated against other individuals who
4 disclosed information to a person with authority over them who has the authority to investigate,
5 discover, or correct the violation or noncompliance, about their reasonable cause to believe that the
6 information discloses a violation of state or federal statute, or a violation of or noncompliance with a
7 local, state, or federal rule or regulation.

8 **§ 2802**

9 31. “An employer shall indemnify his or her employee for all necessary expenditures or
10 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
11 her obedience to the directions of the employer.” Lab. Code § 2802(a).

12 32. Here, Defendant required or directed that its employees who worked remotely, to do
13 work-related activities using internet data service. Defendant did not reimburse them for any portion of
14 their expenses incurred as a result of the internet data service they used to do work-related activities for
15 Defendant, in violation of Labor Code § 2802(a).

16 33. “Any employer or other person acting on behalf of an employer, who violates, or causes
17 to be violated, any provision regulating minimum wages or hours and days of work in any order of the
18 Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6,
19 1194, or 2802, may be held liable as the employer for such violation.” Lab. Code § 558.1(a). It is
20 currently unknown who caused Defendant to violate Labor Code § 2802.

21 34. Labor Code § 2802 does not have a civil penalty specifically provided. Thus, Labor
22 Code § 2699(f) is applicable to impose civil penalties of one hundred dollars (\$100) for each aggrieved
23 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
24 employee per pay period for each subsequent violation.

25 ***Exhaustion of Administrative Remedies***

26 35. On May 18, 2021, Plaintiff provided a pre-filing notice to the California Labor and
27 Workforce Development Agency (“LWDA”), pursuant to Labor Code § 2699.3, detailing the specific
28 provisions of the foregoing Labor Code sections that have been violated, including the facts and theories

1 to support the violations. The LWDA file number is LWDA-CM-832517-21. The pre-filing notice was
2 sent by certified mail on May 18, 2021, to AMBRY (7019 0140 0000 7526 8910), (7019 0140 0000
3 7526 8767). Plaintiff submitted a \$75.00 fee to the LWDA.

4 36. The LWDA has not, within 65 days of Plaintiff's Notice of violations of the Labor Code,
5 sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff's
6 administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil
7 action, for civil penalties pursuant to Labor Code section 2699. Defendant has not sent any notice to
8 the LWDA attempting to cure the alleged violations of Labor Code statutes not enumerated in Labor
9 Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to
10 Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to
11 Labor Code section 2699.

12 **PRAYER**

13 WHEREFORE, Plaintiff prays:

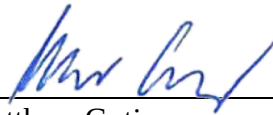
- 14 1. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
15 2. For reasonable attorneys' fees pursuant to the California Labor Code and Code of Civil
16 Procedure.
17 3. For costs of suit including expert witness fees.
18 4. For prejudgment interest.
19 5. For such other and further relief as the Court may deem proper.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff JEFFREY WOERTINK hereby demands a trial by jury.

22 Dated: July 22, 2021

GUTIERREZ DERHAM LAW FIRM LLP

23
24 By: 

Matthew Gutierrez
Attorneys for Plaintiff, JEFFREY WOERTINK,
individually and as a proxy for the State of
California