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FILED
Superior Court of California
County of Los Angeles
07/19/2021

Sherri R. Carter, Executive Officer / Clerk of Court
By: J. Arceo Deputy

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**
12

13
14 MARIA LOZANO, an individual,

15 Plaintiff,

16 v.

17 COLLECTION SITES, LLC, a Nevada
18 corporation; and DOES 1 through 50,
19 inclusive,

20 Defendant.
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Case Number: 21STCV22681

[Assigned for all purposes to Hon. John P. Doyle]

**FIRST AMENDED COMPLAINT FOR
VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
("PAGA")**

[California Labor Code § 2698 *et seq.*]

Action filed: June 17, 2021

1 This is a representative action brought by Maria Lozano ("Plaintiff"), on behalf of herself
2 and all other aggrieved employees and the State of California, relating to systemic violations of
3 California wage and hour laws by her former employer Collection Sites, LLC (hereinafter referred
4 to as "Collection Sites" or "Defendant"). Plaintiff makes the following allegations on information
5 and belief, except as to allegations pertaining to Plaintiff individually, which are based on her
6 personal knowledge.

7 **INTRODUCTION**

8 1. Defendant provides mobile testing centers for COVID-19 throughout the State
9 of California.

10 2. In an effort to conserve labor costs, and thereby maximize profits, Defendant has
11 implemented policies and practices that have resulted in systematic violations of California's wage
12 and hour laws.

13 3. For example, Defendant has implemented unlawful policies with respect to meal
14 and rest breaks. Defendant requires its non-exempt employees, who are informed that the needs of
15 the businesses take top priority, to work through meal and rest breaks, to take untimely meal periods
16 and to remain on call during such breaks. As a result, Plaintiff and other aggrieved employees have
17 been denied the ability to take the meal and rest breaks that they were and are legally entitled to
18 take.

19 4. Moreover, Defendant has uniformly failed to pay Plaintiff and other aggrieved
20 employees proper overtime wages due the fact that it has willfully turn a blind eye to off-the-clock
21 work that Plaintiff and other non-exempt employees perform as a direct consequence of
22 Defendant's understaffing and imposition of an unreasonable workload.

23 5. Defendant also fails to indemnify Plaintiff and the other aggrieved employees for
24 Personal Protective Equipment relating to the COVID 19 pandemic, including but not limited to,
25 safety glasses, gloves and masks.

26 **JURISDICTION AND VENUE**

27 6. The Superior Court of the State of California has jurisdiction in this matter because
28 Plaintiff is a citizen of the State of California, and Defendant is licensed to do business under the

1 laws of the State of California.

2 7. Venue is proper in this judicial district and the County of Los Angeles because
3 Defendant assigned Plaintiff to perform services in the City of Pomona which is located in the
4 County of Los Angeles. Many other aggrieved employees also worked for Defendant and assigned
5 to perform services in the County of San Bernardino.

6 8. Defendant employed Plaintiff and other aggrieved employees within the State of
7 California and the unlawful acts alleged herein have a direct effect on Plaintiff and other aggrieved
8 employees.

9 9. The State of California, County of Los Angeles, has jurisdiction in this matter
10 because the individual claims are under the seventy-five thousand dollar (\$75,000.00) individual
11 jurisdictional threshold and the five million dollar (\$5,000,000.00) aggregate jurisdictional
12 threshold for federal court diversity jurisdiction. Further, there is no federal question at issue as
13 the issues herein are based solely on the California Labor Code, Industrial Welfare Commission
14 Wage Orders, Code of Civil Procedure and Rules of Court. Thus, the State of California, San
15 Bernardino County Superior Court maintains the appropriate jurisdiction to hear this matter.

16 **THE PARTIES**

17 10. During the statute of limitations period, Plaintiff was employed by Defendant as a
18 Medical Assistant, administering COVID-19 nasal swabs, antibody testing and other related duties,
19 to customers of Defendant at her worksite in Pomona, California.

