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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

13 STANLEY CALLAHAN and FAISAL GAILANI,
14 individually and on behalf of all others similarly
15 situated,

16 Plaintiffs,

17 v.

18 PAYCHEX NORTH AMERICA, INC., a
19 Delaware Corporation,

20 Defendant.

CASE NO. 3:21-cv-05670-CRB

**SECOND AMENDED
REPRESENTATIVE ACTION
COMPLAINT FOR CIVIL PENALTIES
PURSUANT TO PRIVATE ATTORNEYS
GENERAL ACT (CAL. LABOR CODE §§
2698 ET SEQ.)**

1 Plaintiff Stanley Callahan and Faisal Gailani ("Plaintiffs"), on behalf of themselves and all others
2 similarly situated, complain and allege the following:

3 **INTRODUCTION**

4 1. This is a representative action under the Labor Code Private Attorneys General Act
5 ("PAGA"), Labor Code §§ 2698 *et seq.*, for civil penalties on behalf of Plaintiffs and other individuals
6 currently and formerly employed by Defendant Paychex North America, Inc. ("Paychex" or "Defendant")
7 as Sales Representatives or in a similar capacity ("Aggrieved Employees") at any time from April 6, 2020
8 through to the trial date ("PAGA Period") for Defendant's alleged violation of Labor Code § 226(a).
9 During the PAGA Period, Defendant maintained a policy and/or practice of misclassifying Aggrieved
10 Employees as outside sales representatives, yet Aggrieved Employees customarily and regularly worked
11 50% or more of their working time at their employer's place of business.

12 2. As a result of misclassifying Aggrieved Employees as exempt throughout the PAGA
13 Period, Defendant did not require Aggrieved Employees to track their hours worked, and thus did not list
14 the total hours worked and/or their applicable hourly rates and corresponding number of hours worked at
15 each rate on the wage statements it furnished to the Aggrieved Employees, in violation of Labor Code §
16 226(a).

17 3. Plaintiffs also bring this representative action on behalf of themselves and Aggrieved
18 Employees who in any pay period earned 50% or more of their total compensation in earnings other than
19 commissions ("Overtime Aggrieved Employees") during the PAGA Period. As stated above, Defendant
20 maintained a practice and/or policy of misclassifying Aggrieved Employees as exempt from overtime,
21 pursuant to the outside sales exemption contained in Wage Order 4, § 1(C). Overtime Aggrieved
22 Employees routinely worked more than eight hours in a day and 40 hours in a workweek and were
23 therefore entitled to overtime pay. However, as a result of misclassifying them as exempt Defendant did
24 not pay Overtime Aggrieved Employees overtime, in violation of Labor Code §§ 1194, 510, and Wage
25 Order No. 4-2001, § 3.
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4. As a result of failing to pay overtime, Defendant failed to pay Plaintiffs and formerly employed Overtime Aggrieved Employees all wages due and owing to them at the time of their discharge, in violation of Labor Code § 201.

5. Plaintiffs also bring this action as a PAGA representative action for civil penalties on behalf of Aggrieved Employees for Defendant's violation of Labor Code § 432.5.

6. Finally, Plaintiffs bring this action on behalf of themselves and all employees employed by Defendant in California (“Expense Reimbursement Aggrieved Employees” or “ER Aggrieved Employees”) at any time during the PAGA Period for unreimbursed business expenses incurred by them during that period. During the PAGA Period, Defendant maintained a policy and/or practice of requiring Plaintiffs and Aggrieved Employees to work remotely. In order to carry out and perform their assigned work-related duties remotely, Plaintiffs and ER Aggrieved Employees incurred and continue to incur expenses, including but not limited to, cost of internet service and telephone service (hereinafter, “home office expenses”). However, Defendant maintains a policy and/or practice of denying reimbursement to Plaintiffs and ER Aggrieved Employees for these necessarily incurred home office expenses, in violation of Labor Code § 2802.

PARTIES

7. Plaintiff Callahan is a resident of Los Angeles, California and was employed by Paychex as a Sales Consultant in Los Angeles from approximately July 2019 through June 2020. During his employment, Plaintiff Callahan was subject to Defendant's unlawful conduct described herein.

8. Plaintiff Gailani is a resident of San Diego, California and was employed by Paychex as a Sales Consultant in San Diego from approximately November 2019 through June 2020. During his employment, Plaintiff Gailani was subject to Defendant's unlawful conduct described herein.

9. Defendant Paychex North America, Inc. is a Delaware corporation with its principal place of business and mailing address at 19 Goldenchain Court, Penfield, New York 14625.