20 11. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all
21 times relevant hereto was, a corporation organized and existing under the laws of the State of
22 Nevada and license to do business in the State of California.

23 12. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
24 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff
25 is informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
26 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved
27 employees' injuries and damages, as alleged herein, were proximately caused by the conduct of
28 such DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the

1 true names and capacities of such DOE defendants when ascertained.

2 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
3 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
4 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
5 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
6 employer and/or joint employer of Plaintiff and the other aggrieved employees.

7 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
8 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
9 Managing agent, and/or principal of the co-Defendants, and in performing the acts mentioned
10 below was acting, at least in part, within the course and scope of that authority as such agent, proxy,
11 servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the
12 permission and consent of the co-Defendants. Plaintiff also alleges that the acts of each Defendant
13 are legally attributable to the other Defendants.

14 15. Plaintiff is informed and believes, and based thereon alleges, that each of the
15 Defendants sued herein was, at all relevant times, the employer, owner, shareholder, principal, joint
16 venture, alter-ego, employee, proxy, managing agent, and/or principal of the remaining Defendants,
17 and was acting, at least in part, within the course and scope of such employment and agency, with
18 the express and implied permission, consent and knowledge, approval and/or ratification of the
19 other Defendants. The above co-Defendant, managing agents, and supervisors, aided, abetted,
20 condoned, permitted, approved, authorized, and/or ratified the unlawful acts described herein.

21 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

22 16. On May 11, 2021, Plaintiff gave written notice by certified mail pursuant to
23 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
24 ("LWDA") and Defendant, of the specific provisions of the California Labor Code and IWC Wage
25 Order alleged to have been violated, including the facts and theories to support the alleged
26 violations. Plaintiff has not received any response from the LWDA. As Plaintiff has waited more
27 than sixty-five (65) days from the May 11, 2021 postmark date of her written notice before filing
28 this action, Plaintiff has complied with all of the requirements set forth in California Labor Code §

1 2699.3 to commence a representative action under the California Private Attorneys General Act of
2 2004 ("PAGA").

3 17. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this
4 action on behalf of the State of California, and all other aggrieved employees (e.g., current and
5 former non-exempt employees of Defendant and performed work for Defendant in the State of
6 California at any time within the period beginning one (1) year prior to the May 11, 2021 notice
7 Plaintiff provided to the LWDA and Defendant, and ending at the time this action proceeds to final
8 judgment ("statute of limitations period").

9 **FACTUAL ALLEGATIONS**

10 **Failure to Provide Required Meal Periods**

11 18. During the statute of limitations period, as part of Defendant's illegal policies and
12 practices to minimize labor costs and maximize corporate profits, Defendant has required,
13 permitted or otherwise suffered Plaintiff and aggrieved employees to perform work during their
14 meal periods, to completely skip their meal periods, to take late and short meal periods, and
15 Defendant has otherwise failed to provide the required meal periods to Plaintiff and aggrieved
16 employees as required under California Labor Code §§ 226.7, 512 and § 11 of the applicable IWC
17 Order.

18 19. Defendant has implemented several practices that have caused Plaintiff and
19 aggrieved employees to systematically miss and otherwise take non-compliant meal periods.
20 Defendant systematically understaff its job sites such that non-exempt employees are given so
21 much work to complete that they regularly miss or otherwise take non-compliant meal periods. As
22 a direct consequence of this understaffing, Plaintiff and aggrieved employees have so much work
23 to complete within their scheduled shifts that they are forced to skip their meal periods altogether,
24 to take them after working longer than five (5) hours, to perform work during their meal periods,
25 or return to work after taking less than a thirty (30) minute meal period.