JURISDICTION

10. This Court has jurisdiction over Plaintiffs' claims for civil penalties under Labor Code § 2699. On May 14, 2021, Plaintiffs provided Notice pursuant to Labor Code § 2699.3 to the California

1 Labor & Workforce Development Agency (“LWDA”) and to the Defendant. On August 17, 2021,
2 Plaintiffs provided Amended Notice pursuant to Labor Code § 2699.3 to the LWDA and to the Defendant.
3 On October 15, 2021, Plaintiffs provided their Second Amended PAGA Notice to the LWDA and
4 Defendant. The LWDA has provided no notice to Plaintiffs within the period specified in Labor Code §
5 2699.3 regarding its intention to investigate or not investigate any other claims alleged in the PAGA
6 Notice. Plaintiffs have therefore fully complied with the PAGA procedural requirements and may
7 commence this representative action pursuant to Labor Code § 2699.

8 **VENUE**

9 11. Venue is proper in the United States District Court for the Northern District of California
10 pursuant to 28 U.S.C. §§ 1332 and 1441.

11 **FACTUAL ALLEGATIONS COMMON TO ALL AGGRIEVED EMPLOYEES**

12 ***A. Defendant Misclassified Plaintiffs and Aggrieved Employees as Outside Sales Representatives***

13 12. During the PAGA Period, Defendant maintained a policy and/or practice of classifying
14 Plaintiffs and Aggrieved Employees, which includes the Overtime Aggrieved Employees, as outside sales
15 representatives. However, Aggrieved Employees customarily and regularly spent more than 50% of their
16 working time performing work for Defendant from the Defendant’s place of business, that being either
17 the Defendant’s office or Plaintiffs and Aggrieved Employees’ home offices.

18 13. Because Plaintiffs and Aggrieved Employees did not spend 50% or more away from the
19 Defendant’s place of business, the California outside sales exemption does not apply, and Aggrieved
20 Employees were and are entitled to the protections of the California minimum wage laws, including the
21 right to be provided with itemized wage statements that include entries for their total hours worked and
22 applicable hourly rates and corresponding number of hours worked at each rate pursuant to Labor Code §
23 226.

24 14. Moreover, in mid-to-late March 2020, following Governor Newsom’s stay-at-home order,
25 Defendant instituted policies and/or practices that led Aggrieved Employees to work almost exclusively
26 from their own home office, i.e. the employer’s place of business.

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1 ***B. Defendant Failed to Issue Accurate Itemized Wage Statements***

2 15. During the PAGA Period, Defendant did not require Plaintiffs and Aggrieved Employees
3 to record their hours worked, and Defendant did not maintain policies and/or practices to track Plaintiffs
4 and Aggrieved Employees' hours worked for payroll and wage statement purposes.

5 16. As a result of Defendant's failure to track Aggrieved Employees' hours worked, Defendant
6 failed to furnish Aggrieved Employees with wage statements containing entries for their total hours
7 worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours
8 worked at each hourly rate by the employee in violation of Labor Code § 226(a).

9 ***C. Defendant's Compensation Policies and Practices Applicable to Overtime Aggrieved***
10 ***Employees Violated California's Overtime Laws***

11 17. As discussed above, during the Overtime Aggrieved Employees, Defendant maintained a
12 policy and/or practice of misclassifying Overtime Aggrieved Employees as exempt from overtime
13 pursuant to the outside sales exemption, despite the fact that they customarily and regularly spent 50% or
14 more of their time working hours from their employers' place of business, which included working from
15 their home office.

16 18. In addition, Overtime Aggrieved Employees earned 50% or more of their total
17 compensation in earnings other than commissions. As a result, Plaintiffs and Overtime Aggrieved
18 Employees were entitled to overtime for all hours worked in excess of eight hours in a day, and 40 hours
19 in a workweek.

20 19. During the PAGA Period, Plaintiffs and Overtime Aggrieved Employees routinely worked
21 more than 8 hours in a workday and/or more than forty hours in workweek.

22 20. Because Overtime Aggrieved Employees were non-exempt employees throughout the
23 Overtime PAGA Period, Defendant was required to pay them overtime pay pursuant to Labor Code §§
24 510, 1194 and Wage Order No. 4-2001, § 3. However, Defendant failed to pay overtime wages owed to
25 Plaintiffs and Overtime Aggrieved Employees because Defendant misclassified them as exempt from the
26 overtime laws.
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1 ***D. Defendant Failed to Pay All Compensation Owed to Overtime Aggrieved Employees Upon***
2 ***Discharge From Employment***

3 21. Plaintiffs' employment with Paychex ended in June 2020.

4 22. During the PAGA Period, as a consequence of Defendant's failure to pay overtime wages,
5 Plaintiffs and formerly employed Overtime Aggrieved Employees did not receive all compensation due
6 to them upon separation from employment as required under Labor Code §§ 201-203.