26 20. There are also frequent occasions when Plaintiff and aggrieved employees need to
27 perform other duties immediately before the time during which they are legally entitled to take a
28 meal period. Pursuant to Defendant's policies, Plaintiff and aggrieved employees cannot simply

1 drop their job duties and leave a customer to take a meal period. At other times Plaintiff and the
2 other aggrieved employees were too busy performing their job duties at Defendant's client facilities
3 to stop their work in middle of an assignment. Consequently, Plaintiff and aggrieved employees
4 regularly miss meal periods, take late meal periods, return early from meal periods, and even clock
5 out for meal periods but continue working.

6 21. Plaintiff and aggrieved employees often cannot simply stop their assignments to take
7 their meal period, and their inability to secure coverage regularly causes them to regularly miss and
8 otherwise take non-compliant meal periods, in addition to other violations yet to be discovered.

9 22. Despite the foregoing, Defendant has implemented a policy and practice of actively
10 discouraging the issuance of meal period premium payments, and in the process, Defendant has
11 violated California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order, by failing to
12 compensate Plaintiff and aggrieved employees who were not authorized and permitted to take a
13 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper
14 regular rate of pay for each workday that such a meal period was not authorized or permitted.

15 **Failure to Provide Required Rest Breaks**

16 23. During the statute of limitations period, as part of Defendant's illegal policies and
17 practices to minimize labor costs and maximize corporate profits, Defendant has failed to authorize
18 and permit Plaintiff and other aggrieved employees to take rest breaks as required under California
19 Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order.

20 24. The same or similar policies and practices that deprive Plaintiff and other aggrieved
21 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability
22 to take their first and second and third rest breaks. As alleged herein, Defendant understaffs its
23 client facilities, which creates so much work for Plaintiff and other aggrieved employees that they
24 are frequently unable to take rest breaks. Plaintiff and aggrieved employees often cannot simply
25 stop assisting a customer to take a rest break, and their inability to secure coverage regularly causes
26 them to regularly miss and otherwise take non-compliant rest breaks.

27 25. Defendant also does not provide adequate training regarding its legal obligations
28 with respect to the provision of rest breaks, does not implement a schedule regarding rest breaks

1 for non-exempt employees, and often interrupts staff who try to take rest periods. In short,
2 Defendant essentially has a non-existent rest break policy, as there is no guidance or specification
3 as to when Plaintiff and other aggrieved employees are authorized and permitted to take rest breaks
4 during their shifts.

5 26. Defendant also violated California Labor Code § 226.7, and § 12 of the applicable
6 IWC Order, by failing to pay Plaintiff and other aggrieved employees who were not provided with
7 a rest break, in accordance with the applicable wage order, one additional hour of compensation at
8 the proper regular rate of pay for each workday that a rest break was not provided.

9 **Failure to Pay Overtime Wages**

10 27. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC
11 Order, Defendant is required to compensate Plaintiff and other aggrieved employees for all
12 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
13 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight
14 (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of
15 twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the
16 seventh consecutive day of work in any workweek.

17 28. During the statute of limitations period, Defendant failed to compensate Plaintiff
18 and other aggrieved employees for all overtime hours worked as required under the foregoing
19 provisions of the California Labor Code and IWC Wage Order by, among other methods: failing to
20 pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California
21 Labor Code §§ 510, 1194 and § 3 of the applicable IWC Order, requiring, permitting or suffering
22 Plaintiff and other aggrieved employees to work off-the-clock, and to work through meal and rest
23 breaks, but not compensating them for this time, illegal rounding, improperly calculating the regular
24 rate of pay based on bonuses, commissions, and other remuneration, and other methods to be
25 discovered.

26 29. Defendant has knowingly and willfully refused to perform its obligations to
27 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
28 violation of California Labor Code §§ 510, 1194 and 1198, and § 3 of the applicable IWC Order.

Failure to Pay Minimum Wages

30. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

31. During the statute of limitations period, the hourly rates for Plaintiff and other aggrieved employees were precisely at California minimum wage. Based on this common practice, Defendant failed to pay Plaintiff and other aggrieved employees minimum wages for all hours worked by requiring, permitting or suffering Plaintiff and other aggrieved employees to work off the clock, such as requiring them to work through meal and rest breaks but not compensating them for this time, illegal rounding, and failing to include this time in all hours worked, and other methods to be discovered.

32. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order. As a proximate result of the aforementioned violations, Plaintiff and other aggrieved employees have been damaged in an amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any other applicable law, Plaintiff and other aggrieved employees are entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

Failure to Pay All Wages Due to Discharged and Quitting Employees

33. Pursuant to California Labor Code §§ 201, 202 and 203, Defendant is required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

34. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

35. California Labor Code § 203 provides that if an employer willfully fails to pay, in

1 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
2 quits, the employer is liable for waiting time penalties in the form of continued compensation to
3 the employee at the same rate for up to 30 workdays.

4 36. During the statute of limitations period, Defendant has willfully failed to pay
5 accrued wages and other compensation to Plaintiff and other aggrieved employees in accordance
6 with California Labor Code §§ 201 and 202. On information and belief, Defendant does not have
7 a sufficient policy to provide Plaintiff and other aggrieved employees with their final paychecks
8 within the timeframes required under California law. Defendant also willfully failed and continues
9 to fail to pay accrued wages and other compensation to other aggrieved employees similarly
10 situated as Plaintiff in accordance with California Labor Code §§ 201, 202 and 203.

11 **Failure to Furnish Accurate Itemized Wage Statements**

12 37. During the statute of limitations period, Defendant has routinely failed to provide
13 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
14 Defendant's pay stubs have violated California Labor Code § 226. Defendant was and is not
15 providing Plaintiff and other aggrieved employees with proper meal periods and rest breaks but
16 intentionally fails to include in their wage statements one (1) additional hour of compensation at
17 their regular rates of pay for each non-compliant meal period or rest break. Moreover, Defendant
18 has failed to pay proper overtime wages to Plaintiff and other aggrieved employees and its wage
19 statements therefore fail to reflect the correct hourly rates worked by Plaintiff and other aggrieved
20 employees. Defendant also failed to reimburse Plaintiff and the other aggrieved employees for
21 employment related expenses resulting in inaccurate wage statements.

22 38. In order to conceal its wage theft, Defendant knowingly and intentionally failed to
23 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements
24 in accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

25 39. Plaintiff and other aggrieved employees suffered injury as a result of the failure of
26 Defendant to provide timely and accurate itemized wage statements because it prevented them from
27 discovering the scope and extent of Defendant's violations of California wage and hour laws,
28 prevented them from being able to accurately determine the gross wages earned, the total hours

1 worked, all deductions made, the net wages earned, all applicable hourly rates in effect during each
2 pay period and the corresponding number of hours worked at each hourly rate, and wages were
3 earned but remained unpaid and business expenses were incurred by unreimbursed by Defendant.

4 **Failure to Maintain Required Records**

5 40. During the statute of limitations period, as part of Defendant's illegal payroll
6 policies and practices to deprive Plaintiff and other aggrieved employees of all wages earned and
7 due, Defendant knowingly and intentionally failed to maintain records as required under California
8 Labor Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order, including but not limited
9 to the following records: total daily hours worked by each employee; applicable rates of pay; all
10 deductions; meal periods; time records showing when each employee begins and ends each work
11 period; and accurate itemized statements. Defendant had knowledge that it was not providing its
12 non-exempt employees with proper meal and rest periods, but knowingly failed to include in the
13 wage statements one (1) extra hour of compensation for each missed meal and rest period.
14 Defendant also illegally and inaccurately recorded the time in which Plaintiff and other aggrieved
15 employees worked. Defendant also failed to maintain accurate, itemized wage statements, as
16 alleged above.