7 ***E. Defendant's Forum Selection Clause and Choice of Law Clause are Unlawful Terms of***
8 ***Employment***

9 23. During the PAGA Period, Defendant required Aggrieved Employees to enter into, as a
10 condition of employment, a "Confidentiality, Non-Solicitation, and Non-Compete" Agreement.
11 Defendant also required Aggrieved Employees to enter into an "Incentive Plan Agreement." The
12 Agreement and the Incentive Plan both contained a Forum Selection clause and /or Choice of Law clause
13 in violation of Labor Code § 925.

14 24. Specifically, Defendant's Agreement contained a Forum Selection Clause requiring that
15 the employee "bring any litigation related to this agreement solely in the Supreme Court for Monroe
16 County, New York, or the United States District for Western District of New York in Rochester, New
17 York."

18 25. The Agreement also contained a Choice of Law clause which provided that the "agreement,
19 and any dispute hereunder, shall be decided in accordance with the laws of the State of New York...".

20 26. Additionally, Defendant's Incentive Plan contained a Choice of Law clause providing that
21 "the validity and construction of the Plan and all determinations made and actions taken hereunder, as
22 well as any amendment(s) made to the Plan will be governed by the laws of the State of New York,
23 without giving effect to the principals of the conflict of laws."

24 27. Defendant's Forum Selection clause violates Labor Code § 925(a)(1) which prohibits an
25 employer from requiring "an employee who primarily resides and works in California, as a condition of
26 employment, to agree to a provision that would...Require the employee to adjudicate outside of California
27 a claim arising in California."
28

1 28. Defendant's Choice of Law clauses violate Labor Code § 925(a)(2) which prohibits an
2 employer from requiring "an employee who primarily resides and works in California, as a condition of
3 employment, to agree to a provision that would...[d]eprive the employee of the substantive protection of
4 California law with respect to a controversy arising in California."

5 29. As a result of its violations of Labor Code § 925, Defendant violated Labor Code § 432.5
6 which prohibits an employer from "requir[ing] any employee or applicant for employment to agree, in
7 writing, to any term or condition which is known by such employer, or agent, manager, superintendent,
8 or officer thereof to be prohibited by law."

9 ***F. Defendant's Failure to Reimburse ER Aggrieved Employees for their Business Expenses***

10 30. Beginning in mid-to-late March 2020, Defendant instituted policies and/or practices that
11 required Expense Reimbursement Aggrieved Employees to perform work-related duties from home.

12 31. As a result of working remotely, in direct consequence of carrying out their job duties, or
13 their obedience to the directions of the Defendant, Expense Reimbursement Aggrieved Employees
14 incurred home office expenses, including but not limited to charges for cellular phone service and internet
15 service.

16 32. Defendant knew or should have known that Expense Reimbursement Aggrieved
17 Employees incurred those home office expenses.

18 33. However, during the PAGA Period, Defendant maintained a policies and/or practices that
19 denied full reimbursement for these expenses.

20 34. As a result, Defendant's policies and/or practices required and/or with Defendant's
21 knowledge thereof permit, ER Aggrieved Employees to pay for their office business expenses, including
22 but not limited to, internet and phone service in direct discharge of their job duties on behalf of Defendant,
23 without reimbursement by Defendant in full or at all, for such expenses, in violation of Labor Code §
24 2802.

25 35. Defendant was aware that Plaintiffs and ER Aggrieved Employees routinely incurred
26 business expenses in the discharge of their duties, as employees, without any reimbursement. Defendant
27 nevertheless has, through the PAGA Period, failed and refused to reimburse Plaintiffs and ER Aggrieved
28

1 Employees for such expenses incurred by them in their work as they carry out their work duties for
2 Defendant.

3 36. Defendant failed to implement and maintain a policy of reimbursing ER Aggrieved
4 Employees necessarily-incurred business expenses, or substantially similar policies.

5 37. Plaintiffs and ER Aggrieved Employees have been harmed by Defendant's unlawful lack
6 of a reimbursement policy and/or practice in that they have not been paid for any of their expenses incurred
7 in carrying out their job duties for Defendant, thereby diminishing their agreed-upon compensation, in
8 substantial amounts to be proved at trial.

9
10 **CAUSE OF ACTION FOR CIVIL PENALTIES**
[Labor Code §§ 2698 *et seq.*]

11 38. Plaintiffs re-allege and incorporates by reference each and every allegation set forth in the
12 preceding paragraphs.

13 39. Plaintiffs seek PAGA penalties, and attorneys' fees and costs, on behalf of themselves,
14 Aggrieved Employees, Overtime Aggrieved Employees, and Expense Reimbursement Aggrieved
15 Employees, for the following violations:

16 ***Violation of Labor Code § 226(a) on behalf of Aggrieved Employees***

17 40. During the PAGA Period, Defendant failed to issue accurate itemized wage statements by
18 failing to list on the wage statements (1) total hours worked and (2) all applicable hourly rates in effect
19 during the pay period, and the corresponding number of hours worked at each hourly rate, in violation of
20 Labor Code § 226(a)(2) and (a)(9).