17 41. During the statute of limitations period, as part of Defendant's illegal payroll
18 policies and practices to deprive Plaintiff and other aggrieved employees of all wages earned and
19 due, Defendant knowingly and intentionally failed to maintain records as required under California
20 Labor Code § 2801.5, which requires a California employer to provide written notice at the time of
21 hiring of certain employment related information, including but not limited to, the name of the
22 employer, including any "doing business as" names used by the employer, and the physical address
23 of the employer's main office or principal place of business, and a mailing address, if different.

24 42. Defendant failed to comply with California Labor Code § 2810.5 by not the listing
25 the correct business entity for whom work will be performed by Plaintiff and the other aggrieved
26 employees.

Failure to Indemnify Employees for Necessary Expenditures

Incurred in Discharge of Duties

43. California Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer.

44. Defendant has failed to properly indemnify Plaintiff and the other aggrieved employees for the costs associated with the upkeep uniforms and the upkeep, washing and laundering of the unfirms exposed to COVID-19 while testing Defendant's customers. The expenses were incurred by Plaintiff and the other aggrieved employees were in direct consequence of the discharge of their duties.

45. Defendant knowingly, willingly and intentionally attempted to offset the cost of doing business on Plaintiff and the other aggrieved employees.

FIRST CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

[Cal. Lab. Code § 2698 *et seq.*]

(On Behalf of Plaintiff and the Aggrieved Employees Against Defendant)

46. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 45 above.

47. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code § 2699(c), and a proper representative to bring a civil action on behalf of herself and other aggrieved employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff was employed by Defendant and one or more of the alleged California Labor Code violations was committed against Plaintiff during the statute of limitations period.

48. Plaintiff seeks to recover civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class certification is not required.

49. Plaintiff further has standing to represent all aggrieved employees for all of her asserted violations of the California Labor Code under PAGA. See *Huff v. Securitas Security*

1 *Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757 (“For PAGA standing a plaintiff need only have
2 been employed by the violator and affected by ‘one or more’ of the alleged violations. (Sec. 2699,
3 subds. (a), (c)).).

4 50. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
5 penalties from Defendant in a representative action for the violations set forth above, including but
6 not limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512,
7 1174, 1194, 2802 and for the violations of the applicable IWC Wage Order alleged above.

8 51. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil
9 penalties against Defendant for violations of California Labor Code provisions for which a civil
10 penalty is specifically provided, including but not limited to, the following:

- 11 a. Pursuant to California Labor Code § 226.3, for violations of California
12 Labor Code § 226(a), Defendant is subject to a civil penalty in the amount
13 of two hundred and fifty dollars (\$250) per aggrieved employee for the
14 initial pay period where a violation occurs and one thousand dollars
15 (\$1,000) per aggrieved employee for violations in subsequent pay periods.
- 16 b. Pursuant to California Labor Code § 1174.5, for violations of California
17 Labor Code § 1174(d), Defendant is subject to a civil penalty of five
18 hundred dollars (\$500).

19 52. California Labor Code § 2699(f) provides that for all California Labor Code
20 violations for which a civil penalty is not specifically provided, the following civil penalties are
21 established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
22 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
23 subsequent violation.

24 53. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f)
25 for Defendant’s violations of California Labor Code provisions for which a civil penalty is not
26 specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204,
27 226.7, 1197, 1024.5, and for the violations of the applicable IWC Wage Order alleged above.

28 54. All civil penalties sought and recovered under this action will be allocated as

1 follows: seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff
2 and aggrieved employees.

3 55. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to
4 California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays
7 for relief against Defendant, as follows:

- 8 1. For civil penalties according to proof;
9 2. For reasonable attorneys' fees and costs pursuant to California Labor Code §
10 2699(g), California Code of Civil Procedure § 1021.5, and/or any other applicable provisions
11 providing for attorneys' fees and costs; and
12 3. For such further relief that the Court may deem just and proper.

13 DATED: July 19, 2021

LAW OFFICE OF SCOTT E. WHEELER

14 By: 
15

SCOTT E. WHEELER

16 *Attorney for Plaintiff and the other Aggrieved*
17 *Employees*
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