21 41. Pursuant to Labor Code § 226.3, Plaintiffs and Aggrieved Employees are entitled to \$250
22 for each initial pay period with a violation of Labor Code § 226(a)(2), (a)(9), and \$1,000 for each
23 subsequent pay period with a violation.

24 42. Alternatively, under Labor Code § 2699(f)(2), Plaintiffs and Aggrieved Employees are
25 entitled to a PAGA penalty equal to one hundred dollars (\$100) per pay period per Aggrieved Employee
26 for each initial violation of Labor Code § 226(a)(2) and (a)(9), and two hundred dollars (\$200) per pay
27 period for each subsequent violation.

1 ***Violation of Labor Code §§ 510 and 1194 on behalf of Overtime Aggrieved Employees***

2 43. During the PAGA Period, Defendant did not compensate Overtime Aggrieved Employees
3 overtime wages when they worked over 8 hours in a day, 40 hours in a week, in violation of Labor Code
4 §§ 510 and 1194, and Wage Order No. 4-2001, § 3.

5 44. Pursuant to Labor Code § 2699(f)(2), Plaintiffs and Overtime Aggrieved Employees are
6 entitled to one hundred dollars (\$100) per pay period per Overtime Aggrieved Employee for each initial
7 violation of Labor Code §§ 510 and 1194, and two hundred dollars (\$200) per pay period for each
8 subsequent violation.

9 ***Violation of Labor Code §§ 201-202 on behalf of Overtime Aggrieved Employees***

10 45. During the PAGA Period, as a consequence of Defendant's failure to pay overtime wages
11 owed, formerly employed Overtime Aggrieved Employees did not receive all compensation due to them
12 when they were discharged from employment, in violation of Labor Code § 201.

13 46. Pursuant to Labor Code § 2699(f)(2), Plaintiffs and formerly employed Overtime
14 Aggrieved Employees are entitled to one hundred dollars (\$100) per pay period per Overtime Aggrieved
15 Employee for each initial violation of Labor Code §§ 201-202 and two hundred dollars (\$200) per pay
16 period for each subsequent violation.

17 ***Violation of Labor Code §§ 925 and 432.5 on behalf of Aggrieved Employees***

18 47. During the PAGA Period, Defendant required Aggrieved Employees as a condition of their
19 employment to enter into a "Confidentiality, Non-Solicitation, and Non-Compete" Agreement and an
20 "Incentive Plan Agreement." Both the Agreement and the Incentive Plan contained a Forum Selection
21 clause and /or Choice of Law clause that violate Labor Code § 925.

22 48. As a result of its violation of Labor Code § 925, Defendant violated Labor Code § 432.5
23 which prohibits an employer from "requir[ing] any employee or applicant for employment to agree, in
24 writing, to any term or condition which is known by such employer, or agent, manager, superintendent,
25 or officer thereof to be prohibited by law."

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1 49. Pursuant to Labor Code § 2699(f)(2), Plaintiffs and Aggrieved Employees are entitled to
2 one hundred dollars (\$100) per pay period for each initial violation and two hundred dollars (\$200) per
3 pay period for each subsequent violation.

4 ***Violation of Labor Code § 2802 on behalf of Expense Reimbursement Aggrieved Employees***

5 50. During the PAGA Period, Expense Reimbursement Aggrieved Employees were required
6 to work remotely from home and as a result incurred expenses in carrying out their job duties for
7 Defendant including the cost of internet and home or mobile telephone expenses, and other expenses
8 associated with working from home. However, Defendant failed to reimburse Expense Reimbursement
9 Aggrieved Employees for these business expenses reasonably incurred, in violation of Labor Code § 2802.

10 51. Pursuant to Labor Code § 2699(f)(2), Plaintiffs and Expense Reimbursement Aggrieved
11 Employees are entitled to one hundred dollars (\$100) per pay period per Expense Reimbursement
12 Aggrieved Employee for each initial violation and two hundred dollars (\$200) per pay period for each
13 subsequent violation.

14 **Attorneys' Fees and Costs**

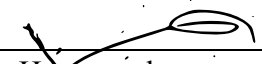
15 52. Plaintiffs are entitled to recover attorneys' fees and costs under Labor Code § 2699(g)(1).

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiffs, on behalf of themselves, Aggrieved Employees, Overtime
18 Aggrieved Employees, and Expense Reimbursement Aggrieved Employees, pray that the Court award
19 PAGA Civil Penalties, and attorneys' fees and costs, as provided under Labor Code § 2699; and all
20 other relief as this Court deems proper.

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22 Dated: . October 4, 2021

Respectfully submitted,

23
24 
25 Julian Hammond
26 HAMMONDLAW, P.C.
27 Attorneys for Plaintiff
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